



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Acting Administrative Code Editor

Telephone: (515)281-3355

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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 2011

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
14	Wednesday, December 22, 2010	January 12, 2011
15	Friday, January 7, 2011	January 26, 2011
16	Friday, January 21, 2011	February 9, 2011

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*****

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Examinations for dentists and dental hygienists, 11.2(2)“e,” 11.5(2)“e,” 12.1, 12.3, 12.4 IAB 12/1/10 ARC 9243B	Board Conference Room 400 SW 8th St., Suite D Des Moines, Iowa	December 21, 2010 2 p.m.
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ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Site development program, ch 77 IAB 12/1/10 ARC 9255B	IDED Southwest Room 200 E. Grand Ave. Des Moines, Iowa	December 21, 2010 10 to 11 a.m.
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EDUCATION DEPARTMENT[281]

Special education, amendments to ch 41 IAB 12/15/10 ARC 9269B	State Board Room, Second Floor Grimes State Office Bldg. East 14th and Grand Ave. Des Moines, Iowa	January 4, 2011 2 to 3 p.m.
	State Board Room, Second Floor Grimes State Office Bldg. East 14th and Grand Ave. Des Moines, Iowa	January 11, 2011 2 to 3 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Open feedlots and confinement feeding operations, amendments to chs 60, 63 to 65 IAB 12/15/10 ARC 9274B	Room 115, Dairy Center Northeast Iowa Community College 1527 Highway 150 South Calmar, Iowa	January 4, 2011 6 p.m.
	Lime Creek Nature Center 3501 Lime Creek Rd. Mason City, Iowa	January 5, 2011 6 p.m.
	Washington County Conservation Board Education Center, Marr Park 2943 Highway 92 Ainsworth, Iowa	January 6, 2011 6 p.m.
	Boardroom Clay County Administration Building 300 W. 4th Street Spencer, Iowa	January 10, 2011 6 p.m.
	Fourth Floor Conference Room Wallace State Office Building 502 E. 9th Street Des Moines, Iowa	January 11, 2011 11 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Sign language interpreters and transliterators, 361.5(1) IAB 12/15/10 ARC 9259B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	January 4, 2011 9 to 9:30 a.m.
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PUBLIC HEALTH DEPARTMENT[641]

Volunteer health care provider program, 88.2, 88.3, 88.5, 88.6 IAB 12/1/10 ARC 9245B	GoToMeeting online at: https://www1.gotomeeting.com/join/847635881 Toll-free: 1-877-568-4106 Access Code: 847-635-881	December 21, 2010 9 to 10 a.m.
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PUBLIC SAFETY DEPARTMENT[661]

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221.4(2)
IAB 12/15/10 **ARC 9289B**
(See also **ARC 9283B** herein)

First Floor Conference Room 125
Public Safety Headquarters Bldg.
215 E. 7th St.
Des Moines, Iowa

January 4, 2011
9:30 a.m.

TRANSPORTATION DEPARTMENT[761]

Update of signing manual,
130.1
IAB 12/15/10 **ARC 9290B**

First Floor South Conference Room
Department of Transportation
800 Lincoln Way
Ames, Iowa

January 6, 2011
10 a.m.
(If requested)

The following list will be updated as changes occur.

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

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

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

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ARC 9260B**ARCHITECTURAL EXAMINING BOARD[193B]****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 544A.29, the Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 4, “Rules of Conduct,” Iowa Administrative Code.

The proposed amendment to Chapter 4 reflects a change to the supervisor’s requirements for the Intern Development Program by requiring the supervisor to respond when requested by an intern to verify experience hours. Although this amendment, with an intended effective date of March 16, 2011, requires the supervisor to respond to the request, the supervisor has the option to reject the submission and send it back for further revision.

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

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before January 5, 2011. Comments should be addressed to Jodi Adams, Architectural Examining Board, 1920 S.E. Hulsizer Road, Ankeny, Iowa 50021; or faxed to (515)281-7411. E-mail may be sent to jodi.adams@iowa.gov.

The amendment is intended to implement Iowa Code chapter 544A.

The following amendment is proposed.

Adopt the following **new** subrule 4.1(9):

4.1(9) Intern Development Program supervisor. The Intern Development Program supervisor shall respond to a request to verify experience hours reported to the National Council of Architectural Registration Board’s Intern Development Program when requested by NCARB, the board, or a subordinate, associate, or intern who is, or has been, supervised by the Intern Development Program supervisor.

ARC 9271B**COLLEGE STUDENT AID COMMISSION[283]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 261.3, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to amend Chapter 1, “Organization and Operation,” Iowa Administrative Code.

The rules in Chapter 1 describe the location of the Commission, contact information, and the makeup of the Commission. This amendment updates the rules to reflect the new location of the Commission’s offices and Iowa Code changes affecting membership of the Commission.

Interested persons may submit comments orally or in writing by 4:30 p.m. on January 4, 2011, to the Executive Director, Iowa College Student Aid Commission, 603 East 12th Street, 5th Floor, Des Moines, Iowa 50319-9017; fax (515)725-3401.

This amendment is intended to implement Iowa Code chapter 261.

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

The following amendment is proposed.

Amend subrules 1.2(1) and 1.2(2) as follows:

1.2(1) Location. The commission is located in the ~~Clemens Iowa Building, 200 Tenth Street, Fourth Floor,~~ 603 East 12th Street, 5th Floor, Des Moines, Iowa 50309-3609; telephone (515)~~242-3344~~ 725-3400; Web site www.iowacollegeaid.org. Office hours are 8 a.m. to 4:30 p.m., Monday to Friday. Offices are closed on Saturdays and Sundays and on official state holidays designated in accordance with state law.

1.2(2) The commission. The commission consists of ~~12~~ 14 members and functions under the leadership of a chairperson elected by the membership. Eight members are appointed by the governor to serve four-year terms. Three of the governor's appointees represent the general public, one represents Iowa lending institutions, one represents Iowa independent colleges and universities, one represents Iowa community colleges, ~~one represents the Iowa student loan liquidity corporation, and one represents Iowa postsecondary students, and one shall be an individual who is repaying or has repaid a student loan guaranteed by the commission.~~ The One member is appointed by the board of regents, The president of the senate, and the minority leader of the senate, the speaker of the house of representatives, and the minority leader of the house of representatives each appoint a one ex officio, nonvoting commission member. The director of the department of education serves as a continuous member of the commission and may appoint a designee to represent the department of education.

ARC 9272B

COLLEGE STUDENT AID COMMISSION[283]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 261.3, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to amend Chapter 34, “Registered Nurse and Nurse Educator Loan Forgiveness Program,” Iowa Administrative Code.

The rules in Chapter 34 describe the awarding of forgivable loans to registered nurses and nurse educators. This amendment updates rule 283—34.3(261) by eliminating restrictions on eligibility which originally ensured that applicants did not receive awards under both the current program and a program that has not been funded since fiscal year 2007.

Interested persons may submit comments orally or in writing by 4:30 p.m. on January 4, 2011, to the Executive Director, Iowa College Student Aid Commission, 603 East 12th Street, 5th Floor, Des Moines, Iowa 50319-9017; fax (515)725-3401.

This amendment is intended to implement Iowa Code chapter 261.

The following amendment is proposed.

Rescind subrule **34.3(5)**.

ARC 9273B**COLLEGE STUDENT AID COMMISSION[283]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 261.3, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to amend Chapter 35, “Iowa Teacher Shortage Loan Forgiveness Program,” Iowa Administrative Code.

The rules in Chapter 35 describe the awarding of forgivable loans to teachers. This amendment updates rule 283—35.4(261) by eliminating restrictions on eligibility which originally ensured that applicants did not receive awards under both the current program and a program that has not been funded since fiscal year 2007.

Interested persons may submit comments orally or in writing by 4:30 p.m. on January 4, 2011, to the Executive Director, Iowa College Student Aid Commission, 603 East 12th Street, 5th Floor, Des Moines, Iowa 50319-9017; fax (515)725-3401.

This amendment is intended to implement Iowa Code chapter 261.

The following amendment is proposed.

Amend subrule 35.4(3) as follows:

35.4(3) *Extent of forgiveness.* Recipients may receive loan forgiveness for no more than five consecutive years. Recipients who fail to complete five consecutive years of teaching in the designated shortage areas will not be considered for subsequent years of forgiveness.

~~Applicants who received funding under the teacher shortage forgivable loan program will be eligible for funding under the Iowa teacher shortage loan forgiveness program for five years minus one year for each year that a loan was received under the teacher shortage forgivable loan program.~~

ARC 9270B**EDUCATION DEPARTMENT[281]****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 256.7(5), the State Board of Education hereby proposes to amend Chapter 36, “Extracurricular Interscholastic Competition,” Iowa Administrative Code.

The proposed amendment is the result of a recent proposal made by Department staff after meeting with management of the Iowa High School Athletic Association (IHSAA) and the Iowa Girls High School Athletic Union (IGHSAU). It was determined that the rescission of paragraph 36.15(6)“c” would eliminate widespread confusion regarding “open gyms.” Additionally, paragraphs “a” and “b” of subrule 36.15(6) sufficiently address all elements of paragraph “c,” with the exception of the requirement that notice of “open gym” be posted on the general student information bulletin board and be signed or initialed by a school administrator other than the coach supervising the open gym, a matter that is better left to the discretion of local school administrators.

An agencywide waiver provision is provided in 281—Chapter 4.

EDUCATION DEPARTMENT[281](cont'd)

Interested individuals may make written comments on the proposed amendment on or before January 4, 2011, at 4:30 p.m. Comments on the proposed amendment should be directed to Carol Greta, Office of the Director, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; E-mail carol.greta@iowa.gov; or fax (515)281-4122.

This amendment is intended to implement Iowa Code section 280.13.

The following amendment is proposed.

Rescind paragraph 36.15(6)“c.”

ARC 9269B

EDUCATION DEPARTMENT[281]

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 256.7(5), the State Board of Education hereby proposes to amend Chapter 41, “Special Education,” Iowa Administrative Code.

These proposed amendments are technical in nature. First, the term “mental disability” is replaced with the term “intellectual disability.” This change is in line with recent federal legislation on this topic. No substantive change is intended.

Second, the term “preappeal conference” is deleted and replaced with “mediation conference” (or simply “conference”). This change is based on technical assistance from the United States Department of Education, which stated that the term “preappeal conference” could be misconstrued by those persons who are inexperienced with special education procedural safeguards; for example, the term might be misconstrued to be a prerequisite to other procedural grounds. No substantive change is intended. A rule of construction is added, providing that the Department would continue to accept filings labeled as requests for a “preappeal conference.” The Department also made technical and conforming corrections to requirements to file a request for a mediation conference prior to or without filing a due process complaint.

An agencywide waiver provision is provided in 281—Chapter 4.

Two public hearings will be held. The first will be on January 4, 2011, from 2 to 3 p.m., and the second will be on January 11, 2011, from 2 to 3 p.m. Both hearings will be held in the State Board Room on the second floor of the Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing.

All persons who intend to attend one of the public hearings and have special requirements, such as those related to hearing or mobility impairments, should advise the Department of Education of specific needs by calling (515)281-5295.

Interested individuals may make written comments on the proposed amendments until 4:30 p.m. on January 11, 2011. Comments on the proposed amendments should be directed to Thomas Mayes, Legal Consultant, Bureau of Student and Family Support Services, Iowa Department of Education, Third Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)242-5614; E-mail Thomas.Mayes@iowa.gov; or fax (515)242-6019.

These amendments are intended to implement Iowa Code chapter 256B and 34 CFR Part 300.

The following amendments are proposed.

EDUCATION DEPARTMENT[281](cont'd)

ITEM 1. Strike “mental disability” wherever it appears in **281—Chapter 41** and insert “intellectual disability” in lieu thereof.

ITEM 2. Amend subrule 41.506(4) as follows:

41.506(4) ~~Special definition~~ *Mediation procedures.* ~~In this chapter and in Iowa practice, a~~ request for mediation filed before the filing of a due process complaint is referred to as a “request for a special education preappeal conference,” further shall be conducted according to the procedures described in rule 281—41.1002(256B,34CFR300).

ITEM 3. Adopt the following **new** subrule 41.506(5):

41.506(5) *Rule of construction.* The department shall accept documents captioned as requests for a “preappeal conference” as requests for mediation prior to the filing of a due process complaint.

ITEM 4. Amend subrule 41.518(5) as follows:

41.518(5) ~~Preappeal conference~~ *Mediation requested prior to the filing of a due process complaint.* Except as provided in rule 281—41.533(256B,34CFR300), during the pendency of any ~~preappeal conference~~ request for mediation filed prior to or in lieu of a due process complaint under rule 281—41.506(256B,34CFR300) and for ten days after a preappeal any such mediation conference at which no agreement is reached, unless the state or local agency and the parents of the child agree otherwise, the child involved in the ~~preappeal~~ any such mediation conference must remain in his or her current educational placement.

ITEM 5. Amend rule 281—41.533(256B,34CFR300) as follows:

281—41.533(256B,34CFR300) Placement during appeals and preappeal mediations. When an appeal under rule 281—41.532(256B,34CFR300) or a request for a ~~preappeal conference~~ mediation under rules 281—41.506(256B,34CFR300) and 281—41.1002(256B,34CFR300) has been made by either the parent or the LEA, the child must remain in the interim alternative educational setting pending the decision of the administrative law judge or until the expiration of the time period specified in subrule 41.530(3) or 41.530(7), whichever occurs first, unless the parent and the SEA or LEA agree otherwise.

ITEM 6. Amend rule 281—41.1002(256B,34CFR300) as follows:

281—41.1002(256B,34CFR300) Special education preappeal mediation conference.

41.1002(1) *Procedures.* The parent, the LEA or the AEA may request a special education ~~preappeal~~ mediation conference on any decision relating to the identification, evaluation, educational placement, or the provision of FAPE without the need for filing a due process complaint. The ~~preappeal~~ mediation conference shall comply with the requirements of rule 281—41.506(256B,34CFR300).

a. A request for a special education ~~preappeal~~ mediation conference ~~shall be made~~ may be in the form of a letter ~~which identifies~~ or a pleading or on a form provided by the department. The request shall identify the student, LEA and AEA, ~~sets and set~~ set forth the facts, the issues of concern, or the reasons for the conference. The letter shall be ~~mailed~~ provided to the department, to the AEA, and to the LEA.

b. No change.

c. A ~~preappeal~~ mediation conference will be scheduled and held at a time and place reasonably convenient to all parties involved. Written notice will be sent to all parties by the department.

d. The LEA or the AEA shall submit the ~~special education preappeal~~ checklist to the department and shall provide a copy to the parent within ten business days after receiving the request.

e. The student’s complete school record shall be made available for review by the parent prior to the conference, if requested in writing at least ten calendar days before the ~~preappeal~~ conference.

f. The individual’s complete school record shall be available to the participants at the ~~preappeal~~ conference.

g. A mediator provided by the department shall preside over the ~~preappeal~~ conference.

h. No change.

i. If agreement is not reached at the ~~special education preappeal~~ conference, all parties shall be informed of the procedures for filing a due process complaint.

EDUCATION DEPARTMENT[281](cont'd)

41.1002(2) *Placement during proceedings.* Pursuant to rule 281—41.518(256B,34CFR300), unless the parties agree otherwise, the student involved in the ~~preappeal~~ mediation conference must remain in the student's present educational placement during the pendency of the proceedings.

41.1002(3) *Withdrawals or automatic closures.* The initiating party may request a withdrawal of the ~~preappeal~~ prior to the conference. Automatic closure of the department file will occur if any of the following circumstances apply:

- a. No change.
- b. The ~~preappeal~~ conference is held, but parties are not able to reach an agreement. There will be a ten-calendar-day waiting period after the ~~preappeal~~ conference to continue the placement as described in subrule 41.1002(2) in the event a party wishes to pursue a hearing.
- c. The ~~preappeal~~ conference is held, and the parties are able to reach an agreement, and the agreement does not specify a withdrawal date. If a withdrawal date is part of the agreement, an agency withdrawal will occur on the designated date.

41.1002(4) *Confidentiality of discussions.* Discussions that occur during the special education ~~preappeal~~ mediation conference must be confidential, except as may be provided in Iowa Code chapter 679C, and may not be used as evidence in any subsequent due process hearings or civil proceedings; however, the parties may stipulate to agreements reached at the conference. Prior to the start of the conference, the parties and the mediator will be required to sign an Agreement to Mediate form containing this confidentiality provision.

ARC 9268B

EDUCATION DEPARTMENT[281]

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 256.7(5), the State Board of Education hereby proposes to amend Chapter 102, “Procedures for Charging and Investigating Incidents of Abuse of Students by School Employees,” Iowa Administrative Code.

The proposed amendments are the result of routine Department review of these rules, as well as feedback from “designated investigators,” as that term is defined in these rules. The proposed amendment in Item 1 conforms the definition of “sexual harassment” to the definition in Iowa Code section 280.28. The proposed amendments in Items 2, 3, 6, 7, and 8 avoid use of the word “victim” inasmuch as that term is not in the underlying statute. The amendments in Items 4 and 5 are proposed as a result of actual practice and to make the process more user-friendly for students and their families. The amendments in Item 9 are not substantive and are made to reflect the correct numbering system for the Iowa Administrative Code.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendments on or before January 4, 2011, at 4:30 p.m. Comments on the proposed amendments should be directed to Carol Greta, Office of the Director, Iowa Department of Education, Second Floor, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-8661; E-mail carol.greta@iowa.gov; or fax (515)281-4122.

These amendments are intended to implement Iowa Code section 280.17.

The following amendments are proposed.

ITEM 1. Amend rule **281—102.2(280)**, definition of “Sexual harassment,” as follows:

“*Sexual harassment*” means unwelcome sexual advances, requests for sexual favors or other verbal or physical conduct of a sexual nature when:

EDUCATION DEPARTMENT[281](cont'd)

1. Submission to the conduct is made either implicitly or explicitly a term or condition of the student's education or benefits;
2. Submission to or rejection of the conduct is used as the basis for academic decisions affecting that student; or
3. The conduct has the purpose or effect of substantially interfering with a student's academic performance by creating an objectively intimidating, hostile, or offensive education environment.

ITEM 2. Amend rule 281—102.3(280), introductory paragraph, as follows:

281—102.3(280) Jurisdiction. To constitute a violation of these rules, acts of the school employee must be alleged to have occurred on school grounds, on school time, on a school-sponsored activity, or in a school-related context. To be investigable, the written report must include basic information showing that the ~~victim of the alleged abuse~~ student allegedly abused is or was a student at the time of the incident, that the alleged act of the school employee resulted in injury or otherwise meets the definition of abuse in these rules, and that the person responsible for the act is currently a school employee.

ITEM 3. Amend subrule 102.5(2) as follows:

102.5(2) Adopt written procedures that establish persons to whom the school authorities will delegate a second level of investigation beyond the level-one procedures specifically described in these rules, including law enforcement authorities or the county attorney's office, personnel of the local office of the department of human services, or private parties experienced and knowledgeable in the area of abuse investigation. The second-level investigator shall not be a school employee; and shall be considered an independent contractor if remunerated for services rendered.

The adopted procedures shall conform to these rules and shall include provisions for the safety of a student when, in the opinion of the investigator, the student would be placed in imminent danger if continued contact is permitted between the school employee and the student. These provisions shall include the options of:

- a. Temporary removal of the student from contact with the school employee.
- b. Temporary removal of the school employee from service.
- c. Any other appropriate action permissible under Iowa law to ensure the student's safety.

The adopted written procedures shall include a statement that the investigators appointed and retained under this chapter shall have access to any educational records of ~~a student who is the named victim of alleged abuse,~~ the allegedly abused student and access to the student for purposes of interviewing and investigating the allegation.

ITEM 4. Amend subrule 102.5(3), introductory paragraph, as follows:

102.5(3) Annually publish the names or positions and telephone numbers or other contact information of the designated investigator and alternate:

ITEM 5. Amend subrule 102.6(2), introductory paragraph, as follows:

102.6(2) Content of report. The report shall be in writing, signed, and, if signed by a minor, witnessed by a person of majority age; and shall contain the following information:

ITEM 6. Amend subrule 102.8(4) as follows:

102.8(4) The investigator shall interview the ~~alleged victim, the school employee named in the report, and any collateral sources who may have knowledge of the circumstance contained in the report~~ allegedly abused student, any witnesses or persons who may have knowledge of the circumstances contained in the report, and the school employee named in the report. The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

ITEM 7. Amend subrule 102.9(1) as follows:

102.9(1) Upon receipt of the report, the designated investigator shall make and provide a copy of the report to the person filing the report, to the student's parent or guardian if different from the person filing the report, and to the supervisor of the employee named in the report. The school employee

EDUCATION DEPARTMENT[281](cont'd)

named in the report shall receive a copy of the report at the time the employee is initially interviewed by any investigator. However, if this action would conflict with the terms of a contractual agreement between the employer and employee, the terms of the contract shall control. The designated investigator shall not interview the school employee named in a report of sexual abuse until after a determination that jurisdiction exists is made ~~that jurisdiction exists~~, the ~~alleged-victim~~ allegedly abused student has been interviewed, and a determination is made that the investigation will not be deferred under subrule 102.9(5).

ITEM 8. Amend subrule 102.9(3) as follows:

102.9(3) The investigator shall notify the parent, guardian, or legal custodian of a child; in prekindergarten through grade six; of the date and time of the interview and of the right to be present or to see and hear the interview or to send a representative in the parent's, guardian's, or legal custodian's place. The investigator shall interview the ~~alleged-victim~~ allegedly abused student as soon as possible, but in no case later than five days from the receipt of a report or notice of the allegation of sexual abuse. The investigator may record the interview electronically.

The investigator shall exercise prudent discretion in the investigative process to preserve the privacy interests of the individuals involved. To the maximum extent possible, the investigator shall maintain the confidentiality of the report.

ITEM 9. Amend rule 281—102.11(280) as follows:

281—102.11(280) Founded reports—designated investigator's duties.

102.11(1) The investigator shall notify law enforcement authorities in founded cases of serious physical abuse and in any founded case of sexual abuse under Iowa Code chapter 709 or sexual exploitation under Iowa Code section 728.12(1). In founded cases of less serious physical incidents or sexual incidents not in the nature of statutory sexual abuse or exploitation as defined by Iowa law, the investigator shall arrange for the level-two investigator to carry out a professional investigation unless the level-one investigation has resulted in a final disposition of the investigation. In addition, the designated investigator shall give a copy of the investigative report to the employee's supervisor and document all action taken.

102.11(2) Upon receipt of the level-two investigator's report under rule 281—102.12(280) or upon resolution of the investigation at level one, the designated investigator shall:

~~1. a.~~ Forward copies of the level-two investigator's report to the student's parent or guardian, the school employee named in the complaint, and the school employee's supervisor; notify the person filing the report, if different from the student's parent or guardian, of the disposition of the case or current status of the investigation;

~~2. b.~~ File a complaint against the school employee who has been found to have physically or sexually abused a student, if that employee holds a teaching certificate, coaching authorization, or practitioner license, with the board on behalf of the school or district by obtaining the superintendent's signature on the complaint in cases where the level-two investigator or law enforcement officials have concluded abuse occurred as defined in these rules or where the employee has admitted the violation or agreed to surrender the employee's certificate or license. The designated investigator has discretion to file a complaint with the board in situations where the employee has resigned as a result of the allegation or investigation but has not admitted that a violation occurred. In the event an employee holding a school bus driver permit has been found to have physically or sexually abused a student, the designated investigator shall file a written complaint with the school transportation consultant at the department of education; the designated investigator shall file a written complaint with the local school board in founded cases involving other nonlicensed school employees; and

~~3. c.~~ Arrange for counseling services for the student on request of the student, or the student's parent or guardian.

ARC 9274B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.173, 459.103 and 459A.104, the Environmental Protection Commission proposes to amend Chapter 60, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 63, “Monitoring, Analytical and Reporting Requirements,” Chapter 64, “Wastewater Construction and Operation Permits,” and Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

As required by the Iowa General Assembly earlier this year, the proposed amendments update the Department’s rules regarding confinement feeding operations to conform with 2008 federal regulations pertaining to NPDES permits. In addition, the proposed amendments include revisions to open feedlot rules and related NPDES rules as necessary to conform to the 2008 federal regulations and several “housekeeping” type corrections and updates.

The Commission specifically seeks public comment regarding Item 38, proposed new subrule 65.17(53), and Item 49, proposed new subrule 65.112(12). Federal regulations allow states to authorize the use of either the linear approach or the narrative approach, or both, in expressing the rates of application in a nutrient management plan. The proposed amendments incorporate by reference the federal regulations for both approaches. The Commission seeks comment on whether both approaches should be authorized or whether only one of the approaches should be authorized.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 11, 2011. Written comments should be directed to Gene Tinker, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; or E-mail gene.tinker@dnr.iowa.gov.

Also, there will be public hearings as follows, at which time persons may present their views either orally or in writing:

January 4, 2011	6 p.m.	Northeast Iowa Community College Dairy Center, Room 115 1527 Highway 150 South Calmar
January 5, 2011	6 p.m.	Lime Creek Nature Center 3501 Lime Creek Road Mason City
January 6, 2011	6 p.m.	Washington County Conservation Board Education Center, Marr Park 2943 Highway 92 Ainsworth
January 10, 2011	6 p.m.	Clay County Administration Building Boardroom 300 W. 4th Street Spencer
January 11, 2011	11 a.m.	Wallace State Office Building Fourth Floor Conference Room 502 E. 9th Street Des Moines

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

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

These amendments are intended to implement Iowa Code chapters 455B, 459, 459A, and 459B and 2010 Iowa Acts, Senate File 2248.

The following amendments are proposed.

ITEM 1. Amend rule 567—60.1(455B,17A) as follows:

567—60.1(455B,17A) Scope of title. The department has jurisdiction over the surface water and groundwater of the state to prevent, abate and control water pollution by establishing standards for water quality and for direct or indirect discharges of wastewater to waters of the state and by regulating potential sources of water pollution through a system of general rules or specific permits. The construction and operation of any wastewater disposal system and the discharge of any pollutant to a water of the state require a specific permit from the department, unless exempted by the department.

This chapter provides general definitions applicable in this title and rules of practice, including forms, applicable to the public in the department's administration of the subject matter of this title.

Chapter 61 contains the water quality standards of the state, including classification of surface waters. Chapter 62 contains the standards or methods for establishing standards relevant to the discharge of pollutants to waters of the state. Chapter 63 identifies monitoring, analytical and reporting requirements pertaining to permits for the operation of wastewater disposal systems. Chapter 64 contains the standards and procedures for obtaining construction, operation and NPDES permits for wastewater disposal systems ~~other than those associated with~~ and animal feeding operations. Chapter 65 specifies minimum waste control requirements and additional permit requirements for animal feeding operations. Chapter 66 specifies restrictions on pesticide application to waters. Chapter 67 contains standards for the land application of sewage sludge. Chapter 68 contains standards and licensing requirements applicable to commercial septic tank cleaners. Chapter 69 specifies guidelines for private sewage disposal systems.

ITEM 2. Amend rule 567—60.2(455B), introductory paragraph, as follows:

567—60.2(455B) Definitions. ~~The~~ In addition to the definitions in Iowa Code sections 455B.101 and 455B.171, the following definitions apply to this title, unless otherwise specified in the particular chapter of this title:

ITEM 3. Amend the following definitions in rule **567—60.2(455B)**:

“Act” means the Federal Water Pollution Control Act as amended through ~~July 1, 2007~~ January 3, 2007, 33 U.S.C. §1251 et seq.

“CFR” or *“Code of Federal Regulations”* means the federal administrative rules adopted by the United States in effect as of July 1, ~~2008~~ 2010. The amendment of the date contained in this definition shall constitute the amendment of all CFR references contained in 567—Chapters 60 to 69, Title IV, unless a date of adoption is set forth in a specific rule.

“Minor permit amendment” or *“minor modification”* means a permit modification made with the consent of the permittee that occurs as a result of any of the following:

1. to 4. No change.
5. Deletion of a point source outfall that does not result in the discharge of pollutants from other outfalls; ~~or~~
6. Incorporation of an approved local pretreatment program; ~~or~~
7. Incorporation of changes to the terms of a CAFO's nutrient management plan that has been revised in accordance with the requirements of 40 CFR 122.42(e)(6).

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

“*Storm water*” means storm water runoff, snow melt runoff and surface runoff and drainage. (NOTE: Agricultural storm water runoff is excluded by federal regulation 40 CFR 122.3(e) ~~as amended through June 15, 1992.~~)

“*Storm water discharge associated with industrial activity*” means the discharge from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include discharges from facilities or activities excluded from the NPDES program under 40 CFR Part 122 ~~as amended through June 15, 1992.~~ For the categories of industries identified in paragraphs “1” to “10” of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR 401 amended through June 15, 1992); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

For the categories of industries identified in paragraphs “1” to “9” and “11,” the term includes only storm water discharges from all the areas (except access roads and rail lines) that are listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. To qualify for this exclusion, a storm-resistant shelter is not required for: drums, barrels, tanks and similar containers that are tightly sealed with bands or otherwise secured and have no taps or valves, are not deteriorated and do not leak; adequately maintained vehicles used in material handling; and final products other than products that would be mobilized in storm water discharge. The term excludes areas located on plant lands separate from the plant’s industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are federally, state, or municipally owned or operated) that meet the description of the facilities listed in paragraphs “1” to “11” of this definition include those facilities designated under 40 CFR 122.26(a)(1)(v) as amended through December 8, 1999. The following categories of facilities are considered to be engaging in “industrial activity” for purposes of this definition:

1. to 11. No change.

“*Storm water point sources*” means point sources that serve to collect, channel, direct, and convey storm water and which are subject to Section 402(p) of the federal Clean Water Act and Parts 122, 123, and 124 of Title 40 of the Code of Federal Regulations (~~as amended through June 15, 1992.~~)

ITEM 4. Amend paragraph **60.3(2)“c”** as follows:

c. Form 34 — open feedlots and confinement feeding operations 542-4001.

ITEM 5. Amend rule 567—60.4(455B,17A), introductory paragraph, as follows:

567—60.4(455B,17A) Application procedures and requirements generally. The following general procedures and requirements pertain to applications for wastewater construction permits, operation permits and NPDES permits. More specific and substantive requirements may be found in 567—Chapters 61 to 65.

ITEM 6. Amend paragraph **63.1(1)“a”** as follows:

a. The following is adopted by reference: 40 Code of Federal Regulations (CFR) Part 136, ~~revised as of July 1, 2007.~~

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 7. Amend subrule 63.2(3) as follows:

63.2(3) ~~The~~ Except as required by 567—Chapter 65, the permittee shall retain for a minimum of three years all paper and electronic records of monitoring activities and results including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records. This retention includes but is not limited to monitoring and calibration records from pH meters, dissolved oxygen meters, total residual chlorine meters, and flow meters; and temperature readings from any composite samplers. The period of retention shall be considered to be extended during the course of any unresolved litigation or when an extension is requested by the director or the regional administrator.

ITEM 8. Rescind and reserve rule **567—63.5(455B)**.

ITEM 9. Adopt the following new rule 567—63.15(455B,459,459A,459B):

567—63.15(455B,459,459A,459B) Applicability. This chapter shall apply to all waste disposal systems treating or intending to treat sewage, industrial waste, or other waste except waste resulting from livestock or poultry operations. Livestock and poultry operations constituting animal feeding operations as defined in 567—Chapter 65 shall be governed by the requirements contained in 567—Chapter 65. Except as provided in 567—Chapter 65, a CAFO as defined in 567—Chapter 65 that is required to seek coverage under an NPDES permit shall also comply with applicable provisions of this chapter relating to records of monitoring activities and results, bypasses and upsets, certification and signatory requirements in the submission of records of operation, 24-hour reporting, planned changes, and anticipated noncompliance. Where the provisions of this chapter and 567—Chapter 65 are inconsistent, 567—Chapter 65 shall apply.

ITEM 10. Amend subrule 64.3(1), introductory paragraph, as follows:

64.3(1) Except as otherwise provided in this subrule, in 567—Chapter 65, and in 567—Chapter 69, no person shall operate any ~~wastewater~~ disposal system or part thereof without, or contrary to any condition of, an operation permit issued by the director. An operation permit is not required for the following:

ITEM 11. Amend subparagraph **64.7(2)“f”(1)** as follows:

(1) Necessary to meet water quality standards, treatment or pretreatment standards, or schedules of compliance established pursuant to any Iowa law or regulation, or to implement the ~~antidegradation~~ antidegradation policy in 567—subrule 61.2(2); or

ITEM 12. Adopt the following new subrule 64.7(7):

64.7(7) CAFOs. See additional terms and conditions for CAFO NPDES permits in 567—Chapter 65.

ITEM 13. Amend rule 567—64.14(455B) as follows:

567—64.14(455B) Transfer of title or owner address change. ~~If~~ Except as provided in 567—Chapter 65, if title to any disposal system or part thereof for which a permit has been issued under 567—64.2(455B), 567—64.3(455B) or 567—64.6(455B) is transferred, the new owners shall be subject to all terms and conditions of said permit. Whenever title to a disposal system or part thereof is changed, the department shall be notified in writing of such change within 30 days of the occurrence. No transfer of the authorization to discharge from the facility represented by the permit shall take place ~~prior to notifying before~~ the department is notified of the transfer of title. Whenever the address of the owner is changed, the department shall be notified in writing within 30 days of the address change. Electronic notification is not sufficient; all title transfers or address changes must be reported to the department by mail.

ITEM 14. Amend rule 567—64.18(455B) as follows:

567—64.18(455B,459,459A,459B) Applicability. This chapter shall apply to all waste disposal systems treating or intending to treat sewage, industrial waste, or other waste except waste resulting from livestock or poultry operations. ~~All livestock~~ Livestock and poultry operations constituting animal

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

feeding operations as defined in 567—Chapter 65 shall be governed by the requirements contained in 567—Chapter 65. ~~However, if an animal feeding operation is required to apply for and obtain an NPDES permit, the~~ Except as provided in 567—Chapter 65, a CAFO as defined in 567—Chapter 65 that is required to seek coverage under an NPDES permit shall also comply with applicable provisions of this chapter relating to the permit to operate, issuance of NPDES permits, notice and public participation, to the terms and conditions of the permit, ~~to the~~ and reissuance of the permit ~~and to monitoring, reporting and record-keeping activities shall apply.~~ Where the provisions of this chapter and 567—Chapter 65 are inconsistent, 567—Chapter 65 shall apply.

ITEM 15. Amend rule 567—65.1(459,459B), introductory paragraph, as follows:

567—65.1(459,459B) Definitions. In addition to the definitions in Iowa Code sections 455B.101 and 455B.171 and ~~Iowa Code section 459.102~~ and in 567—Chapter 60, the following definitions shall apply to Division I of this chapter:

ITEM 16. Amend the following definitions in rule **567—65.1(459,459B)**:

“Animal feeding operation” or “AFO” means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. Except as required for an NPDES permit required pursuant to the federal Water Pollution Control Act, 33 U.S.C. Chapter 26, an animal feeding operation does not include a livestock market; ~~Open~~ open feedlots and confinement feeding operations are considered to be separate animal feeding operations.

1. For purposes of water quality regulation, Iowa Code section 459.301 as amended by 2009 Iowa Acts, House File 735, section 6, provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common area or system for manure disposal. For purposes of the air quality-related separation distances in Iowa Code section 459.202, Iowa Code section 459.201 provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common system for manure storage. The distinction is due to regulation of animal feeding operations for water quality purposes under the federal Clean Water Act. ~~The Code of Federal Regulations at 40 CFR §122.23 (2008)~~ sets out the requirements for an animal feeding operation and requires that two or more animal feeding operations under common ownership be considered a single operation if they adjoin each other or if they use a common area or system for disposal of wastes. However, this federal regulation does not control regulation of animal feeding operations for the purposes of the separation distances in Iowa Code section 459.202, and therefore the definition is not required by federal law to include common areas for manure disposal.

2. and 3. No change.

“Applicant” means the person applying for a construction ~~or operation~~ permit or an NPDES permit for a confinement feeding operation.

“Manure” means animal excreta or other commonly associated wastes of animals including, but not limited to, bedding, litter, or feed losses. Manure does not include wastewater resulting from the washing and in-shell packaging of eggs. For the purposes of NPDES permitting, manure includes manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.

“Public water supply system (PWS)” ~~(also referred to as a system or a water system)~~ means a system for the provision to the public ~~of piped water for human consumption~~ of water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. ~~Such term~~ PWS includes: (1) any collection, treatment, storage, and distribution facilities under control of the supplier of water operator of such system and used primarily in connection with such system; and (2) any collection (including wells) or pretreatment storage facilities not under such control which are used primarily in connection with such system. PWS does not include any “special irrigation district” as

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defined in 567—40.2(455B). A public water supply system is either a “community water system” or a “noncommunity water system.”

ITEM 17. Rescind the definitions of “NPDES permit” and “Operation permit” in rule **567—65.1(459,459B)**.

ITEM 18. Adopt the following **new** definitions in rule **567—65.1(459,459B)**:

“*Concentrated animal feeding operation*” or “*CAFO*” means an AFO that is defined as a large CAFO, a medium CAFO, or a designated CAFO.

“*Designated CAFO*” means an AFO that has been designated as a CAFO pursuant to subrule 65.5(4).

“*Land application area*” means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied.

“*Large concentrated animal feeding operation*” or “*Large CAFO.*” An AFO is defined as a large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

1. 700 mature dairy cows, whether milked or dry;
2. 1,000 veal calves;
3. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs;
4. 2,500 swine each weighing 55 pounds or more;
5. 10,000 swine each weighing less than 55 pounds;
6. 500 horses;
7. 10,000 sheep or lambs;
8. 55,000 turkeys;
9. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
10. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
11. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
12. 30,000 ducks (if the AFO uses other than a liquid manure handling system); or
13. 5,000 ducks (if the AFO uses a liquid manure handling system).

“*Medium concentrated animal feeding operation*” or “*Medium CAFO.*” The term medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges listed in paragraph “a” of this definition and which has been defined or designated as a CAFO. An AFO is defined as a medium CAFO if:

- a. The type and number of animals that it stables or confines fall within any of the following ranges:
 1. 200 to 699 mature dairy cows, whether milked or dry;
 2. 300 to 999 veal calves;
 3. 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs;
 4. 750 to 2,499 swine each weighing 55 pounds or more;
 5. 3,000 to 9,999 swine each weighing less than 55 pounds;
 6. 150 to 499 horses;
 7. 3,000 to 9,999 sheep or lambs;
 8. 16,500 to 54,999 turkeys;
 9. 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
 10. 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
 11. 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
 12. 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system); or
 13. 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); and
- b. Either one of the following conditions is met:

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1. Pollutants are discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

2. Pollutants are discharged directly into waters of the United States which originate outside of and pass over, across or through the facility or otherwise come into direct contact with animals confined in the operation.

“*Nutrient management plan*” or “*NMP*” means a plan which provides for the management of manure, litter or process wastewater, including the application of manure, litter or process wastewater as provided in 567—65.17(459,459B).

“*Process wastewater*” means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

“*Production area*” means that part of an AFO that includes the area in which animals are confined, the manure storage area, the raw materials storage area, egg washing and egg processing facilities, and the waste containment areas. The area in which animals are confined includes, but is not limited to, open lots, housed lots, feedlots, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, confinement houses, and stables. The manure storage area includes, but is not limited to, lagoons, solids settling facilities, settled open feedlot effluent basins, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes, but is not limited to, feed silos, silage bunkers, and bedding materials. The waste containment area includes, but is not limited to, settling basins and areas within berms and diversions which separate uncontaminated storm water. Also included in the definition of production area is any area used in the storage, handling, treatment, or disposal of mortalities.

“*Waters of the United States*” means the same as defined in 40 CFR 122.2.

ITEM 19. Amend subrule 65.2(3), introductory paragraph, as follows:

65.2(3) The minimum level of manure control for a confinement feeding operation shall be the retention of all manure produced in the confinement enclosures between periods of manure application and as specified in this rule. In no case shall manure from a confinement feeding operation be discharged directly into a water of the state or into a tile line that discharges to waters of the state. Manure from a confinement feeding operation shall be disposed of in a manner which will not cause surface water or groundwater pollution. Disposal in accordance with provisions of state law, and the rules and guidelines in this chapter, shall be deemed as compliance with this requirement.

ITEM 20. Amend subparagraph **65.2(3)“d”(2)** as follows:

(2) Applicable NPDES requirements pursuant to the ~~federal Water Pollution Control Act, 33 U.S.C. Ch. 26,~~ and 40 CFR ~~Pts. Parts~~ 122 and 412.

ITEM 21. Rescind subrule **65.2(6)**.

ITEM 22. Renumber subrules **65.2(7)** to **65.2(11)** as **65.2(6)** to **65.2(10)**.

ITEM 23. Amend rule 567—65.3(459,459B), introductory paragraph, as follows:

567—65.3(459,459B) Requirements and recommended practices for land application of manure. A confinement feeding operation which has obtained an NPDES permit pursuant to 567—65.6(459,459B) shall comply with the land application requirements specified in 65.6(2).

ITEM 24. Amend subrule 65.3(4), introductory paragraph, as follows:

65.3(4) Surface application of liquid manure on frozen or snow-covered ground. A person who applies liquid manure on frozen or snow-covered ground shall comply with applicable NPDES requirements pursuant to the ~~federal Water Pollution Control Act, 33 U.S.C. Chapter 26,~~ and 40 CFR Parts 122 and 412, and also shall comply with the following requirements:

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ITEM 25. Rescind and reserve rule **567—65.4(459,459B)**.

ITEM 26. Amend subrule 65.5(2) as follows:

65.5(2) If departmental evaluation determines that any of the conditions listed in subrule 65.5(1) exist, the operation shall:

~~a. Apply for an operation permit if the operation receives a written notification from the department that it is required to apply for an operation permit. However, no operation with an animal capacity less than that specified in the following subparagraphs shall be required to apply for a permit unless manure from the operation is discharged into a water of the state through a man-made manure drainage system or is discharged into a water of the state which traverses the operation:~~

- ~~(1) 300 beef cattle.~~
- ~~(2) 200 dairy cattle.~~
- ~~(3) 750 butcher and breeding swine (over 55 lbs.).~~
- ~~(4) 3000 sheep or lambs.~~
- ~~(5) 16,500 turkeys.~~
- ~~(6) 30,000 broiler or layer chickens.~~
- ~~(7) 150 horses.~~
- ~~(8) 300 animal units.~~

~~b. Institute~~ institute necessary remedial actions to eliminate the conditions if the operation receives a written notification from the department of the need to correct the conditions. This paragraph shall apply to all permitted and unpermitted animal feeding operations, regardless of animal capacity.

ITEM 27. Adopt the following **new** subrule 65.5(4):

65.5(4) Designated CAFO. The following is adopted by reference: 40 CFR 122.23(c).

ITEM 28. Amend rule 567—65.6(459,459B) as follows:

567—65.6(459,459B) Operation NPDES permits.

65.6(1) ~~Existing animal feeding operations holding an operation permit~~ Who must seek coverage under an NPDES permit. Animal feeding operations which hold a valid operation permit issued prior to July 22, 1987, are not required to reapply for an operation permit. However, the operations are required to apply for permit renewal in accordance with subrule 65.6(10). The following is adopted by reference: 40 CFR 122.23(a) and (d).

65.6(2) ~~Existing animal feeding operations not holding an operation permit~~ Land application discharges from a CAFO that are subject to NPDES permit requirements. Animal feeding operations in existence on July 22, 1987, which are covered by the operation permit provisions of subrule 65.4(1) or 65.4(2) but have not obtained a permit, shall apply for an operation permit prior to January 22, 1988. Once application has been made, the animal feeding operation is authorized to continue to operate without an operation permit until the application has either been approved or disapproved by the department. The following is adopted by reference: 40 CFR 122.23(e).

65.6(3) ~~Expansion of existing animal feeding operations~~ When an owner or operator of a CAFO must seek coverage under an NPDES permit. A person intending to expand an existing animal feeding operation which, upon completion of the expansion, will be covered by the operation permit provisions of subrule 65.4(1) or 65.4(2) shall apply for an operation permit at least 180 days prior to the date operation of the expanded facility is scheduled. Operation of the expanded portion of the facility shall not begin until an operation permit has been obtained. The following is adopted by reference: 40 CFR 122.23(f).

65.6(4) ~~New animal feeding operations~~ Duty to maintain permit coverage. A person intending to begin a new animal feeding operation which, upon completion, will be covered by the operation permit provisions of subrule 65.4(1) or 65.4(2) shall apply for an operation permit at least 180 days prior to the date operation of the new animal feeding facility is scheduled. Operation of the new facility shall not begin until an operation permit has been obtained. The following is adopted by reference: 40 CFR 122.23(g).

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~~65.6(5) *Permits required as a result of departmental evaluation No discharge certification option.* An animal feeding operation which is required to apply for an operation permit as a result of departmental evaluation (in accordance with the provisions of 65.5(2) "a") shall apply for an operation permit within 90 days of receiving written notification of the need to obtain a permit. Once application has been made, the animal feeding operation is authorized to continue to operate without a permit until the application has either been approved or disapproved by the department. The following is adopted by reference: 40 CFR 122.23(i) and (j).~~

~~65.6(6) *Voluntary operation permit applications.* Applications for operation permits received from animal feeding operations not meeting the operation permit requirements of subrules 65.4(1) to 65.4(3) will be acknowledged by the department and returned to the applicant. Operation permits will not be issued for facilities not meeting the permit requirements of subrules 65.4(1) to 65.4(3).~~

~~65.6(7) 65.6(6) *Application forms.* An application for an operation NPDES permit shall be made on a form provided by the department. Form 34 as specified in 567—paragraph 60.3(2) "c." The application shall be complete as specified in 567—paragraph 60.4(2) "a" and shall contain detailed information as deemed necessary required by the department. The application shall be signed by the person who is legally responsible for the animal feeding operation and its associated manure control system, and as specified in 567—subrule 64.3(8). At a minimum, the application must contain all information required in 40 CFR 122.21(i).~~

~~65.6(7) *Notice and public participation.* Notice and public participation in the NPDES permit process shall comply with the requirements set forth in 567—64.5(455B).~~

~~65.6(8) *Compliance schedule.* When necessary to comply with a present standard or a standard which must be met at a future date, an operation permit shall include a schedule for modification of the permitted facility to meet the standard. The schedule shall not relieve the permittee of the duty to obtain a construction permit pursuant to subrule 65.7(1). When necessary to comply with a standard which must be met at a future date, an NPDES permit shall include a schedule for modification of the permitted facility to meet the standard in accordance with 567—subrule 64.7(4).~~

~~65.6(9) *Permit conditions.* Operation permits shall contain conditions considered necessary by the department to ensure compliance with all applicable rules of the department, to ensure that the manure control system is properly operated and maintained, to protect the public health and beneficial uses of state waters, and to prevent water pollution from manure storage or application operations. Self-monitoring and reporting requirements which may be imposed on animal feeding operations are specified in 567—subrule 63.5(1). The following is adopted by reference: 40 CFR 122.42(e).~~

~~65.6(10) *Permit renewal.* An operation permit may be issued for any period of time not to exceed five years. An application for renewal of an operation permit must be submitted to the department at least 180 days prior to the date the permit expires. Each permit to be renewed shall be subject to the provisions of those rules of the department which apply to the facility at the time of renewal.~~

~~A permitted animal feeding operation which does not meet the operation permit requirements of subrules 65.4(1) to 65.4(3) will be exempted from the need to retain that permit at the time of permit renewal, and the existing operation permit will not be renewed.~~

~~65.6(11) *Permit modification, suspension or revocation.* The department may modify, suspend, refuse to renew or revoke in whole or in part any operation NPDES permit for cause as specified in 567—subrule 64.3(11). Cause for modification, suspension or revocation of a permit may include the following:~~

- ~~a. Violation of any term or condition of the permit.~~
- ~~b. Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.~~
- ~~c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.~~
- ~~d. Failure to submit the records and information that the department requires in order to ensure compliance with the operation and discharge conditions of the permit.~~
- ~~e. A determination by the department that the continued operation of a confinement feeding operation constitutes a clear, present and impending danger to public health or the environment.~~

~~65.6(12) No change.~~

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65.6(13) Effluent limitations and standards. The following is adopted by reference: 40 CFR Part 412.

ITEM 29. Amend paragraphs **65.10(5)“a”** to **“c”** as follows:

a. If the county board of supervisors does not submit a construction evaluation resolution to the department, fails to submit an adopted recommendation, submits only comments, or fails to submit comments, the department shall approve the application if the application meets the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B. The department will disapprove the application if it does not meet such requirements.

b. If the board of supervisors for the county in which the confinement feeding operation is proposed to be constructed has filed a county construction evaluation resolution and submits an adopted recommendation to approve the construction permit application, which may be based on a satisfactory rating produced by the master matrix, to the department, the department shall preliminarily approve an application for a construction permit if the department determines that the application meets the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B. The department shall preliminarily disapprove an application that does not satisfy the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B regardless of the adopted recommendation of the board of supervisors. The department shall consider any timely filed comments made by the board as provided in this subrule to determine if an application meets the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B.

c. If the board submits to the department an adopted recommendation to disapprove an application for a construction permit that is based on a rating produced by the master matrix, the department shall first determine if the application meets the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B. The department shall preliminarily disapprove an application that does not satisfy the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B regardless of any result produced by using the master matrix. If the application meets the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B, the department shall conduct an independent evaluation of the application using the master matrix. The department shall preliminarily approve the application if it achieves a satisfactory rating according to the department's evaluation. The department shall preliminarily disapprove the application if it produces an unsatisfactory rating regardless of whether the application satisfies the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B. The department shall consider any timely filed comments made by the board as provided in this subrule to determine if an application meets the requirements of this chapter and Iowa Code ~~chapter 455B~~ chapters 459 and 459B.

ITEM 30. Amend subrule 65.10(10), introductory paragraph, as follows:

65.10(10) Complaint investigations. Complaints of violations of Iowa Code ~~chapter 455B, 459 or 459B, and this rule or this chapter,~~ chapter 455B, 459 or 459B, which are received by the department or are forwarded to the department by a county, following a county board of supervisors' determination that a complainant's allegation constitutes a violation, shall be investigated by the department if it is determined that the complaint is legally sufficient and an investigation is justified.

ITEM 31. Amend paragraph **65.10(10)“b”** as follows:

b. A complaint is legally sufficient if it contains adequate information to investigate the complaint and if the allegation constitutes a violation, without investigating whether the facts supporting the allegation are true or untrue, of rules adopted by the department, Iowa Code ~~chapter 455B, 459 or 459B,~~ chapter 455B, 459 or 459B, or environmental standards in regulations subject to federal law and enforced by the department.

ITEM 32. Amend rule 567—65.16(459,459B), introductory paragraph, as follows:

567—65.16(459,459B) Manure management plan and nutrient management plan requirements. Manure management plan requirements are set forth in subrules 65.16(1) through 65.16(7) and 65.17(1) through 65.17(20). Nutrient management plan requirements are set forth in subrules 65.16(26) and 65.17(51) through 65.17(54).

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ITEM 33. Reserve subrules **65.16(8)** to **65.16(25)**.

ITEM 34. Adopt the following **new** subrule 65.16(26):

65.16(26) A CAFO that is required to seek coverage under an NPDES permit as required in 65.6(1) must implement a nutrient management plan that, at a minimum, contains best management practices necessary to meet the requirements in 65.17(51) and 65.17(52) and all applicable effluent limitations and standards specified in 40 CFR Part 412.

ITEM 35. Amend rule 567—65.17(459,459B), introductory paragraph, as follows:

567—65.17(459,459B) Manure management plan and nutrient management plan content requirements. ~~All manure management plans are to be submitted on forms or electronically as prescribed by the department. The plans shall include all of the information specified in Iowa Code section 459.312 as amended by 2009 Iowa Acts, Senate File 432, section 2, and as described below. Manure management plan content requirements are set forth in subrules 65.17(1) through 65.17(20). Nutrient management plan content requirements are set forth in subrules 65.17(51) and 65.17(52).~~

ITEM 36. Amend subrule 65.17(1), introductory paragraph, as follows:

65.17(1) ~~General Manure management plans—general.~~ All manure management plans are to be submitted on forms or electronically as prescribed by the department. The plans shall include all of the information specified in 2009 Iowa Code Supplement section 459.312 and as described below.

ITEM 37. Reserve subrules **65.17(21)** to **65.17(50)**.

ITEM 38. Adopt the following **new** subrules 65.17(51) to 65.17(54):

65.17(51) Nutrient management plan content requirements. The nutrient management plan must, to the extent applicable:

- a. Ensure adequate storage of manure or process wastewater, including procedures to ensure proper operation and maintenance of the storage structures.
- b. Ensure proper management of animal mortalities to ensure that they are not disposed of in liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities.
- c. Ensure that clean water is diverted, as appropriate, from the production area.
- d. Prevent direct contact of confined animals with waters of the United States.
- e. Ensure that chemicals or other contaminants handled on site are not disposed of in any manure, process wastewater, or storm water storage or treatment system unless specifically designed to treat such chemicals or other contaminants.
- f. Identify appropriate site-specific conservation practices to be implemented including, as appropriate, buffers or equivalent practices, to control runoff of pollutants to waters of the United States.
- g. Identify protocols for appropriate testing of manure, process wastewater, and soil.
- h. Establish protocols to land-apply manure or process wastewater in accordance with site-specific nutrient management practices that ensure appropriate agricultural utilization of the nutrients in the manure or process wastewater.
- i. Identify specific records that will be maintained to document the implementation and management of the minimum elements described in paragraphs “a” through “h” above.

65.17(52) Nutrient management plan record-keeping requirements.

- a. A copy of the CAFO’s site-specific nutrient management plan must be maintained on site and made available to the department upon request.
- b. The permittee must create, maintain for five years, and make available to the department, upon request, the following records:

- (1) All applicable records identified pursuant to 65.17(51) “i.”
- (2) In addition, all CAFOs subject to 40 CFR Part 412 must comply with the record-keeping requirements as specified in 40 CFR 412.37(b) and (c) and 40 CFR 412.47(b) and (c).

65.17(53) Terms of a nutrient management plan. The following is adopted by reference: 40 CFR 122.42(e)(5)(i) and (ii).

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65.17(54) Changes to a nutrient management plan. The following is adopted by reference: 40 CFR 122.42(e)(6).

ITEM 39. Amend the following definitions in rule **567—65.100(455B,459,459A)**:

“Animal feeding operation” or *“AFO”* means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. Except as required for an NPDES permit required pursuant to the ~~federal Water Pollution Control Act, 33 U.S.C. Chapter 26, as amended,~~ an animal feeding operation does not include a livestock market.

“Large concentrated animal feeding operation” or *“large CAFO.”* An AFO is defined as a large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

1. 700 mature dairy cows, whether milked or dry;
- ~~2. 1,000 cattle, including but not limited to heifers, steers, bulls, veal calves and cow/calf pairs;~~
2. 1,000 veal calves;
3. 1,000 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs;
- ~~3. 4. 2,500 swine each weighing 55 pounds or more;~~
4. 5. 10,000 swine each weighing less than 55 pounds;
- ~~5. 6. 500 horses;~~
6. 7. 10,000 sheep or lambs;
- ~~7. 8. 55,000 turkeys;~~
8. 9. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
9. 10. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- ~~10. 11. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;~~
12. 30,000 ducks (if the AFO uses other than a liquid manure handling system);
13. 5,000 ducks (if the AFO uses a liquid manure handling system); or
- ~~11. 14. 1,000 animal units, where more than one category of animals is maintained using the same type of operation.~~

~~*“Manure”* means animal excreta or other commonly associated wastes of animals including, but not limited to, bedding, compost, litter, feed losses, raw materials or other materials commingled with manure or set aside for disposal includes manure, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal.~~

“Medium concentrated animal feeding operation” or *“medium CAFO.”* The term medium CAFO includes any AFO with the type and number of animals that fall within any of the ranges listed in paragraph “a” of this definition and which has been defined or designated as a CAFO. An AFO is defined as a medium CAFO if:

- a. The type and number of animals that it stables or confines fall within any of the following ranges:
 - (1) 200 to 699 mature dairy cows, whether milked or dry;
 - ~~(2) 300 to 999 cattle, including but not limited to heifers, steers, bulls, veal calves and cow/calf pairs;~~
 - (2) 300 to 999 veal calves;
 - (3) 300 to 999 cattle other than mature dairy cows or veal calves. Cattle includes but is not limited to heifers, steers, bulls, and cow/calf pairs;
 - ~~(3) (4) 750 to 2,499 swine each weighing 55 pounds or more;~~
 - (4) (5) 3,000 to 9,999 swine each weighing less than 55 pounds;
 - ~~(5) (6) 150 to 499 horses;~~
 - (6) (7) 3,000 to 9,999 sheep or lambs;
 - ~~(7) (8) 16,500 to 54,999 turkeys;~~
 - (8) (9) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
 - (9) (10) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;

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~~(10)~~ (11) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
~~(12)~~ 10,000 to 29,999 ducks (if the AFO uses other than a liquid manure handling system);
~~(13)~~ 1,500 to 4,999 ducks (if the AFO uses a liquid manure handling system); or
~~(11)~~ (14) 300 to 999 animal units, where more than one category of animals is maintained using the same type of operation; and

b. Either one of the following conditions is met:

(1) Manure or process wastewater is discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or

(2) Manure or process wastewater is discharged directly into waters of the United States which originate outside of and pass over, across or through the facility or otherwise come into direct contact with animals confined in the operation.

“*Waters of the United States*” means the same as defined in 40 CFR 122.2 ~~as that section existed on July 1, 2005.~~

ITEM 40. Rescind the definition of “NPDES permit” in rule ~~567—65.100(455B,459,459A)~~.

ITEM 41. Adopt the following new definition of “Land application area” in rule ~~567—65.100(455B,459,459A)~~:

“*Land application area*” means land under the control of an AFO owner or operator, whether it is owned, rented, or leased, to which manure, litter or process wastewater from the production area is or may be applied.

ITEM 42. Amend rule ~~567—65.102(455B,459A)~~ as follows:

~~567—65.102(455B,459A)~~ **NPDES permits required for CAFOs.** Concentrated animal feeding operations (CAFOs) are point sources that require NPDES permits if the conditions of 65.102(1) apply.

~~65.102(1)~~ *Duty to apply.* Each CAFO owner or operator must apply for an NPDES permit if the CAFO discharges or proposes to discharge, except as provided in subrule 65.102(2). A CAFO proposes to discharge if it is designed, constructed, operated or maintained such that a discharge will occur. The owner or operator of a CAFO that includes an open feedlot must apply for an individual NPDES permit. The application procedures are prescribed in ~~567—65.104(455B,459A)~~.

~~65.102(2)~~ *Exception.* An open feedlot operation shall not be required to obtain an NPDES permit if the operation does not discharge or propose to discharge manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent into any waters of the United States.

~~65.102(3)~~ *No discharge certification.* The following is adopted by reference: 40 CFR 122.23(i).

ITEM 43. Amend subrule ~~65.103(1)~~ as follows:

~~65.103(1)~~ The department may evaluate any animal feeding operation that is not defined as a large or medium CAFO, and designate it as a CAFO if, after an on-site inspection, it is determined to be a significant contributor of manure or process wastewater to waters of the United States. In making this determination, the department shall consider the following factors: Designated CAFO. The following is adopted by reference: 40 CFR 122.23(c).

~~a.~~—The size of the operation and the amount of manure or process wastewater reaching waters of the United States;

~~b.~~—The location of the operation relative to waters of the United States;

~~c.~~—The means of conveyance of manure or process wastewater to waters of the United States;

~~d.~~—The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure or process wastewater into waters of the United States; and

~~e.~~—Other relevant factors.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 44. Rescind and reserve subrules **65.103(2)** and **65.103(3)**.

ITEM 45. Amend rule 567—65.104(455B,459A) as follows:

567—65.104(455B,459A) NPDES permits.

65.104(1) *Existing animal feeding operations holding an NPDES permit* Who must seek coverage under an NPDES permit. Animal feeding operations which hold a valid NPDES permit issued prior to September 14, 2005, are not required to reapply for an NPDES permit. However, the operations are required to apply for permit renewal in accordance with subrule 65.104(10). The following is adopted by reference: 40 CFR 122.23(a) and (d).

65.104(2) *Existing animal feeding operations not holding an NPDES permit* Land application discharges from an existing animal feeding operation that is subject to NPDES permit requirements. Animal feeding operations in existence prior to April 14, 2003, which were defined as CAFOs under rules that were in effect prior to April 14, 2003, but which have not obtained a permit, should have applied for an NPDES permit by April 14, 2003. Animal feeding operations in existence on April 14, 2003, which were not defined as CAFOs under rules that were in effect prior to April 14, 2003, shall apply for an NPDES permit no later than July 31, 2007. The following is adopted by reference: 40 CFR 122.23(e).

65.104(3) *Expansion of existing animal feeding operations* When an owner or operator of an existing animal feeding operation must seek coverage under an NPDES permit. A person intending to expand an existing animal feeding operation which, upon completion of the expansion, will be defined as a CAFO shall apply for an NPDES permit at least 90 days prior to the scheduled expansion. Operation of the expanded portion of the facility shall not begin until an NPDES permit has been obtained. The following is adopted by reference: 40 CFR 122.23(f).

65.104(4) *New animal feeding operations* Duty to maintain permit coverage. A person intending to begin a new animal feeding operation which, upon completion, will be defined as a CAFO shall apply for an NPDES permit at least 180 days prior to the date operation of the new animal feeding facility is scheduled. Operation of the new facility shall not begin until an NPDES permit has been obtained. The following is adopted by reference: 40 CFR 122.23(g).

65.104(5) *Permits required as a result of departmental designation* No discharge certification option. An animal feeding operation which is required to apply for an NPDES permit as a result of departmental designation (in accordance with the provisions of 567—65.103(455B,459A)) shall apply for an NPDES permit within 90 days of receiving written notification of the need to obtain a permit. Once application has been made, the animal feeding operation is authorized to continue to operate without a permit until the application has either been approved or disapproved by the department, provided that the owner or operator has submitted all requested information and promptly taken all steps necessary to obtain coverage. The following is adopted by reference: 40 CFR 122.23(i) and (j).

65.104(6) *Voluntary permit applications.* Applications for NPDES permits received from animal feeding operations which are not defined as CAFOs will be acknowledged and returned to the applicant. NPDES permits will not be issued for facilities which are not defined or designated as CAFOs.

65.104(7) **65.104(6)** *Application forms and requirements.* An application for an NPDES permit shall be made on a form provided by the department. Form 34 as specified in 567—paragraph 60.3(2) “c.” The application shall be complete as specified in 567—paragraph 60.4(2) “a” and shall contain detailed information as required by the department. Applications shall include a nutrient management plan as required in rule 567—65.112(459A). Applications involving AT systems shall include results of predictive computer modeling as required by 65.110(6) “a.” The application shall be signed by the person who is legally responsible for the animal feeding operation and its associated manure or process wastewater control system, and as specified in 567—subrule 64.3(8). At a minimum, the application must contain all information required in 40 CFR 122.21(i).

65.104(7) *Notice and public participation.* Notice and public participation in the NPDES permit process shall comply with the requirements set forth in 567—64.5(455B).

65.104(8) *Compliance schedule.* When necessary to comply with a standard which must be met at a future date, an NPDES permit shall include a schedule for modification of the permitted facility to meet

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

the standard in accordance with 567—subrule 64.7(4). The schedule shall not relieve the permittee of the duty to obtain a construction permit pursuant to rule 567—65.105(459A).

65.104(9) Permit conditions. ~~NPDES permits shall contain conditions required by 40 CFR Section 122.41 and conditions considered necessary by the department to ensure compliance with all applicable rules of the department, to ensure that the production area and land application areas are operated and maintained as required by Iowa law, to protect the public health and beneficial uses of waters of the United States, and to prevent water pollution from manure storage or application operations. Any more stringent conditions of 2005 Iowa Code Supplement chapter 459A, 567—subrule 62.4(12), and this chapter that apply to animal feeding operations shall govern. For CAFOs that maintain cattle, swine, or poultry, the following conditions shall be included: The following is adopted by reference: 40 CFR 122.42(e).~~

a. Nutrient management plan. ~~Open feedlot CAFOs shall comply with the requirements of 567—65.112(459A) and any additional nutrient management plan requirements for CAFOs in these rules by December 31, 2006 shall comply with the terms of the CAFO's site-specific nutrient management plan as specified in 65.112(12). CAFOs that seek to obtain coverage under an NPDES permit issued after December 31, 2006, shall have a nutrient management plan developed and implemented upon the date of permit coverage. CAFOs that make changes to the CAFO's nutrient management plan shall also comply with the procedures set forth in 65.112(13).~~

b. Inspections and record keeping.

(1) Visual inspections. Routine visual inspections of the CAFO production area must be conducted. At a minimum the following must be visually inspected:

1. Weekly inspections of all storm water diversion, runoff diversion structures, and devices ~~channelling~~ channeling contaminated storm water to the open feedlot structure.

2. No change.

(2) and (3) No change.

c. No change.

d. Minimum monitoring requirements for AT systems. ~~During the first two years of operation term of the initial NPDES permit of an AT system, the following minimum monitoring will be required:~~

(1) to (3) No change.

(4) Soil sampling.

1. No change.

2. Annual sampling. One sampling site shall be established in each cell of a VTA and VIB in an area which is expected to receive the greatest amount of open feedlot effluent. Soil samples shall be taken from each site prior to initiating discharge of open feedlot effluent into the VTA or VIB and shall be repeated annually. Each sample shall represent a composite of 10 to 12 individual samples taken to a 6-inch depth, and analyzed for P using either the Olsen or Mehlich-3 method and for pH.

Monitoring requirements for an AT system following the ~~initial two-year operation period term of the initial NPDES permit~~ will be determined at the time the NPDES permit for the operation is due for renewal.

e. and f. No change.

g. Quarterly reporting requirements for CAFOs with AT systems. A permittee with an AT system must submit quarterly reports by April 10, July 10, October 10, and January 10, following the respective calendar quarters. The quarterly reports shall provide all of the following information:

(1) to (3) No change.

(4) Results of laboratory analyses (as listed in 65.104(9)“d”(1)) of discharge samples for each date a discharge from the production area or the AT system occurred. If the results of laboratory analyses are not available by the due date of the quarterly report, the results shall be provided with the following quarter's report.

(5) Results of laboratory analyses (as listed in 65.104(9)“d”(3)) of samples taken from the groundwater monitoring wells or piezometers. If the results of laboratory analyses are not available by the due date of the quarterly report, the results shall be provided with the following quarter's report.

h. No change.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

65.104(10) *Permit renewal for permits involving the use of AT systems.*

a. General requirements. An NPDES permit may be issued for any period of time not to exceed five years. An application for renewal of an NPDES permit must be submitted to the department at least 180 days prior to the date the permit expires. Each permit to be renewed shall be subject to the rules of the department in effect at the time of renewal. A permitted animal feeding operation which ceases to be a CAFO will be exempted from the need to retain an NPDES permit if the permittee can demonstrate to the satisfaction of the department that there is no remaining potential for a discharge of manure that was generated while the operation was a CAFO, other than agricultural storm water from land application areas.

b. Permits involving use of AT systems.

(1) *a.* During the first two initial years of operation of an AT system, a permittee will ~~may~~ be issued a ~~two-year~~ an NPDES permit for a period of time less than five years. Renewal of this permit is contingent upon proper operation and maintenance of the AT system, submittal of all required records and reports, and demonstration that the AT system is providing an equivalent level of performance to that achieved by a containment system that is designed and operated as required by statute, 567—subrule 62.4(12) and Division II of this chapter.

(2) *b.* If departmental review of an AT system indicates the system is not meeting the equivalent performance standard, the permittee may either be required to make needed system modifications to enable compliance with this standard or be required to install a conventional runoff containment system. Open feedlot operations found to be in compliance with the equivalent performance standard will be issued a five-year NPDES permit which allows continued use of the AT system.

65.104(11) *Permit modification, suspension or revocation.* The department may modify, suspend, refuse to renew or revoke in whole or in part any NPDES permit for cause as specified in 567—subrule 64.3(11). ~~Any more stringent requirement pursuant to 40 CFR Section 122.62, 122.63 or 122.64 shall control. Cause for modification, suspension or revocation of a permit may include the following:~~

a. ~~Violation of any term or condition of the permit.~~

b. ~~Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.~~

c. ~~A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.~~

d. ~~Failure to retain, make available, or submit the records and information that the department requires in order to ensure compliance with the operation and discharge conditions of the permit.~~

e. ~~A determination by the department that the continued operation of a CAFO constitutes a clear, present and impending danger to public health or the environment.~~

65.104(12) *Effluent limitations and standards.* The following is adopted by reference: 40 CFR 412.

ITEM 46. Amend paragraph **65.105(4)“a”** as follows:

a. Plan review criteria. Review of plans and specifications shall be conducted by the department to determine the potential of the settled open feedlot effluent basin or AT system to achieve the level of control being required of the open feedlot operation. Applicable criteria contained in federal law, state law, these rules, Natural Resources Conservation Service design standards and specifications, unless inconsistent with federal or state law or these rules, and United States Department of Commerce precipitation data will be used in the review. If the proposed facility plans are not adequately covered by these criteria, applicable criteria contained in current technical literature shall be used. For medium CAFOs and designated CAFOs, the construction design standard shall be best professional judgment as determined by the department on a case-by-case basis pursuant to Section 402(a)(1)(B) of the Act and as defined in 40 CFR 125.3(c)(2) and 125.3(d).

ITEM 47. Amend paragraph **65.110(7)“i”** as follows:

i. Depth to sands, gravels, or glacial outwash. A VTA is not allowed if the depth to sands, gravels, or glacial outwash is less than six feet. A soils investigation that documents sands found are in isolated sand lenses that will not have a significant impact on subsurface water flow or groundwater groundwater quality shall not prohibit use of the site.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 48. Amend subrule 65.112(7) as follows:

65.112(7) Public notice.

a. No change.

b. The notice for public comment shall include all of the following:

(1) to (6) No change.

For public notice requirements for NPDES permits, see 65.104(7).

ITEM 49. Adopt the following **new** subrules 65.112(12) and 65.112(13):

65.112(12) Terms of a nutrient management plan. The following is adopted by reference: 40 CFR 122.42(e)(5)(i) and (ii).

65.112(13) Changes to a nutrient management plan. The following is adopted by reference: 40 CFR 122.42(e)(6).

ARC 9277B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

Under federal Medicaid legislation, a person who transfers assets for less than fair market value in order to meet Medicaid resource limits is penalized by a period of ineligibility for long-term care services that is proportional to the amount of assets transferred. In essence, this provision avoids Medicaid expenditures for services that the person could have purchased independently had the assets been retained or sold at fair market value.

Legislation applying the transfer of assets provision to the purchase of annuities was enacted in Public Law 109-171 and took effect on February 8, 2006. The law provides that the entire amount used to purchase an annuity shall be counted as a transfer of assets for less than fair market value unless certain conditions are met. One of these conditions is that the state is named as a residual beneficiary to the annuity. The original legislation was retroactively amended in December 2006 by Public Law 109-432. The Department’s medical assistance rules do not correctly reflect those changes.

The proposed amendment:

- Specifies that the residual beneficiary designation must apply to the extent of the amount of medical assistance paid for care of either the annuitant or the annuitant’s spouse in a medical institution, not just for the care of the annuitant.
- Provides that this restriction also applies to annuities for which the spouse of a Medicaid applicant or member is the annuitant. (Other conditions for exemption apply only when the Medicaid applicant or member is the annuitant.)

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

Any interested person may make written comments on the proposed amendment on or before January 4, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code sections 249A.3 and 249A.4.

The following amendment is proposed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend subrule 75.23(9) as follows:

75.23(9) Purchase of annuities. Funds used to purchase an annuity for more than its fair market value shall be treated as assets transferred for less than fair market value regardless of when the annuity was purchased or whether the conditions described in this subrule were met.

a. The entire amount used to purchase an annuity on or after February 8, 2006, with a Medicaid applicant or member as the annuitant shall be treated as assets transferred for less than fair market value unless the annuity meets one of the conditions described in subparagraphs (1) through (3) of this paragraph 75.23(9) "b" and also meets the condition described in subparagraph (4): paragraph 75.23(9) "c."

b. To be exempted from treatment as an asset transferred at less than fair market value, an annuity described in paragraph 75.23(9) "a" must meet one of the following conditions:

(1) The annuity is an annuity described in Subsection (b) or (q) of Section 408 of the United States Internal Revenue Code of 1986.

(2) The annuity is purchased with proceeds from:

1. An account or trust described in Subsection (a), (c), or (p) of Section 408 of the United States Internal Revenue Code of 1986;

2. A simplified employee pension (within the meaning of Section 408(k) of the United States Internal Revenue Code of 1986); or

3. A Roth IRA described in Section 408A of the United States Internal Revenue Code of 1986.

(3) The annuity:

1. Is irrevocable and nonassignable;

2. Is actuarially sound (as determined in accordance with actuarial publications of the Office of the Chief Actuary of the United States Social Security Administration); and

3. Provides for payments in equal amounts during the term of the annuity, with no deferral and no balloon payments made.

(4) c. To be exempted from treatment as an asset transferred at less than fair market value, an annuity described in paragraph 75.23(9) "a" must have Iowa is named as the remainder beneficiary for at least the total amount of medical assistance paid on behalf of the annuitant or the annuitant's spouse, if either is institutionalized. Iowa may be named either:

~~1. (1) In the first position for at least the total amount of medical assistance paid on behalf of the annuitant; or~~

~~2. (2) In the second position after the community spouse or minor or disabled child and in the first position if the spouse or a representative of the child disposes of any of the remainder for less than fair market value.~~

~~b. Funds used to purchase an annuity for more than its fair market value shall be treated as assets transferred for less than fair market value regardless of when the annuity was purchased or whether the conditions described in 75.23(9) "a" were met.~~

d. The entire amount used to purchase an annuity on or after February 8, 2006, with the spouse of a Medicaid applicant or member as the annuitant shall be treated as assets transferred for less than fair market value unless Iowa is named as the remainder beneficiary for at least the total amount of medical assistance paid on behalf of the annuitant or the annuitant's spouse, if either is institutionalized. Iowa may be named either:

(1) In the first position; or

(2) In the second position after the spouse or minor or disabled child and in the first position if the spouse or a representative of the child disposes of any of the remainder for less than fair market value.

ARC 9276B**HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 77, “Conditions of Participation for Providers of Medical and Remedial Care,” Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” and Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

The proposed amendments add assertive community treatment to the array of services under the Iowa Medicaid program. Assertive community treatment helps persons who have serious mental illness remain in the community by providing all behavioral health services necessary to ensure that outcome. To provide the services, representatives of various medical disciplines, such as nursing, case management, community support, medication monitoring, and crisis response, participate as a team under the supervision of a psychiatrist. All behavioral health services except for drugs and hospitalization are provided and coordinated by the team, resulting in comprehensive care provided seven days a week and 24 hours a day.

Assertive community treatment is already available to Medicaid members enrolled in the Iowa Plan for Behavioral Health. These amendments will allow members who are not eligible for enrollment in the Iowa Plan to access assertive community treatment.

These amendments also make technical changes to replace the name “Surveillance and Utilization Review Services Unit” with “Program Integrity Unit.” This change reflects the current organizational structure of the Iowa Medicaid Enterprise.

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

Any interested person may make written comments on the proposed amendments on or before January 4, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

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

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 441—77.38(249A):

441—77.38(249A) Assertive community treatment. Services in the assertive community treatment (ACT) program shall be rendered by a multidisciplinary team composed of practitioners from the disciplines described in this rule. The team shall be under the clinical supervision of a psychiatrist. The program shall designate an individual team member who shall be responsible for administration of the program, including authority to sign documents and receive payment on behalf of the program.

77.38(1) Minimum composition. At a minimum, the team shall consist of a nurse, a mental health service provider, and a substance abuse treatment professional.

77.38(2) Psychiatrists. A psychiatrist on the team shall be a physician (MD or DO) who:

- a. Is licensed under 653—Chapter 9,
- b. Is certified as a psychiatrist by the American Board of Medical Specialties’ Board of Psychiatry and Neurology or by the American Osteopathic Board of Neurology and Psychiatry, and
- c. Has experience treating serious and persistent mental illness.

HUMAN SERVICES DEPARTMENT[441](cont'd)

77.38(3) Registered nurses. A nurse on the team shall:

- a. Be licensed as a registered nurse under 655—Chapter 3, and
- b. Have experience treating persons with serious and persistent mental illness.

77.38(4) Mental health service providers. A mental health service provider on the team shall be:

- a. A mental health counselor or marital and family therapist who:
 - (1) Is licensed under 645—Chapter 31, and
 - (2) Has experience treating persons with serious and persistent mental illness; or
- b. A social worker who:
 - (1) Is licensed as a master or independent social worker under 645—Chapter 280, and
 - (2) Has experience treating persons with serious and persistent mental illness.

77.38(5) Psychologists. A psychologist on the team shall:

- a. Be licensed under 645—Chapter 240, and
- b. Have experience treating persons with serious and persistent mental illness.

77.38(6) Substance abuse treatment professionals. A substance abuse treatment professional on the team shall:

- a. Be an appropriately credentialed counselor pursuant to 641—paragraph 155.21(8) “i,” and
- b. Have at least three years of experience treating substance abuse.

77.38(7) Peer specialists. A peer specialist on the team shall be a person with serious and persistent mental illness who has met all requirements of the Peer Support Training Academy managed by the State Public Policy Group in Des Moines under contract with the department, including 30 hours of training and satisfactory completion of an examination.

77.38(8) Community support specialists. A community support specialist on the team shall be a person who:

- a. Has a bachelor’s degree (BA or BS) in a human services field (sociology, social work, counseling, psychology, or human services), and
- b. Has experience supporting persons with serious and persistent mental illness.

77.38(9) Case managers. A case manager on the team shall be a person who:

- a. Has a bachelor’s degree (BA or BS) in a human services field (sociology, social work, counseling, psychology, or human services),
- b. Has experience managing care for persons with serious and persistent mental illness, and
- c. Meets the qualifications of “qualified case managers and supervisors” in rule 441—24.1(225C).

77.38(10) Advanced registered nurse practitioners. An advanced registered nurse practitioner on the team shall:

- a. Be licensed under 655—Chapter 7,
- b. Have a mental health certification, and
- c. Have experience treating serious and persistent mental illness.

77.38(11) Physician assistants. A physician assistant on the team shall:

- a. Be licensed under 645—Chapter 326,
- b. Have experience treating persons with serious and persistent mental illness, and
- c. Practice under the supervision of a psychiatrist.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 2. Adopt the following **new** subrule 78.28(7):

78.28(7) All assertive community treatment (ACT) services require prior approval. EXCEPTION: If ACT services are initiated before Medicaid eligibility is established, prior approval is required for ACT services beginning with the second month following notice of Medicaid eligibility.

- a. Approval shall be granted if ACT services are determined to be medically necessary. Approval shall be limited to no more than 180 days.

- b. A new prior approval must be obtained to continue ACT services after the expiration of a previous approval.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 3. Adopt the following **new** rule 441—78.42(249A):

441—78.42(249A) Assertive community treatment. Assertive community treatment (ACT) services are comprehensive, integrated, and intensive outpatient services provided by a multidisciplinary team under the supervision of a psychiatrist. ACT services are directed toward the rehabilitation of behavioral, social, or emotional deficits or the amelioration of symptoms of a mental disorder. Services are delivered in the member's home or another community setting.

78.42(1) Applicability. ACT services may be provided only to a member who meets all of the following criteria:

a. The member is at least 17 years old.
b. The member has a severe and persistent mental illness or complex mental health symptomatology. A severe and persistent mental illness is a psychiatric disorder that causes symptoms and impairments in basic mental and behavioral processes that produce distress and major functional disability in adult role functioning (such as social, personal, family, educational or vocational roles). Specifically, the member has a degree of impairment arising from a psychiatric disorder such that:

(1) The member does not have the resources or skills necessary to maintain an adequate level of functioning in the home environment without assistance or support;

(2) The member's judgment, impulse control, or cognitive perceptual abilities are compromised; and

(3) The member exhibits significant impairment in social, interpersonal, or familial functioning.

c. The member has a validated principal DSM-IV-TR Axis I diagnosis consistent with a severe and persistent mental illness. Members with a primary diagnosis of substance disorder, developmental disability, or organic disorder are not eligible for ACT services.

d. The member needs a consistent team of professionals and multiple mental health and support services to maintain the member in the community and reduce hospitalizations, as evidenced by:

(1) A pattern of repeated treatment failures with at least two hospitalizations within the previous 24 months, or

(2) A need for multiple or combined mental health and basic living supports to prevent the need for a more intrusive level of care.

e. The member presents a reasonable likelihood that ACT services will lead to specific, observable improvements in the member's functioning and assist the member in achieving or maintaining community tenure. Specifically, the member:

(1) Is medically stable;

(2) Does not require a level of care that includes more intensive medical monitoring;

(3) Presents a low risk to self, others, or property, with treatment and support; and

(4) Lives independently in the community or demonstrates a capacity to live independently and move from a dependent residential setting to independent living.

f. The member has a written treatment plan containing a work evaluation and the necessary psychiatric rehabilitation treatment and support services. The plan shall identify:

(1) Treatment objectives and outcomes,

(2) The expected frequency and duration of each service,

(3) The location where the services will be provided,

(4) A crisis plan, and

(5) The schedule for updates of the treatment plan.

78.42(2) Services. The ACT team shall participate in all mental health services provided to the member and shall provide 24-hour service for the psychiatric needs of the member. Available ACT services are:

a. Evaluation and medication management.

(1) The evaluation portion of ACT services consists of a comprehensive mental health evaluation and assessment of the member by a psychiatrist, advanced registered nurse practitioner, or physician assistant.

HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) Medication management consists of the prescription and management of medication by a psychiatrist, advanced registered nurse practitioner, or physician assistant to respond to the member's complaints and symptoms. A psychiatric registered nurse assists in this management by contact with the member regarding medications and their effect on the member's complaints and symptoms.

b. Integrated therapy and counseling for mental health and substance abuse. This service consists of direct counseling for treatment of mental health and substance abuse symptoms by a psychiatrist, licensed mental health professional, advanced registered nurse practitioner, or physician assistant.

c. Skill teaching. Skill teaching consists of side-by-side demonstration and observation of daily living activities by a registered nurse, licensed mental health professional, psychologist, substance abuse counselor, peer specialist, community support specialist, advanced registered nurse practitioner, or physician assistant.

d. Community support. Community support is provided by a licensed mental health professional, psychologist, substance abuse counselor, peer specialist, community support specialist, advanced registered nurse practitioner, or physician assistant. Community support consists of the following activities focused on recovery and rehabilitation:

(1) Personal and home skills training to assist the member to develop and maintain skills for self-direction and coping with the living situation.

(2) Community skills training to assist the member in maintaining a positive level of participation in the community through development of socialization skills and personal coping skills.

e. Medication monitoring. Medication monitoring services are provided by a psychiatric nurse and other team members under the supervision of a psychiatrist or nurse and consist of:

(1) Monitoring the member's day-to-day functioning, medication compliance, and access to medications, and

(2) Ensuring that the member keeps appointments.

f. Case management for treatment and service plan coordination. Case management consists of the development by the ACT team of an individualized treatment and service plan, including personalized goals and outcomes, to address the member's medical symptoms and remedial functional impairments.

(1) Case management includes:

1. Assessments, referrals, follow-up, and monitoring.

2. Assisting the member in gaining access to necessary medical, social, educational, and other services.

3. Assessing the member to determine service needs by collecting relevant historical information through member records and other information from relevant professionals and natural supports.

(2) The team shall:

1. Develop a specific care plan based on the assessment of needs, including goals and actions to address the needed medical, social, educational, and other necessary services.

2. Make referrals to services and related activities to assist the member with the assessed needs.

3. Monitor and perform follow-up activities necessary to ensure that the plan is carried out and that the member has access to necessary services. Activities may include monitoring contacts with providers, family members, natural supports, and others.

4. Hold daily team meetings to facilitate ACT services and coordinate the member's care with other members of the team.

g. Crisis response. Crisis response consists of direct assessment and treatment of the member's urgent or crisis symptoms in the community by a registered nurse, licensed mental health professional, psychologist, substance abuse counselor, community support specialist, case manager, advanced registered nurse practitioner, or physician assistant, as appropriate.

h. Work-related services. Work-related services may be provided by a registered nurse, licensed mental health professional, psychologist, substance abuse counselor, community support specialist, case manager, advanced registered nurse practitioner, or physician assistant. Services consist of assisting the member in managing mental health symptoms as they relate to job performance. Services may include:

(1) Collaborating with the member to look for job situations that may cause symptoms to increase and creating strategies to manage these situations.

HUMAN SERVICES DEPARTMENT[441](cont'd)

- (2) Assisting the member to develop or enhance skills to obtain a work placement, such as individual work-related behavioral management.
 - (3) Providing supports to maintain employment, such as crisis intervention related to employment.
 - (4) Teaching communication, problem solving, and safety skills.
 - (5) Teaching personal skills such as time management and appropriate grooming for employment.
- This rule is intended to implement Iowa Code section 249A.4.

ITEM 4. Adopt a new provider category in subrule **79.1(2)** as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Assertive community treatment	Fee schedule	\$50.57 per day for each day on which a team meeting is held. Maximum of 5 days per week.

ITEM 5. Amend paragraph **79.3(2)“d,”** introductory paragraph, as follows:

d. Basis for service requirements for specific services. The medical record for the following services must include, but is not limited to, the items specified below (unless the listed item is not routinely received or created in connection with the particular service or activity and is not required to document the reason for performing the service or activity, its medical necessity, or the level of care associated with it). These items will be specified on Form 470-4479, Documentation Checklist, when the Iowa Medicaid enterprise ~~surveillance and utilization review services~~ program integrity unit requests providers to submit records for review. (See paragraph 79.4(2) “b.”)

ITEM 6. Adopt the following new paragraph **79.14(2)“d”**:

- d.* With the application form, an assertive community treatment program shall submit Form 470-4842, Assertive Community Services (ACT) Provider Agreement Addendum, and agree to file with the department an annual report containing information to be used for rate-setting, including:
- (1) Data by practitioner on the utilization by Medicaid members of all the services included in assertive community treatment, and
 - (2) Cost information by practitioner type and by type of service actually delivered as part of assertive community treatment.

ITEM 7. Amend subparagraph **79.15(2)“b”(1)** as follows:

- (1) Mailing the information to the IME ~~Surveillance and Utilization Review Services~~ Program Integrity Unit, P.O. Box 36390, Des Moines, Iowa 50315; or

ARC 9259B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Sign Language Interpreters and Transliterators hereby gives Notice of Intended Action to amend Chapter 361, “Licensure of Sign Language Interpreters and Transliterators,” Iowa Administrative Code.

The proposed amendment removes the requirement for the Board to send a renewal notice to licensees. This change is being made to make licensure requirements consistent with Iowa Code changes.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Any interested person may make written comments on the proposed amendment no later than January 4, 2011, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on January 4, 2011, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 154E and 272C.

The following amendment is proposed.

Amend subrule 361.5(1) as follows:

361.5(1) The biennial license renewal period for a license to practice as a sign language interpreter or transliterator shall begin on July 1 of an odd-numbered year and end on June 30 of the next odd-numbered year. ~~The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.~~ The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive ~~the~~ notice from the board does not relieve the licensee of the responsibility for renewing the license.

ARC 9289B**PUBLIC SAFETY DEPARTMENT[661]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 101.1, the State Fire Marshal hereby gives Notice of Intended Action to amend Chapter 221, “Flammable and Combustible Liquids,” Iowa Administrative Code.

Iowa Code chapter 101 establishes the authority of the State Fire Marshal to establish requirements for the safe transportation, storage, handling and use of flammable and combustible liquids, which include motor vehicle fuels such as gasoline, “traditional” ethanol (90% gasoline, 10% ethanol) and higher blends of ethanol, including E-85. 661—subrule 221.4(2) governs the dispensing of ethanol blended fuels. Generally, dispensers used for motor vehicle fuels are required to be “listed” by an independent testing laboratory for use with the fuel dispensed. However, there has not, until recently, been a dispenser available which was listed for use with E-85, and provisions for the use of other dispensers, with additional monitoring requirements, were included in subrule 221.4(2).

Iowa Code section 455G.31 requires the State Fire Marshal to monitor the potential availability of one or more dispensers listed for use with E-85 and to issue an order regarding the use of listed dispensers once they have become commercially available. Recently, the State Fire Marshal was notified of the commercial availability of two dispensers listed for use with E-85 and issued an order regarding the use of such dispensers, as required by Iowa Code section 455G.31. The order carries out specific requirements specified in Iowa Code section 455G.31: 60 days after the issuance of the order, any new dispensers installed for use with E-85 must be listed for this use, and four years after the issuance of the order, E-85 may be dispensed only from dispensers listed for use with E-85.

The amendment proposed herein would modify the subrule to be consistent with the order issued by the State Fire Marshal. Additionally, the amendment modifies the definition of “E-10” to include blends of gasoline and ethanol up to 16 percent ethanol, rather than 15 percent; coordinates the definition of “E-blend” with the definition of “E-10”; and provides a definition of “listed” to clarify that a piece of

PUBLIC SAFETY DEPARTMENT[661](cont'd)

equipment which is of a model that has been listed for a specific use shall be considered to be listed regardless of whether it was manufactured prior to or after the date on which the listing takes effect.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 9283B**. The Adopted and Filed Emergency rule making became effective December 1, 2010. The content of that submission is incorporated by reference.

Any interested party may submit comments on the proposed amendment to the Agency Rules Administrator, Department of Public Safety, State Public Safety Building, 215 East 7th Street, Des Moines, Iowa 50319, by mail; by fax to (515)725-6195; or by E-mail to admrule@dps.state.ia.us. Comments must be received by 4:30 p.m. on January 4, 2011.

A public hearing on this proposed amendment will be held at 9:30 a.m. on January 4, 2011, in the First Floor Public Conference Room (Room 125) at the State Public Safety Building, 215 East 7th Street, Des Moines, Iowa 50319. The hearing room is fully accessible. Persons wishing to speak at the hearing should contact the Agency Rules Administrator by E-mail sent to admrule@dps.state.ia.us or by telephone at (515)725-6185 at least one day prior to the hearing.

The proposed amendment would be subject to the general waiver provisions which govern rules of the State Fire Marshal.

This amendment is intended to implement Iowa Code section 455G.31.

REVENUE DEPARTMENT

Notice of Electric and Natural Gas Delivery Tax Rates and Municipal Electric and Natural Gas Transfer Replacement Tax Rates for Each Competitive Service Area

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue hereby gives notice of the electric delivery tax rate, the municipal electric transfer replacement tax rate, the natural gas delivery tax rate, and the municipal natural gas transfer replacement tax rate for each competitive service area in the state. These rates will be used in conjunction with the number of kilowatt hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 2010 by each taxpayer to determine the tax due for each taxpayer in the 2011-2012 fiscal year.

2010 ELECTRIC DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3226	Akron Municipal Utilities	0.00006129
3201	Algona Municipal Utilities	0.00026059
3205	Alta Municipal Power Plant	0.00008290
3069	Alta Vista Municipal Utilities	0.00000000
3070	Alton Municipal Light & Power	0.00000000
3207	Ames Municipal Electric System	0.00000094
3071	Anita Municipal Utilities	0.00000000
3227	Anthon Municipal Electric Utility	0.00013220
3209	Atlantic Municipal Utilities	0.00024840
3073	Auburn Municipal Utility	0.00000000
3074	Aurelia Mun. Electric Utility	0.00008478
3211	Bancroft Municipal Utilities	0.00087730
3213	Bellevue Municipal Utilities	0.00009854
3228	Bigelow Municipal Electric Utility	0.00161562
3229	Bloomfield Municipal Electric Utility	0.00003481
3075	Breda Mun. Electric System	0.00000000

REVENUE DEPARTMENT(cont'd)

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3076	Brooklyn Municipal Utilities	0.00162223
3216	Buffalo Municipal Electric System	0.00000245
3217	Burt Municipal Electric Utility	0.00000190
3077	Callender Electric	0.00000000
3078	Carlisle Municipal Utilities	0.00000000
3079	Cascade Municipal Utilities	0.00143518
3221	Cedar Falls Municipal Elec. Utility	0.00031426
3068	City of Afton	0.00000000
3072	City of Aplington	0.00000000
3082	City of Dike	0.00000000
3088	City of Estherville	0.00000000
3089	City of Fairbank	0.00000000
3090	City of Farnhamville	0.00000000
3230	City of Fredericksburg	0.00000502
3106	City of Larchwood	0.00000000
3107	City of Lawler	0.00000000
3108	City of Lehigh	0.00000000
3113	City of Marathon	0.00000000
3311	City of Pella	0.00007414
3125	City of Renwick	0.00000000
3129	City of Sergeant Bluff	0.00000000
3139	City of Westfield	0.00000000
3143	City of Woolstock	0.00000000
3236	Coggon Municipal Light Plant	0.00004291
3237	Coon Rapids Municipal Utilities	0.00042603
3242	Corning Municipal Utilities	0.00029978
3080	Corwith Municipal Utilities	0.00000000
3243	Danville Municipal Electric Utility	0.00000384
3081	Dayton Light & Power	0.00000000
3244	Denison Municipal Utilities	0.00001027
3245	Denver Municipal Electric Utility	0.00006206
3083	Durant Municipal Electric Plant	0.00000000
3084	Dysart Municipal Utilities	0.00000000
3085	Earlville Municipal Utilities	0.00114964
3087	Ellsworth Municipal Utilities	0.00000000
3091	Fonda Municipal Electric	0.00000000
3252	Fontanelle Municipal Utilities	0.00032282
3092	Forest City Municipal Utilities	0.00000000
3231	Glidden Municipal Electric Utility	0.00000195
3093	Gowrie Municipal Utilities	0.00148389
3256	Graettinger Municipal Light Plant	0.00028010
3094	Grafton Municipal Utilities	0.00000000
3258	Grand Junction Municipal Utilities	0.00000456
3095	Greenfield Municipal Utilities	0.00122039

REVENUE DEPARTMENT(cont'd)

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3096	Grundy Center Light & Power	0.00022173
3232	Guttenberg Municipal Electric	0.00002873
3263	Harlan Municipal Utilities	0.00137185
3097	Hartley Municipal Utilities	0.00000000
3098	Hawarden Municipal Utility	0.00000000
3099	Hinton Municipal Electric/Water	0.00006507
3267	Hopkinton Municipal Utilities	0.00000972
3100	Hudson Municipal Utilities	0.00000000
3101	Independence Light & Power	0.00000000
3271	Indianola Municipal Utilities	0.00000736
3102	Keosauqua Light & Power	0.00000000
3103	Kimballton Municipal Utilities	0.00000000
3104	Lake Mills Municipal Utilities	0.00000000
3105	Lake Park Municipal Utilities	0.00000000
3233	Lake View Municipal Utilities	0.00015764
3274	Lamoni Municipal Utilities	0.00135315
3276	LaPorte City Utilities	0.00000913
3277	Laurens Municipal Utilities	0.00027651
3109	Lenox Mun. Light & Power	0.00045704
3110	Livermore Municipal Utilities	0.00000000
3111	Long Grove Mun. Elec./Water	0.00000000
3282	Manilla Municipal Elec. Utilities	0.00011564
3112	Manning Municipal Electric	0.00022637
3284	Mapleton Municipal Utilities	0.00008732
3285	Maquoketa Municipal Electric	0.00004721
3288	McGregor Municipal Utilities	0.00000695
3291	Milford Municipal Utilities	0.00017528
3114	Montezuma Municipal Light & Power	0.00000000
3115	Mount Pleasant Municipal Utilities	0.00000000
3293	Muscatine Municipal Utilities	0.00009555
3116	Neola Light & Water System	0.00000000
3297	New Hampton Municipal Light Plant	0.00009962
3298	New London Municipal Utility	0.00052973
3304	Ogden Municipal Utilities	0.00006019
3234	Onawa Municipal Utilities	0.00010150
3117	Orange City Municipal Utilities	0.00000000
3118	Orient Municipal Utilities	0.00000000
3307	Osage Municipal Utilities	0.00004946
3309	Panora Municipal Electric Utility	0.00006632
3119	Paton Municipal Utilities	0.00000000
3120	Paullina Municipal Utilities	0.00000000
3121	Pocahontas Municipal Utilities	0.00000000
3122	Preston Municipal Utilities	0.00000000
3315	Primghar Municipal Light Plant	0.00001803

REVENUE DEPARTMENT(cont'd)

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3123	Readlyn Municipal Utilities	0.00000000
3124	Remsen Municipal Utilities	0.00000000
3318	Rock Rapids Municipal Utilities	0.00000479
3126	Rockford Municipal Light Plant	0.00000000
3127	Sabula Municipal Utilities	0.00000000
3128	Sanborn Municipal Light & Plant	0.00000000
3130	Shelby Municipal Utilities	0.00000000
3131	Sibley Municipal Utilities	0.00000000
3321	Sioux Center Municipal Utilities	0.00000091
3323	Southern Minnesota Mun. Power	0.00000000
3324	Spencer Municipal Utilities	0.00010954
3132	Stanhope Municipal Utilities	0.00000000
3360	Stanton Municipal Utilities	0.00000000
3326	State Center Municipal Light Plant	0.00031087
3327	Story City Municipal Electric Utility	0.00011022
3134	Stratford Municipal Utilities	0.00000000
3135	Strawberry Point Electric Utility	0.00000000
3136	Stuart Municipal Utilities	0.00128625
3328	Sumner Municipal Light Plant	0.00021044
3330	Tipton Municipal Utilities	0.00149179
3332	Traer Municipal Utilities	0.00071173
3337	Villisca Municipal Power Plant	0.00020737
3137	Vinton Municipal Utilities	0.00000000
3138	Wall Lake Municipal Utilities	0.00000000
3338	Waverly Light & Power	0.00072786
3342	Webster City Municipal Utilities	0.00033901
3345	West Bend Municipal Power Plant	0.00088027
3346	West Liberty Municipal Electric Util.	0.00000641
3347	West Point Municipal Utility System	0.00009639
3140	Whittemore Municipal Utilities	0.00000000
3141	Wilton Municipal Light & Power	0.00000000
3351	Winterset Municipal Utilities	0.00133211
3142	Woodbine Municipal Utilities	0.00000000

REVENUE DEPARTMENT(cont'd)

CO. #	IOU's — ELECTRIC	DELIVERY TAX RATE
7206	Amana Society Service Co.	0.00053494
7248	Eldridge Electric & Water Utilities	0.00062117
7354	Geneseo Municipal Utilities	0.00000000
7270	IES Utilities	0.00237888
7272	Interstate Power	0.00103630
7289	MidAmerican Energy	0.00264702
7296	Nebraska Public Power District	0.00000000
7302	Northwestern Corporation	0.00000000
7305	Omaha Public Power District	0.00120095
7334	Union Electric	0.00000000

CO. #	REC's	DELIVERY TAX RATE
4319	Access Energy Coop	0.00075412
4203	Allamakee Clayton Electric Coop	0.00093586
4208	Atchison-Holt Electric Coop	0.00082007
4214	Boone Valley Electric Coop	0.00090381
4218	Butler County REC	0.00065667
4219	Calhoun County Electric Coop	0.00124147
4220	Cass Electric Coop	0.00004943
4224	Central Iowa Power Coop	0.00000000
4225	Chariton Valley Electric Coop	0.00102029
4235	Clarke Electric Coop	0.00267985
4287	Consumers Energy	0.00209921
4240	Corn Belt Power Coop	0.00000000
4246	East-Central Iowa REC	0.00194547
4247	Eastern Iowa Light & Power	0.00068026
4250	Farmers Electric Coop - Greenfield	0.00237767
4249	Farmers Electric Coop - Kalona	0.00040695
4251	Federated Rural Electric Association	0.00040981
4253	Franklin Rural Electric Coop	0.00076497
4254	Freeborn-Mower Cooperative	0.00093376
4255	Glidden Rural Electric Coop	0.00051684
4259	Grundy County REC	0.00086459
4260	Grundy Electric Cooperative	0.00052127
4261	Guthrie County REC	0.00124657
4262	Hancock Co. REC	0.00122396
4265	Harrison County REC	0.00081966
4266	Hawkeye Tri-County Electric Coop	0.00056469
4223	Heartland Power Coop	0.00034593
4268	Humboldt County REC	0.00099957
4273	Iowa Lakes Electric Coop	0.00062075
4279	Linn County REC	0.00151700

REVENUE DEPARTMENT(cont'd)

CO. #	REC's	DELIVERY TAX RATE
4280	Lyon Rural Electric Coop	0.00064282
4286	Maquoketa Valley Electric Coop	0.00221262
4290	Midland Power Cooperative	0.00114829
4299	Nishnabotna Valley REC	0.00064164
4300	North West Rural Electric Coop	0.00034295
4301	Northwest Iowa Power Coop	0.00000000
4308	Osceola Electric Coop	0.00036628
4310	Pella Cooperative Electric	0.00194961
4313	Pleasant Hill Community Line	0.00021125
4316	Rideta Electric Coop	0.00274284
4320	Sac County Rural Electric Coop	0.00078707
4322	Southern Iowa Electric Coop	0.00134566
4379	Southwest Iowa Service Coop	0.00284449
4329	T.I.P. Rural Electric Coop	0.00207423
4333	Tri County Electric Coop	0.00125083
4336	United Electric Coop	0.00112324
4348	Western Iowa Power Coop	0.00093858
4352	Woodbury County REC	0.00110852
4353	Wright Co. REC	0.00047626

2010 NATURAL GAS DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5021	Bedford Municipal Gas	0.00000000
5215	Brighton Gas	0.00701266
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.00000000
5022	City of Bloomfield	0.00000000
5026	City of Clearfield	0.00000000
5028	City of Everly	0.00000000
5029	City of Fairbank	0.00000000
5238	Coon Rapids Municipal Gas	0.00002986
5241	Corning Municipal Gas	0.00012482
5027	Emmetsburg Municipal Gas	0.00000000
5030	Gilmore City Municipal Gas	0.00000000
5031	Graettinger Municipal Gas	0.00000000
5032	Guthrie Center Municipal Gas	0.00000000
5033	Harlan Municipal Gas	0.00000000
5034	Hartley Municipal Gas	0.00000000
5035	Hawarden Municipal Gas	0.00000000
5036	Lake Park Municipal Gas	0.00000000

REVENUE DEPARTMENT(cont'd)

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5275	Lamoni Municipal Gas	0.00080321
5037	Lenox Municipal Gas	0.00000000
5038	Lineville City Natural Gas	0.00000000
5039	Lorimor Municipal Gas	0.00000000
5281	Manilla Municipal Gas	0.00030261
5283	Manning Municipal Gas	0.00013320
5040	Montezuma Natural Gas	0.00000000
5041	Morning Sun Municipal Gas	0.00000000
5042	Moulton Municipal Gas	0.00000000
5306	Osage Municipal Gas	0.00003369
5043	Prescott Municipal Gas	0.00000000
5044	Preston Municipal Gas	0.00000000
5055	Remsen Municipal Gas	0.00000000
5317	Rock Rapids Municipal Gas	0.00008272
5056	Rolfe Municipal Gas	0.00000000
5057	Sabula Municipal Gas	0.00000000
5058	Sac City Municipal Gas	0.00000000
5059	Sanborn Municipal Gas	0.00000000
5060	Sioux Center Municipal Gas	0.00000000
5061	Tipton Municipal Gas	0.00000000
5063	Waukee Municipal Gas	0.00000000
5340	Wayland Municipal Gas	0.00311509
5064	Wellman Municipal Gas	0.00000000
5344	West Bend Municipal Gas	0.00002363
5065	Whittemore Municipal Gas	0.00000000
5349	Winfield Municipal Gas	0.00039730
5066	Woodbine Gas	0.00000000

CO. #	IOU's — GAS	DELIVERY TAX RATE
5204	Allerton Gas	0.02635027
5270	IES Utilities	0.00761922
5272	Interstate Power	0.00240925
5289	MidAmerican Energy	0.01057313
5312	Peoples Natural Gas	0.00734412
5335	United Cities Gas	0.01769814

REVENUE DEPARTMENT(cont'd)

2010 MUNICIPAL ELECTRIC TRANSFER REPLACEMENT TAX RATES

CO. #	COMPANY	REPLACEMENT TAX RATE
3226	Akron Municipal Utilities	*
3201	Algona Municipal Utilities	0.00412226
3205	Alta Municipal Power Plant	0.00304025
3069	Alta Vista Municipal Utilities	*
3070	Alton Municipal Light & Power	0.00246570
3207	Ames Municipal Electric System	0.00321945
3071	Anita Municipal Utilities	0.00457255
3227	Anthon Municipal Electric Utility	0.01210306
3209	Atlantic Municipal Utilities	0.00303863
3073	Auburn Municipal Utility	0.01562558
3074	Aurelia Municipal Electric Utility	*
3211	Bancroft Municipal Utilities	*
3213	Bellevue Municipal Utilities	*
3229	Bloomfield Municipal Electric Utility	0.03226899
3075	Breda Municipal Electric System	0.00000000
3076	Brooklyn Municipal Utilities	0.00000000
3216	Buffalo Municipal Electric System	0.00000000
3217	Burt Municipal Electric Utility	0.00173391
3077	Callender Electric	0.00000000
3078	Carlisle Municipal Utilities	*
3079	Cascade Municipal Utilities	0.00000000
3221	Cedar Falls Mun. Electric Utility	0.00311538
3068	City of Afton	0.00444113
3072	City of Aplington	0.00824760
3082	City of Dike	0.00000000
3088	City of Estherville	0.00535848
3089	City of Fairbank	0.00665007
3090	City of Farnhamville	0.00000000
3230	City of Fredericksburg	*
3106	City of Larchwood	0.00000000
3107	City of Lawler	0.00329053
3108	City of Lehigh	0.00000000
3113	City of Marathon	*
3311	City of Pella	0.00332004
3125	City of Renwick	*
3129	City of Sergeant Bluff	*
3139	City of Westfield	*
3143	City of Woolstock	*
3236	Coggon Municipal Light Plant	0.00000000
3237	Coon Rapids Municipal Utilities	*
3242	Corning Municipal Utilities	*
3080	Corwith Municipal Utilities	*

REVENUE DEPARTMENT(cont'd)

CO. #	COMPANY	REPLACEMENT TAX RATE
3243	Danville Municipal Electric Utility	0.00365802
3081	Dayton Light & Power	*
3244	Denison Municipal Utilities	0.00241683
3245	Denver Municipal Electric Utility	0.01210306
3083	Durant Municipal Electric Plant	0.00000000
3084	Dysart Municipal Utilities	0.00332021
3085	Earlville Municipal Utilities	*
3086	Eldridge Electric & Water Utility	*
3087	Ellsworth Municipal Utilities	0.00903007
3091	Fonda Municipal Electric	0.00974129
3252	Fontanelle Municipal Utilities	0.00230094
3092	Forest City Municipal Utilities	0.00456922
3231	Glidden Municipal Electric Utility	*
3093	Gowrie Municipal Utilities	0.00301177
3256	Graettinger Municipal Light Plant	*
3094	Grafton Municipal Utilities	0.00610784
3258	Grand Junction Municipal Utilities	*
3095	Greenfield Municipal Utilities	0.00288128
3096	Grundy Center Light & Power	0.00130117
3232	Guttenberg Municipal Electric	0.01035389
3263	Harlan Municipal Utilities	*
3097	Hartley Municipal Utilities	0.00083845
3098	Hawarden Municipal Utility	*
3099	Hinton Municipal Electric/Water	0.00103399
3267	Hopkinton Municipal Utilities	*
3100	Hudson Municipal Utilities	0.00239093
3101	Independence Light & Power	*
3271	Indianola Municipal Utilities	0.00377082
3102	Keosauqua Light & Power	0.00000000
3103	Kimballton Municipal Utilities	*
3104	Lake Mills Municipal Utilities	0.00403065
3105	Lake Park Municipal Utilities	0.00295149
3233	Lake View Municipal Utilities	*
3274	Lamoni Municipal Utilities	*
3276	LaPorte City Utilities	0.00243289
3277	Laurens Municipal Utilities	0.00601506
3109	Lenox Municipal Light & Power	0.00027194
3110	Livermore Municipal Utilities	0.00986850
3111	Long Grove Mun. Elec./Water	0.00000000
3282	Manilla Municipal Elec. Utilities	*
3112	Manning Municipal Electric	*
3284	Mapleton Municipal Utilities	*
3285	Maquoketa Municipal Electric	0.00191149
3288	McGregor Municipal Utilities	0.00168734

REVENUE DEPARTMENT(cont'd)

CO. #	COMPANY	REPLACEMENT TAX RATE
3291	Milford Municipal Utilities	0.00000000
3114	Montezuma Municipal Light & Power	0.00203621
3115	Mount Pleasant Municipal Utilities	0.00144290
3293	Muscatine Municipal Utilities	0.00000000
3116	Neola Light & Water System	*
3297	New Hampton Municipal Light Plant	0.00305742
3298	New London Municipal Utility	0.00431191
3304	Ogden Municipal Utilities	0.00228941
3234	Onawa Municipal Utilities	0.00305222
3117	Orange City Municipal Utilities	0.00258050
3118	Orient Municipal Utilities	*
3307	Osage Municipal Utilities	0.00085500
3309	Panora Municipal Electric Utility	*
3119	Paton Municipal Utilities	*
3120	Paullina Municipal Utilities	0.01535715
3121	Pocahontas Municipal Utilities	*
3122	Preston Municipal Utilities	*
3315	Primghar Municipal Light Plant	0.00000000
3123	Readlyn Municipal Utilities	0.00000000
3124	Remsen Municipal Utilities	*
3318	Rock Rapids Municipal Utilities	0.00460623
3126	Rockford Municipal Light Plant	0.00000000
3127	Sabula Municipal Utilities	*
3128	Sanborn Municipal Light & Plant	0.00229801
3130	Shelby Municipal Utilities	*
3131	Sibley Municipal Utilities	0.00000000
3321	Sioux Center Municipal Utilities	0.00285812
3324	Spencer Municipal Utilities	0.00408739
3132	Stanhope Municipal Utilities	*
3360	Stanton Municipal Utilities	0.00205795
3326	State Center Municipal Light Plant	0.00317852
3327	Story City Municipal Electric Utility	*
3134	Stratford Municipal Utilities	0.00957687
3135	Strawberry Point Electric Utility	0.00000000
3136	Stuart Municipal Utilities	0.00193773
3328	Sumner Municipal Light Plant	*
3330	Tipton Municipal Utilities	*
3332	Traer Municipal Utilities	0.00703660
3337	Villisca Municipal Power Plant	0.00000000
3137	Vinton Municipal Utilities	0.00451549
3138	Wall Lake Municipal Utilities	0.00534895
3338	Waverly Light & Power	0.00638141
3342	Webster City Municipal Utilities	0.00396841
3345	West Bend Municipal Power Plant	0.00222276

REVENUE DEPARTMENT(cont'd)

CO. #	COMPANY	REPLACEMENT TAX RATE
3346	West Liberty Municipal Electric Util.	0.00525417
3347	West Point Municipal Utility System	0.00401737
3140	Whittemore Municipal Utilities	*
3141	Wilton Municipal Light & Power	*
3351	Winterset Municipal Utilities	*
3142	Woodbine Municipal Utilities	0.00157697

*No rate provided to the Department by the Municipal

2010 MUNICIPAL NATURAL GAS TRANSFER REPLACEMENT TAX RATES

CO. #	COMPANY	REPLACEMENT TAX RATE
5401	Alton Municipal Gas	0.00000000
5021	Bedford Municipal Gas	0.09986749
5215	Brighton Gas	0.00000000
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.00451196
5022	City of Bloomfield	0.06158173
5026	City of Clearfield	*
5028	City of Everly	*
5029	City of Fairbank	0.00000000
5238	Coon Rapids Municipal Gas	0.00410722
5241	Corning Municipal Gas	*
5027	Emmetsburg Municipal Gas	0.04171604
5030	Gilmore City Municipal Gas	*
5031	Graettinger Municipal Gas	*
5032	Guthrie Center Municipal Gas	0.00000000
5033	Harlan Municipal Gas	*
5034	Hartley Municipal Gas	0.01473333
5035	Hawarden Municipal Gas	*
5036	Lake Park Municipal Gas	0.01235295
5275	Lamoni Municipal Gas	*
5037	Lenox Municipal Gas	0.00000000
5038	Lineville City Natural Gas	0.00000000
5039	Lorimor Municipal Gas	0.00000000
5281	Manilla Municipal Gas	*
5283	Manning Municipal Gas	0.12157004
5040	Montezuma Natural Gas	0.00000000
5041	Morning Sun Municipal Gas	0.00000000
5042	Moulton Municipal Gas	0.07035004
5369	Orange City Municipal Gas	*
5306	Osage Municipal Gas	0.02615185

REVENUE DEPARTMENT(cont'd)

CO. #	COMPANY	REPLACEMENT TAX RATE
5043	Prescott Municipal Gas	*
5044	Preston Municipal Gas	0.00316984
5055	Remsen Municipal Gas	*
5317	Rock Rapids Municipal Gas	0.02070025
5056	Rolfe Municipal Gas	*
5057	Sabula Municipal Gas	*
5058	Sac City Municipal Gas	0.06187874
5059	Sanborn Municipal Gas	0.03978715
5060	Sioux Center Municipal Gas	0.01598993
5061	Tipton Municipal Gas	*
5067	Wall Lake Municipal Gas	0.00438765
5063	Waukee Municipal Gas	0.04123971
5340	Wayland Municipal Gas	0.03158123
5064	Wellman Municipal Gas	*
5344	West Bend Municipal Gas	0.02800969
5065	Whittemore Municipal Gas	*
5349	Winfield Municipal Gas	*
5066	Woodbine Gas	0.38979589

*No rate provided to the Department by the Municipal

ARC 9290B**TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 130, "Signing Manual," Iowa Administrative Code.

Iowa Code section 321.252 requires the Department to adopt a manual and specifications for a uniform system of traffic control devices for use upon highways within this state.

This rule making replaces the Manual on Uniform Traffic Control Devices, 2003 Edition, including Revision No. 1, with the 2009 Edition. The Manual on Uniform Traffic Control Devices (MUTCD) is issued by the Federal Highway Administration (FHWA) under 23 CFR Part 655, Subpart F. The FHWA's final rule adopting the 2009 Edition of the MUTCD was published in the Federal Register on December 16, 2009 (pages 66730-66863). The FHWA's Web site <http://mutcd.fhwa.dot.gov> contains the 2009 Edition of the MUTCD and information regarding changes from the 2003 Edition.

Iowa Code section 321.249 requires traffic control devices provided for school zones to conform to specifications included in the MUTCD adopted by the Department, except the provision prohibiting the use of portable or part-time stop signs.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

TRANSPORTATION DEPARTMENT[761](cont'd)

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)817-6511; Internet E-mail address: steven.bowman@dot.iowa.gov.

5. Be received by the Office of Policy and Legislative Services no later than January 4, 2011.

A meeting to hear requested oral presentations is scheduled for Thursday, January 6, 2011, at 10 a.m. in the First Floor South Conference Room at the Iowa Department of Transportation located at 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

These amendments are intended to implement Iowa Code sections 321.249 and 321.252.

Proposed rule-making actions:

ITEM 1. Amend rule 761—130.1(321), introductory paragraph, as follows:

761—130.1(321) Manual. The “Manual on Uniform Traffic Control Devices” (MUTCD), ~~2003~~ 2009 Edition ~~including Revision No. 1 dated November 2004~~ dated December 2009, published by the U.S. Department of Transportation, Federal Highway Administration, shall constitute the manual and specifications for a uniform system of traffic control devices for use upon the highways of this state.

ITEM 2. Amend subrule 130.1(1) as follows:

130.1(1) The department makes the following exception to the MUTCD for school zones: In Part 2, Section ~~2B.05~~ 2B.04, ~~paragraph 12~~, of the MUTCD, ~~STOP Sign Applications~~ Right-of-Way at Intersections, Standard, in lieu of the sentence “Portable or part-time STOP or YIELD signs shall not be used except for emergency and temporary traffic control zone purposes,” the department adopts the following: “Portable or part-time STOP signs may be used only in the following situations:

“1. When necessary for emergency and temporary traffic control zone purposes, or

“2. In school zones at appropriate school crosswalks.”

ITEM 3. Renumber subrule **130.1(2)** as **130.1(4)**.

ITEM 4. Adopt the following new subrules 130.1(2) and 130.1(3):

130.1(2) The department makes the following exception to the MUTCD, Section 1A.09, Engineering Study and Engineering Judgment: Add the following paragraphs to the Guidance section prior to paragraph 03:

“The decision to use a particular device at a particular location should be made on the basis of either an engineering study or the application of engineering judgment. While the MUTCD provides standards, guidance, and options for design and application of traffic control devices, the MUTCD should not be considered a substitute for engineering judgment.

“Engineering judgment should be exercised in the selection and application of traffic control devices, as well as in the location and design of the roads and streets that the devices complement.”

130.1(3) The department makes the following exception to the MUTCD, Section 1A.13, Definitions of Headings, Words, and Phrases in this Manual, paragraph 01, definition of “Standard,” to read as shown:

“A. Standard—a statement of required, mandatory, or specifically prohibitive practice regarding a traffic control device. All Standard statements are labeled, and the text appears in bold type. The verb ‘shall’ is typically used. The verbs ‘should’ and ‘may’ are not used in Standard statements. Standard statements are sometimes modified by Options.”

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 December is 4.50%.

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 December 9, 2010, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum .05%
180-364 days	Minimum .05%
One year to 397 days	Minimum .30%
More than 397 days	Minimum .70%

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 9283B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 101.1, the State Fire Marshal hereby amends Chapter 221, "Flammable and Combustible Liquids," Iowa Administrative Code.

Iowa Code chapter 101 establishes the authority of the State Fire Marshal to establish requirements for the safe transportation, storage, handling and use of flammable and combustible liquids, which include motor vehicle fuels such as gasoline, "traditional" ethanol (90% gasoline, 10% ethanol) and higher blends of ethanol, including E-85. 661—subrule 221.4(2) governs the dispensing of ethanol blended fuels. Generally, dispensers used for motor vehicle fuels are required to be "listed" by an independent testing laboratory for use with the fuel dispensed. However, there has not, until recently, been a dispenser available which was listed for use with E-85, and provisions for the use of other dispensers, with additional monitoring requirements, were included in subrule 221.4(2).

Iowa Code section 455G.31 requires the State Fire Marshal to monitor the potential availability of one or more dispensers listed for use with E-85 and to issue an order regarding the use of listed dispensers once they have become commercially available. Recently, the State Fire Marshal was notified of the commercial availability of two dispensers listed for use with E-85 and issued an order regarding the use of such dispensers, as required by Iowa Code section 455G.31. The order carries out specific requirements specified in Iowa Code section 455G.31: 60 days after the issuance of the order, any new dispensers installed for use with E-85 must be listed for this use, and four years after the issuance of the order, E-85 may be dispensed only from dispensers listed for use with E-85.

The amendment adopted herein codifies the terms of the order issued by the State Fire Marshal. Additionally, the amendment modifies the definition of "E-10" to include blends of gasoline and ethanol up to 16 percent ethanol, rather than 15 percent; coordinates the definition of "E-blend" with the definition of "E-10"; and provides a definition of "listed" to clarify that a piece of equipment which is of a model that has been listed for a specific use shall be considered to be listed regardless of whether it was manufactured prior to or after the date on which the listing takes effect.

This amendment is also published herein under Notice of Intended Action as **ARC 9289B** to allow for public comment. A public hearing will be held on January 4, 2011.

Pursuant to Iowa Code section 17A.4(3), the State Fire Marshal finds that notice and public participation are unnecessary because this rule making brings the rules into conformity with the order issued by the State Fire Marshal and published on August 25, 2010, which, because of its statutory basis, takes precedence over the current language of the rules.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the State Fire Marshal further finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective December 1, 2010. Significant possibility of confusion as to the requirements in effect for dispensing E-85 exists as long as those requirements are not accurately captured in current rule language; the public will benefit from the clarity resulting from the adoption of this amendment.

This amendment is intended to implement Iowa Code section 455G.31.

This amendment became effective December 1, 2010.

The following amendment is adopted.

Amend subrule 221.4(2) as follows:

221.4(2) Add the following new sections:

2206.7.1.1 Dispensing of blended biofuels.

2206.7.1.1.1 Definitions.

"*B-blend*" means biodiesel blended fuel as defined in Iowa Code section 214A.1 with the blend including no more than 20 percent biodiesel, as defined in Iowa Code section 214A.1.

"*E-10*" means a blend of petroleum and ethanol including no more than ~~15~~ 16 percent ethanol intended for use as a motor vehicle fuel.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

"E-blend" means a blend of petroleum and ethanol including more than ~~15~~ 16 percent ethanol intended for use as a motor vehicle fuel.

"Existing E-blend dispenser" means a dispenser installed on or before October 24, 2010, for use in dispensing E-blend.

"Listed" means listed or approved by an independent testing laboratory for a specific use. A product shall be considered to be listed if it is of a model which has been listed for the use to which it is being put, whether it was manufactured prior to or after the date on which the listing became effective.

2206.7.1.1.2 E-blend may ~~only~~ be dispensed only if ~~(a)~~ (1) or ~~(b)~~ (2) applies:

(1) The dispenser is listed by an independent testing laboratory for use with E-blend or E-85.

(2) The dispenser is an existing E-blend dispenser and either (a) or (b) applies:

~~(a)~~ (a) ~~Only a~~ The dispenser ~~is~~ listed by an independent testing laboratory as compatible with E-10 gasoline ~~shall be used to dispense E-blend~~, and the retail dealer ~~shall~~ visually ~~inspect~~ inspects the dispenser and the dispenser sump daily for leaks and equipment failure. The dealer shall maintain a record of such inspection for at least one year after the inspection. The record shall be located on the premises of the retail dealer and shall be made available to the department of natural resources or the state fire marshal upon request. If a leak is detected, the department of natural resources shall be notified pursuant to Iowa Code section 455B.386.

(b) The dispenser's manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with E-85 gasoline. ~~In addition, and~~ the retail dealer ~~shall install~~ has installed an under-dispenser containment system with electronic monitoring.

NOTE: Option (2) will not be available after August 25, 2014. On or after August 26, 2014, E-blend will be allowed to be dispensed only from dispensers listed by independent testing laboratories for use with E-blend or E-85.

2206.7.1.1.3 B-blend may ~~only~~ be dispensed only if ~~(a)~~ (1) and either ~~(b)~~, ~~(c)~~, or ~~(d)~~ (2), (3), or (4) apply:

~~(a)~~ (1) Only a dispenser listed by an independent testing laboratory as compatible with diesel fuel shall be used to dispense B-blend.

~~(b)~~ (2) The retail dealer shall visually inspect the dispenser and the dispenser sump daily for leaks and equipment failure and maintain a record of such inspection for at least one year after the inspection. The record shall be located on the premises of the retail dealer and shall be made available to the department of natural resources or the state fire marshal upon request. If a leak is detected, the department of natural resources shall be notified pursuant to Iowa Code section 455B.386.

~~(c)~~ (3) The dispenser's manufacturer has submitted the dispenser to an independent testing laboratory to be listed as compatible for use with B-blend, and the retail dealer has installed an under-dispenser containment system with electronic monitoring.

~~(d)~~ (4) Information published or provided by the manufacturer of the dispenser is available stating that the dispenser is compatible with B-blend.

NOTE: If option ~~(b)~~ (2) or ~~(d)~~ (4) is used, under-dispenser containment shall be provided if otherwise required by the rules in this chapter, rules of the department of natural resources, or any other applicable provision of law.

[Filed Emergency 11/24/10, effective 12/1/10]

[Published 12/15/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/10.

ARC 9278B**CITY DEVELOPMENT BOARD[263]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 368.10, the City Development Board adopts amendments to Chapter 7, "Voluntary Annexation," and Chapter 10, "Board Proceedings on Petitions for Involuntary Boundary Change After Committee Approval," Iowa Administrative Code.

The current rules outline notification requirements for a city's request for Board approval of a voluntary annexation application; describe Board proceedings on voluntary annexation requests; outline the calculation of land area included without the consent of the owner; describe Board proceedings on involuntary boundary adjustment requests; and outline the election procedure if a petition for an involuntary boundary change is approved by the City Development Board Committee.

The amendments intend to clarify how public land and railway right-of-way are treated in annexation requests; create procedures for boundary adjustments between cities by petition and consent pursuant to 2010 Iowa Acts, House File 2376; and conform the rules to recent legislative changes in 2010 Iowa Acts, House File 2376.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 22, 2010, as **ARC 9106B**.

A public hearing was held on Tuesday, October 12, 2010, to receive comments on the amendments. No comments were received. The adopted amendments are identical to the amendments published under Notice of Intended Action.

The City Development Board adopted these amendments on November 10, 2010.

These amendments will become effective on January 19, 2011.

These amendments are intended to implement Iowa Code chapter 368 as amended by 2010 Iowa Acts, House File 2376.

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 [7.2(2), 7.8, 7.12, 10.1] is being omitted. These amendments are identical to those published under Notice as **ARC 9106B**, IAB 9/22/10.

[Filed 11/24/10, effective 1/19/11]

[Published 12/15/10]

[For replacement pages for IAC, see IAC Supplement 12/15/10.]

ARC 9291B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

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

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

The Department requested emergency adoption and implementation of these rules in conformance with the requirements of Iowa Code chapter 17A because the Legislature deemed 2010 Iowa Acts, Senate File 2389, to be of immediate importance and made it effective upon enactment.

Thus, these rules were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on June 30, 2010, as **ARC 8922B**. These rules were also published under Notice of Intended Action as **ARC 8921B** on the same date to allow for public comment. The Department held a public

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

hearing on July 20, 2010. No comments were received. These rules are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

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

These rules will become effective on January 19, 2011, at which time the Adopted and Filed Emergency rules are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 40] is being omitted. These rules are identical to those published under Notice as **ARC 8921B** and Adopted and Filed Emergency as **ARC 8922B**, IAB 6/30/10.

[Filed 11/24/10, effective 1/19/11]

[Published 12/15/10]

[For replacement pages for IAC, see IAC Supplement 12/15/10.]

ARC 9261B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 17, "Open Enrollment," Iowa Administrative Code.

Iowa Code section 257.11(3)"a" states that supplementary weighted funds are available to a school district for the district's "*resident* high school pupils [emphasis added]" who enroll in community college courses for concurrent credit. This amendment requires the resident district to send to the receiving district the supplementary weighting counted in October of the current year multiplied by the district cost per pupil of the current year. This result is as consistent as possible with other items that follow open enrolled pupils from their resident districts to their receiving districts, such as limited English proficient (LEP) weighting and the former Phase III funds, both of which were based on "generated" funding.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the October 6, 2010, Iowa Administrative Bulletin as **ARC 9143B**. Public comments were allowed until 4:30 p.m. on October 26, 2010. No written or oral comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code sections 257.11 and 282.18.

This amendment shall become effective January 19, 2011.

The following amendment is adopted.

Adopt the following **new** subrule 17.10(8):

17.10(8) A student under open enrollment is eligible to be counted for supplementary weighting pursuant to 281—subrule 97.2(5) for qualifying concurrent enrollment classes in which the student is enrolled, including concurrent enrollment classes provided via the ICN. An open enrolled student who is under competent private instruction (CPI) shall be weighted in the student's receiving district, and no tuition shall be billed to the resident district. An open enrolled student who is not under CPI shall be weighted in the resident district, and the funding shall be sent to the receiving district in addition to open enrollment tuition.

a. If the open enrolled student is present in the resident district on October 1 of the school year, the resident district shall count the student, excluding a student under CPI, for supplementary weighting.

b. The concurrent enrollment course must qualify for supplementary weighting in the receiving district pursuant to 281—subrule 97.2(5).

c. The resident district shall forward the weighting generated for the concurrent enrollment for that student using the district cost per pupil of the school year. The amount generated is calculated as the supplementary weighting full-time-equivalency for that one student for each qualified concurrent enrollment course multiplied by the current school year's district cost per pupil in the resident district.

EDUCATION DEPARTMENT[281](cont'd)

d. The receiving district shall pay the community college the tuition negotiated for the course. The tuition negotiated may cost the receiving district a different amount than that received from the resident district. No additional amount may be charged to the resident district, the student, or the parent, guardian, or legal custodian.

e. If the student was not present in the resident district on October 1 of the school year and is a late transfer, the receiving district bears all the tuition cost and shall not bill the resident district in the first year pursuant to subrule 17.10(7).

[Filed 11/17/10, effective 1/19/11]

[Published 12/15/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/10.

ARC 9262B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 43, "Pupil Transportation," Iowa Administrative Code.

Upon routine review of the provisions of Chapter 43, agency staff discovered a few rules that were not previously amended to conform to statutory changes. Accordingly, Items 1 through 3 conform to 2003 Iowa Acts, chapter 180, section 52, which no longer requires a school district to obtain separate body and chassis bids; Items 4 and 5 more accurately state contract law; and Item 6 conforms to the Smokefree Air Act of 2008 (Iowa Code chapter 142D).

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the August 25, 2010, Iowa Administrative Bulletin as **ARC 9013B**. Public comments were allowed until 4:30 p.m. on September 14, 2010. No written or oral comments were received. These amendments are identical to those published under Notice.

These amendments shall become effective January 19, 2011.

These amendments are intended to implement Iowa Code chapter 285.

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 [43.25, 43.34, 43.38] is being omitted. These amendments are identical to those published under Notice as **ARC 9013B**, IAB 8/25/10.

[Filed 11/17/10, effective 1/19/11]

[Published 12/15/10]

[For replacement pages for IAC, see IAC Supplement 12/15/10.]

ARC 9263B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 44, "School Buses," Iowa Administrative Code.

There is a discrepancy in the Department's rules between the description of the weight of a Type A-2 bus and the requirement for tow hooks for a Type A-2 bus. A Type A-2 bus weighs 14,501 pounds or more. Paragraph "f" of subrule 44.3(7) should say "14,501" and not "14,500" to be consistent with the definition. This rule making corrects that discrepancy.

An agencywide waiver provision is provided in 281—Chapter 4.

EDUCATION DEPARTMENT[281](cont'd)

Notice of Intended Action was published in the October 6, 2010, Iowa Administrative Bulletin as **ARC 9145B**. Public comments were allowed until 4:30 p.m. on October 26, 2010. No written or oral comments were received. This amendment is identical to that published under Notice.

This amendment shall become effective January 19, 2011.

This amendment is intended to implement Iowa Code sections 257.11 and 282.18.

The following amendment is adopted.

Amend paragraph **44.3(7)“f”** as follows:

f. Tow eyes or hooks are required on chassis of ~~14,500~~ 14,501 pounds GVWR or greater. Two tow eyes or hooks shall be installed by the chassis manufacturer so as not to project beyond the front bumper. Tow eyes or hooks shall be attached to the chassis frame in accordance with the chassis manufacturer's standards.

[Filed 11/18/10, effective 1/19/11]

[Published 12/15/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/10.

ARC 9264B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 68, "Iowa Public Charter Schools," Iowa Administrative Code.

Upon initial enactment of Iowa's Charter Schools Act (Iowa Code chapter 256F) in 2003, Chapter 68 was adopted in September 2003. There are presently fewer than ten charters. 2010 Iowa Acts, Senate File 2033, added the concept of innovation zone schools to Iowa Code chapter 256F. An innovation zone school is similar to a charter school, but a charter school is a public attendance center chartered and governed by the local school board of the school district in which the charter school is located, whereas an innovation zone school is a public attendance center established by a consortium that must include at least two school districts and an area education agency.

Items 1 through 7, 13, and 16 reflect the addition of language pertaining to innovation zone schools, necessitated by the enactment of 2010 Iowa Acts, Senate File 2033.

In Item 8, the amendment to the number of points awarded is to emphasize that innovation is of great importance to the State Board.

The amendment in Item 9 reflects actual practice. Because the State Board does not meet every month, it is not always possible to meet the existing 60-day deadline. On the other hand, actual practice is for the Department to give notice to applicants of the State Board's decision about a charter application well within 5 days.

In Item 10, language is added to implement 2010 Iowa Acts, Senate File 2033. Similar language is added in Item 15.

The amendment in Item 11 corrects a misstatement by the rule of what is in the statute. Pursuant to Iowa Code chapter 290, only an affected student or parent of a minor affected student may invoke the appeal procedure in that chapter.

Item 15 includes the rules for proposal of innovation zone schools by innovation zone consortia, approval and review process of the schools, and process for renewal or termination of the schools.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the August 25, 2010, Iowa Administrative Bulletin as **ARC 9014B**. A public hearing was held on September 14, 2010, and public comments were allowed until 4:30 p.m. on the same date. No written or oral comments were received.

One nonsubstantive change has been made to the amendments published under Notice. A phrase in the second sentence of subrule 68.7(2) has been transposed for clarity. Subrule 68.7(2) now reads as follows:

EDUCATION DEPARTMENT[281](cont'd)

“**68.7(2)** *Revocation by school board.* A school board considering the revocation of a contract with its charter school shall notify the advisory council, the family units, and the teachers and administrators employed by the charter school at least 60 days prior to the date by which the contract must be renewed, but not later than the last day of classes in the school year. The decision of a school board to revoke or fail to renew a charter school contract is subject to appeal under procedures set forth in Iowa Code chapter 290 by an affected student or parent of an affected student who is a minor.”

These amendments shall become effective January 19, 2011.

These amendments are intended to implement Iowa Code chapter 256F as amended by 2010 Iowa Acts, Senate File 2033.

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 [68.1 to 68.7, 68.11 to 68.15] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 9014B**, IAB 8/25/10.

[Filed 11/18/10, effective 1/19/11]

[Published 12/15/10]

[For replacement pages for IAC, see IAC Supplement 12/15/10.]

ARC 9265B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 83, “Teacher and Administrator Quality Programs,” Iowa Administrative Code.

The original definition of “beginning administrator” in Iowa Code chapter 284A (the chapter was enacted in 2006) precluded all superintendents from the definition because no person may be licensed or serve as a school district superintendent in Iowa if the person holds an “initial” administrator license. This outcome was inadvertent; much of the beginning administrator program is targeted toward beginning superintendents. 2010 Iowa Acts, Senate File 2376, section 35, fixes the error, and this amendment implements that change.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the August 25, 2010, Iowa Administrative Bulletin as **ARC 9015B**. Public comments were allowed until 4:30 p.m. on September 14, 2010. No written or oral comments were received. This amendment is identical to that published under Notice.

This amendment shall become effective January 19, 2011.

This amendment is intended to implement 2010 Iowa Acts, Senate File 2376, section 35.

The following amendment is adopted.

Amend rule **281—83.2(284,284A)**, definition of “Beginning administrator,” as follows:

“*Beginning administrator*” means an individual serving under an ~~initial~~ administrator license, issued by the board of educational examiners under Iowa Code chapter 272, who is assuming a position as a school district ~~administrator~~ principal or superintendent for the first time.

[Filed 11/18/10, effective 1/19/11]

[Published 12/15/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/10.

ARC 9266B**EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 97, "Supplementary Weighting," Iowa Administrative Code.

The amendment in Item 1 implements changes made by Iowa Code chapter 261E, the Senior Year Plus Program.

2010 Iowa Acts, Senate File 2291, section 7, amended Iowa Code section 257.11(8) to clarify that students with disabilities who are served by special education programs or services are not to be denied participation in other weighted programming. This was also an area of confusion regarding students served by at-risk programming. Accordingly, Item 2 addresses both of these programs by clarifying that, while special education programming and at-risk programming are not eligible for additional supplementary weighting, students who are served by such programming are not to be denied participation in other weighted programs for which the students are eligible.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the August 25, 2010, Iowa Administrative Bulletin as **ARC 9016B**. Public comments were allowed until 4:30 p.m. on September 14, 2010. No written or oral comments were received. These amendments are identical to those published under Notice.

These amendments shall become effective January 19, 2011.

These amendments are intended to implement 2010 Iowa Acts, Senate File 2291, section 7, and Iowa Code chapter 261E.

The following amendments are adopted.

ITEM 1. Amend subrule 97.2(5) as follows:

97.2(5) Attend class in a community college. All of the following conditions must be met for any student attending a community college-offered class to be eligible for supplementary weighting under paragraph 97.2(1)"d."

a. The course must supplement, not supplant, high school courses.

(1) ~~The course must not replace the identical course that was offered by the school district in the preceding year or the second preceding year.~~ For purposes of these rules, to comply with the "supplement, not supplant" requirement, the content of a course provided to a high school student for postsecondary credit shall not consist of substantially the same concepts and skills as the content of a course provided by the school district.

(2) The course must not be ~~required~~ used by the school district in order to meet the minimum accreditation standards in Iowa Code section 256.11.

b. to f. No change.

g. The course must be taught in such a manner as to result in student work and student assessment that meets which meet college-level expectations.

h. No change.

ITEM 2. Amend subrule 97.2(6) as follows:

97.2(6) Ineligibility. The following students are ineligible for supplementary weighting:

a. No change.

b. Students eligible for the special education weighting plan provided in Iowa Code section 256B.9 when being served by special education programs or services that carry additional weighting.

c. to i. No change.

j. Students enrolled in an at-risk program or alternative school program when being served by such program.

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k. No change.

[Filed 11/18/10, effective 1/19/11]

[Published 12/15/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/10.

ARC 9267B

EDUCATION DEPARTMENT[281]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 98, "Financial Management of Categorical Funding," Iowa Administrative Code.

This chapter, which provides guidance on financial management of multiple public school funds, was adopted effective September 30, 2009, with the exception of rules 281—98.12(257,299A) and 281—98.112(275), both of which were delayed 70 days by the Administrative Rules Review Committee at the Committee's meeting of September 8, 2009. At its meeting held December 8, 2009, the Committee took no further action on rule 281—98.112(275), but voted to delay the effective date of rule 281—98.12(257,299A) until the adjournment of the 2010 Session of the General Assembly. During the 2010 Session, 2010 Iowa Acts, Senate File 2376, was enacted, specifying in section 40 thereof the lawful purposes of the per-pupil funding received by a school district that operates a home school assistance program. That provision is implemented in Item 3. Because it was necessary to amend the chapter, other items have been edited, as follows:

Item 1 includes the definition of community education, taking the definition from statute (Iowa Code section 276.3) for the ease of the reader.

Item 2 requires amending because market factor incentive pay from Iowa Code section 284.11 (2007) has ceased to exist, but school districts need guidance regarding their unspent funds.

Items 4 and 5 correct confusion that developed regarding the Department's erroneous reference to "dean of students" in the to-be-stricken language. A dean of students is a school administrator, and school administrators are addressed later in both rules.

Items 6 and 9 include changes made to Iowa Code section 257.9, subsections 6 and 7, to the names of funds. Such changes were not made in the substantive sections of statutes, so the Department has chosen to use both names.

Items 7, 8, and 10 make necessary adjustments to acknowledge that the educational excellence Phase II program and the educator quality basic salary program were combined and that they and the educational excellence Phase I program are no longer grants-in-aid, but are budgetary allocations.

Item 11 implements the change to the definition of "textbook" in 2010 Iowa Acts, Senate File 2178.

Item 12 includes a clarification that is important for auditors and for the state appeals board and that was inadvertently omitted when the chapter was first adopted.

An agencywide waiver provision is provided in 281—Chapter 4.

Notice of Intended Action was published in the August 25, 2010, Iowa Administrative Bulletin as **ARC 9017B**. Public comments were allowed until 4:30 p.m. on September 14, 2010. No written or oral comments were received by the Department. One comment was sent to members of the Administrative Rules Review Committee expressing two concerns. The first is that new rule 281—98.12(257,299A) refers only to "home school assistance program" and not to "prekindergarten through grade twelve home school assistance program." The other concern is with the addition of the definition of "dual enrollment."

The Department is not adding the proposed definition of "dual enrollment" to these amendments. This definition is in Iowa Code section 299A.8 and rule 281—31.6(299A), and was proposed in these amendments solely as a convenience for the reader. This chapter of rules is not harmed by omitting the definition. As to the other concern raised, the Department declines to modify "home school assistance program" by adding grade levels. A school district that offers a home school assistance program receives public funding for students of compulsory attendance age who enroll in the program. If the district

EDUCATION DEPARTMENT[281](cont'd)

chooses to serve students beyond compulsory attendance age, it receives no funds for those students. Modifying the term by adding “pre-kindergarten through grade twelve” may confuse the public with an inference that public funding is available for all ages of students.

These amendments have been changed since publication of the Notice of Intended Action: The proposed definition of “dual enrollment” has not been adopted in Item 1.

These amendments shall become effective January 19, 2011.

These amendments are intended to implement 2010 Iowa Acts, Senate File 2178, 2010 Iowa Acts, Senate File 2376, section 40, and Iowa Code chapters 257 and 284.

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 98] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 9017B**, IAB 8/25/10.

[Filed 11/18/10, effective 1/19/11]

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[For replacement pages for IAC, see IAC Supplement 12/15/10.]

ARC 9285B

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Adopted and Filed

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board amends Chapter 4, “Engineering Licensure,” Iowa Administrative Code.

This amendment clarifies the requirements regarding references for any examination applicants who must meet an experience requirement before taking an examination. This amendment enables examination applicants to submit materials that fulfill Board requirements and therefore provides for a more efficient application process.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 25, 2010, as **ARC 9021B**. No public comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 542B.2, 542B.13, 542B.14, 542B.15, 542B.17 and 542B.20.

This amendment was adopted by the Board on November 18, 2010.

This amendment will become effective January 19, 2011.

The following amendment is adopted.

Amend subrule 4.1(5) as follows:

4.1(5) References. References are required for any applicant ~~that~~ who must meet an experience requirement prior to taking an examination.

a. An applicant for the Principles and Practice of Engineering examination shall submit five references on forms provided by the board.

(1) At least three of the five references shall be from licensed professional engineers.

(2) At least one reference shall be from a supervisor. If the applicant has had more than one supervisor, at least two of the references shall be from a supervisor of the applicant. An applicant shall submit supervisor references to verify at least four years of qualifying experience.

(3) If an applicant has had professional experience under more than one employer, the applicant shall provide references from individuals with knowledge of the work performed under a minimum of two employers.

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(4) The board reserves the right to contact references, supervisors, or employers for information about the applicant's professional experience and competence or to request additional references.

(5) All licensed professional engineers who submit references for an applicant shall be sufficiently familiar with the applicant's work product to formulate credible opinions on the applicant's capacity to assume responsible charge of professional engineering works and services.

(6) At least one of the licensed professional engineers who provides references for the applicant shall have provided professional tutelage in the course of a mentoring relationship on such matters as technical skills; professional development; the exercise of professional judgment, ethics, and standards in the application of engineering principles and in the review of such matters by others; and the professional obligations of assuming responsible charge of professional engineering works and services.

(7) Applicants who have not been supervised by a licensed professional engineer for at least four years of qualifying experience shall submit one or more references to verify tutelage by unlicensed supervisors, as provided in paragraph 4.1(7) "a."

(8) The board uses references partially as a means of verifying an applicant's record of experience. The applicant must distribute a reference form to individuals who are asked to submit references for the applicant. To each reference form, the applicant shall attach a copy of the portion of the applicant's experience record that is being addressed by the referring individual.

b. An applicant for the Fundamentals of Engineering examination whose engineering degree is not from an ABET/EAC or CEAB accredited engineering program must provide a reference from a supervisor on a form provided by the board.

[Filed 11/24/10, effective 1/19/11]

[Published 12/15/10]

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ARC 9286B

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

Adopted and Filed

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board amends Chapter 4, "Engineering Licensure," Iowa Administrative Code.

This amendment clarifies the examination application process by directing the applicants to use the correct forms for references.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 25, 2010, as **ARC 9022B**. No public comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Board on November 18, 2010.

This amendment is intended to implement Iowa Code sections 542B.2, 542B.13, 542B.14, 542B.15, 542B.17 and 542B.20.

This amendment will become effective January 19, 2011.

The following amendment is adopted.

Amend paragraph **4.1(7) "a"** as follows:

a. ~~Quality. Experience~~ Qualifying experience shall be supervised and of such quality as to demonstrate that the applicant has developed technical skill and initiative in the correct application of engineering principles. Such experience should demonstrate the applicant's capacity to review the applications of these principles by others and to assume responsibility for engineering work of professional character. To be readily acceptable, an applicant's experience shall be under the tutelage and supervision of a professional engineer. ~~However, an~~ An applicant who is an engineer intern

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and whose ~~tutelage or portion of tutelage has not been under~~ experience was not attained under the supervision of a licensed professional engineer must submit a cover letter to the board requesting consideration of such experience along with the application. The applicant shall also submit on forms provided by the board a letter of reference from the applicant's supervisor(s). The letter of reference shall assess include an assessment of the applicant's performance, development, integrity, and ability to assume responsible charge and shall contain a description of the supervisor's background in education and experience and the nature of the unlicensed tutelage provided to the applicant. Whether directly supervised by a licensed professional engineer or not, all applicants must have received professional tutelage (instruction, guidance, mentoring, review, and critique) from one or more licensed professional engineers to qualify to take the professional engineering examination. Accordingly, all applicants must submit at least one reference from the licensed professional engineer(s) who provided professional tutelage as described in subparagraph 4.1(5) "a"(6). The board may require the applicant to submit additional letters of reference or other evidence of suitable tutelage and supervision. The board may require an oral interview with the applicant or other evidence to verify the applicant's knowledge and experience in the principles and practice of engineering. The board may conduct interviews with persons providing tutelage or supervision to the applicant.

[Filed 11/24/10, effective 1/19/11]

[Published 12/15/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/10.

ARC 9288B

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

Adopted and Filed

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board amends Chapter 4, "Engineering Licensure," Iowa Administrative Code.

This amendment updates the rule to include a provision for the forthcoming change to the Structural Engineering examination. The examination, previously consisting of two 8-hour examinations, is being changed to a single 16-hour examination. The amendment also clarifies how the Structural branch license may be obtained.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 25, 2010, as **ARC 9024B**. No public comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Board on November 18, 2010.

This amendment is intended to implement Iowa Code sections 542B.2, 542B.13, 542B.14, 542B.15, 542B.17 and 542B.20.

This amendment will become effective January 19, 2011.

The following amendment is adopted.

Amend paragraph **4.1(8) "b"** as follows:

b. Principles and Practice of Engineering examination (professional examination). The Principles and Practice of Engineering examination is a written, ~~eight~~ 8-hour examination designed to determine proficiency and qualification to engage in the practice of professional engineering only in a specific branch. The Principles and Practice of Engineering 16-hour Structural examination is a written, 16-hour examination designed to determine proficiency and qualification to engage in the practice of structural engineering. A separate examination shall be required for each branch in which licensure is granted. An applicant may obtain a Structural branch license by passing either the Principles and

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Practice of Engineering Civil (Structural) examination or the Principles and Practice of Engineering 16-hour Structural examination.

[Filed 11/24/10, effective 1/19/11]

[Published 12/15/10]

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ARC 9287B

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

Adopted and Filed

Pursuant to the authority of Iowa Code section 542B.6, the Engineering and Land Surveying Examining Board amends Chapter 4, "Engineering Licensure," Iowa Administrative Code.

This amendment clarifies the comity application process by directing the applicants to use the correct forms for references.

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 25, 2010, as **ARC 9023B**. No public comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Board on November 18, 2010.

This amendment is intended to implement Iowa Code sections 542B.2, 542B.13, 542B.14, 542B.15, 542B.17 and 542B.20.

This amendment will become effective January 19, 2011.

The following amendment is adopted.

Amend subrule 4.2(1) as follows:

4.2(1) References. An applicant for licensure by comity shall submit references on forms provided by the board to verify at least four years of satisfactory experience after the receipt of the qualifying degree. This experience must be under the supervision of a licensed professional engineer, or the applicant must provide unlicensed tutelage references verifying at least four years of satisfactory engineering experience, as provided in paragraph 4.1(7) "a." The board reserves the right to contact employers for information about the applicant's professional experience and competence.

[Filed 11/24/10, effective 1/19/11]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/10.

ARC 9279B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 16.5(1)"r," 16.52 and 17A.3(1)"b," the Iowa Finance Authority hereby amends Chapter 12, "Low-Income Housing Tax Credits," Iowa Administrative Code.

These amendments replace the 2010 first amended qualified allocation plan with the 2011 qualified allocation plan (QAP), which is incorporated by reference in rule 265—12.1(16).

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 20, 2010, as **ARC 9160B**. The Authority received public comment on the QAP and made changes to the QAP based on those comments. The Authority accordingly changed the date set forth in the final sentence of rule 265—12.1(16) and in the third sentence of rule 265—12.2(16) from the amendments published under Notice.

IOWA FINANCE AUTHORITY[265](cont'd)

The Iowa Finance Authority adopted these amendments on November 24, 2010.

These amendments are intended to implement Iowa Code sections 16.5(1)“r,” 16.52, 17A.12, and 17A.16 and IRC Section 42.

These amendments will become effective on January 19, 2011.

The following amendments are adopted.

ITEM 1. Amend rule 265—12.1(16) as follows:

265—12.1(16) Qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program ~~2010 First Amended~~ 2011 Qualified Allocation Plan shall be the qualified allocation plan for the allocation of ~~2010~~ 2011 low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The qualified allocation plan includes the plan, application, and the application instructions. The qualified allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The qualified allocation plan does not include any amendments or editions created subsequent to ~~June 23~~ November 24, 2010.

ITEM 2. Amend rule 265—12.2(16) as follows:

265—12.2(16) Location of copies of the plan. The qualified allocation plan can be reviewed and copied in its entirety on the authority’s Web site at <http://www.iowafinanceauthority.gov>. Copies of the qualified allocation plan, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority’s Web site. The plan incorporates by reference IRC Section 42 and the regulations in effect as of ~~June 23~~ November 24, 2010. Additionally, the plan incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority’s Web site.

[Filed 11/24/10, effective 1/19/11]

[Published 12/15/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/10.

ARC 9284B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.40, the Iowa Finance Authority hereby amends Chapter 39, “HOME Partnership Program,” Iowa Administrative Code.

The purpose of these amendments is to revise the rules and to adopt additional rules relating to the application and allocation process by which HOME funds are to be awarded.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 20, 2010, as **ARC 9159B**. The Authority received public comment on the proposed amendments. In response to those comments, the Authority has made the following changes:

- In rule 265—39.2(16), the definition of “handicapped accessible” was replaced with the definition of “accessible,” and the definition of “extremely low income” was modified.
- Subrule 39.5(2) was changed to clarify that joint HOME and low-income housing tax credit (LIHTC) applications must meet the requirements of both programs.
- Paragraph 39.5(2)“b” was changed to clarify that joint application funding recommendations will be made pursuant to both the LIHTC qualified allocation plan and the HOME application requirements.

The Iowa Finance Authority adopted these amendments on November 24, 2010.

These amendments are intended to implement Iowa Code sections 16.5(1)“f” and 16.5(1)“m” and the Cranston-Gonzalez National Affordable Housing Act of 1990.

These amendments will become effective on January 19, 2011.

IOWA FINANCE AUTHORITY[265](cont'd)

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions in rule **265—39.2(16)**:

“*Accessible*” means that the unit meets the construction standards for the rental unit set forth in Chapter 11 of the International Building Code 2009 or, if more stringent, the local building code related to accessibility of rental units.

“*Energy Star*” means a joint program of the U.S. Environmental Protection Agency and the U.S. Department of Energy that establishes standards and practices to improve energy efficiency.

“*Energy Star certification*” means a property meets strict guidelines for energy efficiency set by the U.S. Environmental Protection Agency (EPA), making the property 20 to 30 percent more efficient than standard homes. Homes achieve this level of performance through a combination of energy-efficient improvements, including effective insulation systems, high-performance windows, tight construction and ducts, efficient heating and cooling equipment, and Energy Star-qualified lighting and appliances.

“*Energy Star rater*” means a certified inspector who works closely with the builder throughout the construction process to help determine the needed energy-saving equipment and construction techniques and to conduct required on-site diagnostic testing and inspections to document that the home is eligible to earn the Energy Star certification.

“*Extremely low income*” means individuals or families whose annual incomes do not exceed 30 percent of the median income for the area, as determined by HUD.

“*Low income*” means families whose annual incomes do not exceed 80 percent of the median income for the area, as determined by HUD.

“*Very low income*” means families whose annual incomes do not exceed 50 percent of the median income for the area, as determined by HUD.

ITEM 2. Rescind the definition of “Iowa green communities criteria” in rule **265—39.2(16)**.

ITEM 3. Adopt the following **new** rule 265—39.3(16):

265—39.3(16) Eligible applicants. Eligible applicants for HOME assistance include all incorporated cities and all counties within the state of Iowa, nonprofit 501(c) organizations, CHDOs, and for-profit corporations or partnerships.

39.3(1) Any eligible applicant may apply directly to IFA.

39.3(2) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

ITEM 4. Amend subrule 39.4(1) as follows:

39.4(1) Eligible activities include transitional housing, tenant-based rental assistance, rental housing rehabilitation (including conversion and preservation), rental housing new construction, home ownership assistance (including development subsidies), ~~owner-occupied housing rehabilitation,~~ and other housing-related activities as may be deemed appropriate by IFA. Assisted housing may be single-family housing or multifamily housing and may be designed for occupancy by homeowners or tenants.

a. Assisted units shall be affordable.

(1) to (3) No change.

~~(4) For owner-occupied housing rehabilitation, the after rehabilitation value of the rehabilitated unit shall not exceed 95 percent of the median purchase price as established by HUD mortgage limits for the same type of single family housing in the area.~~

b. Assisted households shall meet income limits established by federal program requirements.

(1) For rental activities for projects with 35 units or fewer, all assisted units shall be rented to low-income households with incomes at or below 80 percent of the area’s median family income; at initial occupancy, 90 percent of the units shall be rented to households with incomes at or below 60 percent of the area’s median family income and, for projects with ~~five~~ 5 or more units, 20 percent of the units shall be rented initially to very low-income households with incomes at or below 50 percent of the area’s median family income.

IOWA FINANCE AUTHORITY[265](cont'd)

(2) For rental activities for projects with 36 units or more, all assisted units shall be rented to low-income households; at initial occupancy and throughout the HOME compliance period, 5 percent of all of the units, assisted or not assisted, in the project shall be rented to extremely low-income households, and the household shall not pay more than the rent established by HUD for extremely low-income households. At initial occupancy, the remainder of the HOME assisted units shall be rented to households with incomes at or below 60 percent of the area's median family income and, for projects with 5 or more units, 20 percent of the units shall be rented initially to very low-income households.

~~(2)~~ (3) For tenant-based rental assistance, only households with incomes at or below 80 percent of the area median family income shall be assisted; 90 percent of the households served shall have incomes at or below 60 percent of the area's median family income.

~~(3)~~ (4) For home ownership assistance ~~and owner-occupied rehabilitation~~, only households with incomes at or below 80 percent of the area median family income shall be assisted.

c. No change.

~~d. Iowa green communities criteria. All newly constructed housing (single family and multifamily housing) and all multifamily rental activities involving gut rehabilitation shall meet the mandatory requirements of the Iowa green communities criteria. All other multifamily rental activities involving rehabilitation (that is, not gut rehabilitation) shall meet the applicable mandatory requirements of the Iowa green communities criteria regarding rehabilitation. Energy Star. All new construction must obtain Energy Star certification verified by an Energy Star rater.~~

ITEM 5. Adopt the following new rule 265—39.5(16):

265—39.5(16) Application procedure.

39.5(1) HOME applications shall be reviewed at least annually. IFA reserves the right to withhold funding from the annual HOME competitive cycle to compensate for insufficient number or quality of applications received, to ensure IFA meets its 15 percent CHDO set-aside from HOME funds, to add HOME funds to existing HOME awards within one year of the original award date, to reallocate deobligated or recaptured funds, and to fund projects that are consistent with the Rural Development Section 515 Preservation Demonstration Program. In the event that funds are withheld from the annual competitive cycle, IFA will entertain additional applications, requests for proposals, or other forms of requests as deemed appropriate by IFA.

39.5(2) Joint applications. For applicants requesting funding from both the HOME partnership and low-income housing tax credit (LIHTC) programs, the applicant may request application forms and related materials from the LIHTC program at IFA. IFA will make a joint tax credit and HOME application available to a potential applicant. The applicant must submit to IFA the completed application with required HOME attachments by the deadline established in the application package. An applicant shall meet the requirements of the LIHTC and the HOME program to receive an award of HOME funds.

a. IFA shall appoint a joint review team to discuss and review applications for HOME and LIHTC funds and any other funding sources. Staff for each program may communicate frequently regarding common projects. Information contained in the joint application will be shared with each program.

b. HOME staff shall review applications for eligibility and for activity threshold requirements. The joint review team shall meet to compare and discuss each common project. Final award decisions regarding funding recommendations will be made in accordance with IFA's qualified allocation plan (scoring and set-asides) and the HOME application requirements. Staff for each program will make recommendations for funding to the IFA board of directors. A decision by one program does not bind the other program to fund a project.

c. An applicant for the HOME partnership program must meet the threshold requirements outlined in rule 265—39.6(16).

ITEM 6. Rescind rule 265—39.6(16) and adopt the following new rule in lieu thereof:

265—39.6(16) Application requirements. To be considered for HOME assistance, an application shall meet the following threshold criteria.

IOWA FINANCE AUTHORITY[265](cont'd)

39.6(1) The application shall propose a housing activity consistent with the HOME fund purpose and eligibility requirements and the state consolidated plan.

39.6(2) The application shall document the applicant's capacity to administer the proposed activity. Such documentation may include evidence of successful administration of prior housing activities. IFA reserves the right to deny funding to an applicant that has failed to comply with federal or state requirements in the administration of a previous project funded by the state of Iowa or that failed to comply with federal requirements in the administration of a previous project funded in any other state. Documentation of the ability of the applicant to provide technical services and the availability of certified lead professionals and contractors either trained in safe work practices or certified as abatement contractors may also be required as applicable to the HOME fund activity.

39.6(3) The application shall provide evidence of the need for the proposed activity, the potential impact of the proposed activity, the feasibility of the proposed activity, and the impact of additional housing resources on the existing related housing market.

39.6(4) The application shall demonstrate local support for the proposed activity.

39.6(5) The application shall show that a need for HOME assistance exists after all other financial resources have been identified and secured for the proposed activity.

39.6(6) The application shall include a certification that the applicant will comply with all applicable state and federal laws and regulations.

39.6(7) Local participating jurisdiction requirement. An application for a project located in a locally designated participating jurisdiction (PJ) must show evidence of a financial commitment from the local PJ at least equal to 25 percent of the total IFA HOME funds requested. Sources of local PJ financial commitment may include one or more of the following: HOME, community development block grant, tax increment financing, tax abatement, or general funds; the value of waived taxes, fees or charges associated with HOME projects; the value of donated land or real property; the cost of infrastructure improvements associated with HOME projects; and the contracted commitment to provide the direct costs of supportive services to residents of HOME projects provided by a city-owned agency using nonfederal funds.

39.6(8) An application for home ownership assistance activity must indicate that recipients will require the beneficiaries of the applicant's home ownership assistance activity to use a principal mortgage loan product that meets the following criteria:

a. With the exception of Habitat for Humanity principal mortgage loan products, the principal mortgage loan must be the only repayable loan in all individual home ownership assistance projects.

b. The HOME assistance must be recorded in second lien position to the principal mortgage loan, if one exists. Recipients of HOME fund home ownership assistance activities must maintain their assistance security agreements in the above-stated recording position throughout the applicable period of affordability and will not be allowed to subordinate the required recording position to any other form of assistance, such as home equity loans. A homebuyer search is required, and any collection/unpaid obligation that would become a judgment or any judgments must be paid in full prior to closing.

c. Any mortgage lending entity's principal mortgage loan products may be used provided they meet all of the following minimum requirements:

(1) The loan must be a fully amortizing, fixed-rate loan with rate not to exceed Fannie Mae 90-day yield + 0.125% or VA-published interest rate at par;

(2) Loan terms must include an 80 percent or higher loan-to-value ratio;

(3) No less than a 15-year, fully amortized, fixed-rate mortgage shall be used; and

(4) No adjustable rate mortgages or balloon payment types of mortgages will be allowed.

d. Recipients are encouraged but not required to have the beneficiaries of their home ownership assistance activity utilize a principal mortgage loan product offered by one of the following: Iowa finance authority, USDA Rural Development, Federal Home Loan Bank, HUD (including FHA and VA), Habitat for Humanity, Fannie Mae, or Freddie Mac.

39.6(9) An application for a home ownership assistance activity must stipulate that home ownership assistance is for first-time homebuyers only and that the assisted unit will remain as the assisted homebuyer's principal residence throughout the required period of affordability.

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ITEM 7. Adopt the following new rule 265—39.7(16):

265—39.7(16) Application review criteria.

39.7(1) IFA shall evaluate applications and make funding decisions based on general activity criteria, need, impact, feasibility, and activity administration based upon the specific type of activity to be undertaken. The activity criteria shall be a part of the application. Training will be offered prior to the application deadline to provide information and technical assistance to potential applicants.

39.7(2) A request for proposals shall be published by IFA when funds are available to award. The request for proposals shall specify the general criteria, need, impact and feasibility criteria, and the administrative criteria based on the activity proposed. Notice of the availability of funding will be placed on IFA's Web site at www.iowafinanceauthority.gov.

39.7(3) Special consideration will be given to applications where 100 percent of the HOME-funded rental units are fully accessible (not adaptable).

ITEM 8. Amend subrule 39.8(3) as follows:

39.8(3) IFA reserves the right to set aside a portion of the state's annual HOME allocation for rental housing activities jointly funded with HOME and low-income housing tax credits and for the Rural Development Section 515 Preservation Demonstration Program.

ITEM 9. Amend rule 265—39.9(16) as follows:

265—39.9(16) Administration of awards. Applicants selected to receive HOME funds awards shall be notified by letter from the ~~DED director or~~ IFA executive director or IFA affordable rental production division director.

39.9(1) Preaudit survey. A preaudit survey may be required for all for-profit and nonprofit direct recipients for assistance that exceeds \$150,000.

39.9(2) Contract. A contract shall be executed between the recipient and IFA. These rules, the approved application, the ~~Iowa Housing Fund~~ IFA HOME Management Guide and all applicable federal and state laws and regulations shall be part of the contract.

a. The recipient shall execute and return the contract to IFA within 45 days of transmittal of the final contract from IFA. Failure to do so may be cause for IFA to terminate the award.

b. Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Contracts may be conditioned upon the timely completion of these requirements.

c. Awards shall be conditioned upon commitment of other sources of funds necessary to complete the housing activity.

d. ~~Release of funds shall be conditioned upon IFA's receipt of an administrative plan for the funded activity.~~

e. Release of funds shall be conditioned upon IFA's receipt and approval of documentation of environmental clearance.

39.9(3) No change.

39.9(4) Requests for funds. Recipients shall submit requests for funds in the manner and on forms prescribed by IFA. Individual requests for funds shall be made in whole dollar amounts equal to or greater than \$500 per request, except for the final draw of funds. Adequate and itemized documentation supporting the amount of funds requested must be provided prior to release of funds.

39.9(5) Record keeping and retention.

a. No change.

b. Representatives of IFA, HUD, the Inspector General, the General Accounting Office and the state auditor's office shall have access to all records belonging to or in use by recipients and subrecipients pertaining to a HOME funds award; to the total project receipts and expenditures related to new construction, acquisition, or rehabilitation; and to any records maintained by third-party administrators for general administration or technical services for the HOME-funded project.

39.9(6) and 39.9(7) No change.

IOWA FINANCE AUTHORITY[265](cont'd)

39.9(8) *Contract closeout.* Upon the contract expiration date or work completion date, as applicable, and IFA's receipt of final draw and completion documentation, IFA shall initiate closeout procedures. Recipients shall comply with applicable audit requirements, quarterly performance reports and Section 3 requirements and provide other required documents described in the HOME funds application and Iowa Housing Fund, the contract, the IFA HOME Management Guide, and IFA HOME partnership program policies and procedures.

39.9(9) to 39.9(11) No change.

[Filed 11/24/10, effective 1/19/11]

[Published 12/15/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/10.

ARC 9280B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.40, the Iowa Finance Authority hereby adopts new Chapter 40, “Iowans Helping Iowans Housing Assistance Program,” Iowa Administrative Code.

The purpose of these rules is to implement a program of housing assistance for persons affected by certain natural disasters that occurred in 2010.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 8, 2010, as **ARC 9078B**. These rules were also Adopted and Filed Emergency and were published as **ARC 9077B** on the same date. The Authority did not receive any public comment on the proposed rules. The Authority has made no changes to the rules as published under Notice.

The Iowa Finance Authority adopted these rules on November 24, 2010.

These rules are intended to implement Iowa Code sections 16.5(1)“r” and 16.40.

These rules will become effective on January 19, 2011, at which time the Adopted and Filed Emergency rules are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 40] is being omitted. These rules are identical to those published under Notice as **ARC 9078B** and Adopted and Filed Emergency as **ARC 9077B**, IAB 9/8/10.

[Filed 11/24/10, effective 1/19/11]

[Published 12/15/10]

[For replacement pages for IAC, see IAC Supplement 12/15/10.]

ARC 9281B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.40, the Iowa Finance Authority hereby adopts new Chapter 41, “Shelter Assistance Fund,” Iowa Administrative Code.

The purpose of these rules is to facilitate the administration of a fund to provide financial assistance for the rehabilitation, expansion, or costs of operations of group home shelters for the homeless and domestic violence shelters.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 20, 2010, as **ARC 9163B**. These rules were also Adopted and Filed Emergency and were published as **ARC 9162B** on the same date. The Authority did not receive any public comment on the proposed rules.

IOWA FINANCE AUTHORITY[265](cont'd)

Several nonsubstantive grammatical changes have been made to the rules published under Notice of Intended Action. In addition, a reference to the establishment legislation has been added to the definition of "SAF" in 265—41.2(16), a revision was made in 265—41.7(16) to add "review" to the term "application process," and subrule 41.11(2) and paragraph 41.12(3)"b" were expanded for clarity as follows:

41.11(2) Auditing. All recipients and subrecipients must comply with auditing requirements as outlined in the Single Audit Act of 1996 and the implementing regulations found in OMB Circular A-133."

b. Requests for funds. Recipients and subrecipients must submit requests for funds during the contract year at intervals and using forms as prescribed by IFA. IFA may perform any review or field inspections it deems necessary to ensure program compliance, including review of recipient and subrecipient records and reports. When problems of compliance are noted, IFA may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the remedies for noncompliance set forth in subrule 41.12(5)."

The Iowa Finance Authority adopted these rules on November 24, 2010.

These rules are intended to implement Iowa Code section 16.5(1)"r" and 2010 Iowa Acts, Senate File 2088, division XXII.

These rules will become effective on January 19, 2011, at which time the Adopted and Filed Emergency rules are hereby rescinded.

The following amendment is adopted.

Adopt the following new 265—Chapter 41:

CHAPTER 41
SHELTER ASSISTANCE FUND

265—41.1(16) Purpose. The shelter assistance fund is created for the purpose of providing financial assistance for the rehabilitation, expansion, or costs of operations of group home shelters for the homeless and domestic violence shelters.

265—41.2(16) Definitions. When used in this chapter, unless the context otherwise requires:

"Applicant" means an eligible provider of eligible homeless services which is applying for SAF program funds.

"Domestic violence shelter" means a homeless shelter primarily or exclusively serving clients who are homeless due to domestic violence.

"Emergency shelter" means a homeless shelter with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for homeless persons.

"ESG program" or *"ESGP"* means the Emergency Shelter Grants Program created pursuant to Title 42 of the U.S. Code (42 U.S.C. Section 11375) as well as parts of Title 24 of the Code of Federal Regulations (24 CFR Part 576).

"HMIS" means the Homeless Management Information System, which is a client-level data collection and management system implemented at the community level that allows for better coordination among agencies providing services to clients.

"Homeless" or *"homeless individual"* shall have the meaning set forth in 42 U.S.C. Section 11302.

"Homeless prevention" means activities or programs designed to prevent the incidence of homelessness.

"Homeless shelter" means a facility providing temporary housing and services for homeless persons.

"HUD" means the U.S. Department of Housing and Urban Development.

"HUD ESG Desk Guide" means the document provided by HUD which supplements the federal regulations pertaining to the Emergency Shelter Grants Program.

"IFA" means the Iowa finance authority.

"Major rehabilitation" means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

IOWA FINANCE AUTHORITY[265](cont'd)

“Obligated” means that IFA has placed orders, awarded contracts, received services, or entered into similar transactions that require payment from the shelter assistance fund. Funds awarded by IFA by a written agreement or letter of award requiring payment from the shelter assistance fund are obligated.

“Operations” means administration, maintenance, repair, security, provision of essential services, and provision of homelessness prevention activities.

“Private, nonprofit organization” means a secular or religious organization described in Section 501(c) of the Internal Revenue Code which:

1. Is exempt from taxation under Subtitle A of the Internal Revenue Code,
2. Has an accounting system and a voluntary board,
3. Practices nondiscrimination in the provision of services to clients, and
4. Has registered with the state of Iowa as a nonprofit corporation.

“Recipient” means any private, nonprofit organization or city or county government to which IFA distributes shelter assistance fund program funds.

“Rehabilitation” means repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including improvements to increase the efficient use of energy in buildings. Costs of rehabilitation may include labor, materials, tools, and other costs of improving buildings.

“Renovation” means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

“SAF” means shelter assistance fund created in 2010 Iowa Acts, Senate File 2088, section 265.

“Subrecipient” means any private, nonprofit organization or city or county government to which a recipient distributes shelter assistance fund program funds.

“Transitional housing” means a project that is designed to provide housing and appropriate support services to homeless persons to facilitate movement to independent living within a specified time frame.

“Value of the building” means the monetary value assigned to a building by an independent real estate appraiser or as otherwise reasonably established by the recipient or subrecipient.

265—41.3(16) Eligible applicants. City governments, county governments, and private, nonprofit organizations are eligible applicants under the SAF program. City or county governments may apply on behalf of a nonprofit service provider within their jurisdictions when the nonprofit service provider serves homeless and near-homeless clients by providing overnight shelter, meals, clothing, transportation, counseling, child care, legal services, medical services, transitional housing services, and other related services for homeless individuals and families.

265—41.4(16) Eligible activities. Activities assisted by the SAF may include the following:

1. Rehabilitation, renovation, or expansion of buildings for use in the provision of services for the homeless.
2. Provision of normal operating expenses for programs providing services to homeless individuals or families, including staff salaries, maintenance, insurance, utilities, furnishings, provision of essential services, provision of homeless prevention activities, administrative activities, and all other documented normal operating expenses.

265—41.5(16) Ineligible activities. As a general rule, any activity that is not authorized under the provisions of P.L. 100-628 is ineligible to be carried out with SAF program funds. The following are items specifically listed as ineligible in 24 CFR Part 576.

1. Acquisition or new construction of an emergency shelter for the homeless;
2. Rehabilitation administration, such as preparation of work specifications, loan processing, or inspections;
3. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities unless the activity complies with all requirements as outlined in 24 CFR Part 576.23(a) and (b).

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265—41.6(16) Application procedures. IFA will issue requests for proposals from eligible applicants as often as the state expects funding from HUD for the ESG program. Requests for proposals will combine the ESG program with the SAF program. The proposals must be submitted on forms prescribed by IFA and must, at a minimum, include the amount of funds requested, a description of the need for the funds, documentation of other available funding sources, the source of required local match for the ESG program, and the estimated number of persons to be served by the applicant. Maximum and minimum grant awards will be established by IFA for each competition.

265—41.7(16) Application review process. The application review process will be a joint process that combines the SAF program with the ESG program. The following procedures will be used in the review of applications for most purposes. IFA reserves the right to select an alternate application review process for SAF program funds only.

41.7(1) Review; threshold criteria; eligible activities.

a. Review of applications. Applications will be reviewed by a panel appointed by IFA. Applications will be reviewed based on priorities established during each competition round, in accordance with the state of Iowa consolidated plan for housing and community development. Applicant experience and capacity, as well as past performance, are top priorities. Other review criteria include, but are not limited to, program design, community need, program accessibility, program partnerships, the number of persons or households served, and how well the program leverages other resources.

b. Threshold criteria. IFA will identify threshold criteria that all programs must meet in order to be eligible.

c. Activities eligible during funding cycle. Each competition round will specify which of the total eligible program activities will be supported during that competition round.

41.7(2) If an application contains an activity determined to be ineligible, at IFA's discretion, the ineligible activity may be deleted from the application or referred to another funding source or the application may be disqualified.

41.7(3) IFA reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application.

41.7(4) IFA staff may review applications with other state agencies or other groups with expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources.

41.7(5) Based on the review process, IFA may revise the overall funding request by activity or funding level and recommend a final funding figure to the IFA board of directors for approval.

41.7(6) IFA reserves the right to negotiate all aspects of a funding request prior to final approval.

41.7(7) IFA shall establish the period of funding for each competition.

265—41.8(16) Matching requirement. Subrecipients are not required to provide a match for SAF program funds.

265—41.9(16) Funding awards.

41.9(1) Awards on behalf of multiple applicants. A city or county government or nonprofit organization may be designated, at the discretion of IFA, to administer contracts for multiple applicants within a prescribed geographic area.

41.9(2) Right to negotiate. IFA reserves the right to negotiate the amount of the funding award, the scale of the project, and alternative methods for completing the project.

41.9(3) Special purpose awards. IFA may, at its discretion, award any remaining funds as it sees fit within the SAF program regulations.

265—41.10(16) Restrictions placed on recipients and subrecipients.

41.10(1) Use as provider of homeless services. Any building for which SAF program funds are used must be maintained as a provider of homeless services for not less than a three-year period or for not less than a ten-year period if the funding amounts are used for major rehabilitation or conversion of

IOWA FINANCE AUTHORITY[265](cont'd)

the building. If SAF program funds are used for operating and maintenance costs, the recipient must continue to provide homeless services for at least one year. In calculating the applicable time period, the beginning dates of the three- and ten-year periods are determined as follows:

a. In the case of a building that was not operated as a provider of services for the homeless before receipt of SAF program funds, on the date of initial occupancy as a provider of services to the homeless.

b. In the case of a building that was operated as a provider of services to the homeless before the receipt of SAF program funds, on the date that those funds are first obligated to the homeless service provider.

41.10(2) *Building standards.* Any building for which SAF program funds are used for renovation, conversion, rehabilitation, or major rehabilitation must comply with all state and local building codes and ordinances and any other applicable legal requirements.

41.10(3) *Participation by homeless individuals and families.*

a. SAF program recipients and subrecipients must certify that homeless individuals and families are involved, through employment, volunteer services, or otherwise, in constructing, renovating, maintaining, and operating assisted facilities and in providing services.

b. Subrecipients must have the participation of at least one homeless person or formerly homeless person on their board of directors or equivalent policymaking entity. The Secretary of HUD may issue a waiver to the subrecipient if the subrecipient agrees to otherwise consult with homeless or formerly homeless individuals when making policy decisions.

41.10(4) *Termination of assistance and grievance procedure.* Subrecipients must establish and implement a formal process to terminate assistance to individuals or families who violate program requirements. This process must include a hearing that provides individuals a full opportunity to address issues of noncompliance.

41.10(5) *Data reporting system.* Subrecipients shall participate in the HUD-approved Homeless Management Information System (HMIS) adopted by IFA as required in the executed contract.

41.10(6) *Ensuring confidentiality.* Subrecipients must develop and implement procedures to guarantee the confidentiality of records pertaining to any individual to whom family violence prevention or treatment services are provided. In addition, the address or location of any family violence shelter shall not be disclosed to any person except with written authorization of the shelter director.

265—41.11(16) Compliance with applicable federal and state laws and regulations. All recipients and subrecipients must comply with the Iowa Code governing activities performed under this program. Use of SAF program funds must comply with the following additional requirements.

41.11(1) *Nondiscrimination and equal opportunity.* All recipients and subrecipients must comply with the following:

a. The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107 (June 1, 1999); and Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2002d) and implementing regulations at 24 CFR Part 1 (June 1, 1999).

b. Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.

c. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07).

d. The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

41.11(2) *Auditing.* All recipients and subrecipients must comply with auditing requirements as outlined in the Single Audit Act of 1996 and the implementing regulations found in OMB Circular A-133.

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265—41.12(16) Administration.

41.12(1) Contracts. Upon selection of an application for funding, IFA will either initiate a contract or authorize a recipient to initiate a contract on IFA's behalf. If a local city or county government or a nonprofit organization is designated as the recipient, the subrecipients shall remain responsible for adherence to the requirements of the SAF program rules. These rules and applicable federal and state laws and regulations become part of the contract. Certain activities may require that permits or clearances be obtained from other state agencies before the start of the project. Funding awards may be conditioned upon the timely completion of these requirements.

41.12(2) Record keeping and retention. Financial records, supporting documents, statistical records, and all other records pertinent to the funded program shall be retained by the recipient and the subrecipient. Private, nonprofit subrecipients covered through an SAF program contract from a local city or county government or nonprofit organization are responsible for ensuring that pertinent records of their SAF program funds be made available to the administering city or county or nonprofit organization and to IFA upon request. Proper record retention must be in accordance with the following:

a. Records for any assisted activity shall be retained for three years after the end of the grant period and, if applicable, until audit procedures are completed and accepted by IFA.

b. Representatives of the state auditor's office and IFA shall have access to all books, accounts, documents, records, and other property belonging to or in use by a recipient or a subrecipient pertaining to the receipt of assistance under these rules.

41.12(3) Reporting requirements. Recipients and subrecipients shall submit reports to IFA as prescribed in the contract. Reports include:

a. HMIS data reports. All recipients and subrecipients of SAF program funds are required to submit regular reports on clients served using the current HMIS reporting process as prescribed by IFA; provided, however, that a recipient or subrecipient that qualifies as a domestic violence shelter shall not be required to report personally identifiable information about its homeless domestic violence clients. "Personally identifiable information" shall include any information that the reporting domestic violence shelter reasonably determines could be used to identify a particular client.

b. Requests for funds. Recipients and subrecipients must submit requests for funds during the contract year at intervals and using forms as prescribed by IFA. IFA may perform any review or field inspections it deems necessary to ensure program compliance, including review of recipient and subrecipient records and reports. When problems of compliance are noted, IFA may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the remedies for noncompliance set forth in subrule 41.12(5).

41.12(4) Amendments to contracts. Contracts may be amended on an individual basis in emergency situations. Any request to amend a contract must be submitted in writing to IFA. IFA will determine if the request to amend is justified based on the material presented in the letter of request. No amendment is valid until approved in writing by IFA.

41.12(5) Remedies for noncompliance. At any time, IFA may, for cause, find that a recipient or subrecipient is not in compliance with the requirements under this program. Reasons for a finding of noncompliance include, but are not limited to, the recipient's or subrecipient's use of program funds for activities not described in its application, the recipient's or subrecipient's failure to complete approved activities in a timely manner, the recipient's or subrecipient's failure to comply with any applicable state or federal rules or regulations, or the recipient's or subrecipient's lack of continuing capacity to carry out the approved program in a timely manner. At its discretion, IFA may employ any of the following remedies for noncompliance:

a. Issue a warning letter stating that continued failure to comply with program requirements within a stated period of time will result in a more serious action.

b. Condition a future award.

c. Direct the recipient or subrecipient to stop incurring costs with grant funds.

d. Require that some or all of the awarded funds be remitted to the state.

e. Reduce the level of funds the recipient or subrecipient would otherwise be entitled to receive.

IOWA FINANCE AUTHORITY[265](cont'd)

f. Elect not to provide future award funds to the recipient or subrecipient until appropriate actions are taken to ensure compliance.

These rules are intended to implement Iowa Code section 16.5(1)“r” and 2010 Iowa Acts, Senate File 2088, division XXII.

[Filed 11/24/10, effective 1/19/11]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/15/10.

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IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.40, the Iowa Finance Authority hereby adopts new Chapter 42, “Emergency Shelter Grants Program,” Iowa Administrative Code.

The purpose of these rules is to facilitate the administration of a fund to provide financial assistance for the rehabilitation, expansion, or costs of operations of group home shelters for the homeless and domestic violence shelters.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 20, 2010, as **ARC 9167B**. These rules were also Adopted and Filed Emergency and were published as **ARC 9166B** on the same date. The Authority did not receive any public comment on the proposed rules.

Several nonsubstantive grammatical changes have been made to the amendments published under Notice of Intended Action. In addition, subrule 42.11(2) and paragraph 42.12(3)“b” were expanded for clarity as follows:

“**42.11(2) Auditing.** All recipients and subrecipients must comply with auditing requirements as outlined in the Single Audit Act of 1996 and the implementing regulations found in OMB Circular A-133.”

“*b.* Requests for funds. Recipients and subrecipients must submit requests for funds during the contract year at intervals and using forms as prescribed by IFA. IFA may perform any review or field inspections it deems necessary to ensure program compliance, including review of recipient and subrecipient records and reports. When problems of compliance are noted, IFA may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the remedies for noncompliance set forth in subrule 42.12(5).”

The Iowa Finance Authority adopted these rules on November 24, 2010.

These rules are intended to implement Iowa Code section 16.5(1)“m” and 42 U.S.C. Sections 11371 through 11378.

These rules will become effective on January 19, 2011, at which time the Adopted and Filed Emergency rules are hereby rescinded.

The following amendment is adopted.

Adopt the following **new** 265—Chapter 42:

CHAPTER 42 EMERGENCY SHELTER GRANTS PROGRAM

265—42.1(16) Purpose. The emergency shelter grants program is designed to improve the quality of services to the homeless and to prevent individuals and families from becoming homeless. The program will make available needed services and help meet the costs of providing essential social services so that homeless individuals and families have access not only to safe and sanitary shelter but also to the supportive services and other types of assistance the individuals and families need to improve their situations.

IOWA FINANCE AUTHORITY[265](cont'd)

265—42.2(16) Definitions. When used in this chapter, unless the context otherwise requires:

“*Applicant*” means an eligible provider of eligible homeless services which is applying for funds through the ESG program.

“*Domestic violence shelter*” means a homeless shelter primarily or exclusively serving clients who are homeless due to domestic violence.

“*Emergency shelter*” means a homeless shelter with overnight sleeping accommodations, the primary purpose of which is to provide temporary shelter for homeless persons.

“*ESG program*” or “*ESGP*” means the Emergency Shelter Grants Program created pursuant to Title 42 of the U.S. Code (42 U.S.C. Section 11375) as well as parts of Title 24 of the Code of Federal Regulations (24 CFR Part 576).

“*HMIS*” means the Homeless Management Information System, which is a client-level data collection and management system implemented at the community level that allows for better coordination among agencies providing services to clients.

“*Homeless*” or “*homeless individual*” shall have the meaning set forth in 42 U.S.C. Section 11302.

“*Homeless prevention*” means activities or programs designed to prevent the incidence of homelessness.

“*Homeless shelter*” means a facility providing temporary housing and services for homeless persons.

“*HUD*” means the U.S. Department of Housing and Urban Development.

“*HUD ESG Desk Guide*” means the document published by HUD which supplements the federal regulations pertaining to the Emergency Shelter Grants Program.

“*IFA*” means the Iowa finance authority.

“*Major rehabilitation*” means rehabilitation that involves costs in excess of 75 percent of the value of the building before rehabilitation.

“*Obligated*” means that IFA has placed orders, awarded contracts, received services, or entered into similar transactions that require payment from the grant amount. Funds awarded by IFA by a written agreement or letter of award requiring payment from the grant amount are obligated.

“*Private, nonprofit organization*” means a secular or religious organization described in Section 501(c) of the Internal Revenue Code which:

1. Is exempt from taxation under Subtitle A of the Internal Revenue Code,
2. Has an accounting system and a voluntary board,
3. Practices nondiscrimination in the provision of services to clients, and
4. Has registered with the state of Iowa as a nonprofit corporation.

“*Recipient*” means any private, nonprofit organization or city or county government to which IFA distributes ESG program funds.

“*Rehabilitation*” means repair directed toward an accumulation of deferred maintenance; replacement of principal fixtures and components of existing buildings; installation of security devices; and improvement through alterations or additions to, or enhancements of, existing buildings, including improvements to increase the efficient use of energy in buildings. Costs of rehabilitation may include labor, materials, tools, and other costs of improving buildings.

“*Renovation*” means rehabilitation that involves costs of 75 percent or less of the value of the building before rehabilitation.

“*SAF*” means the shelter assistance fund, as set forth in 265—Chapter 41.

“*Subrecipient*” means any private, nonprofit organization or city or county government to which the recipient distributes ESG program funds.

“*Transitional housing*” means a project that is designed to provide housing and appropriate support services to homeless persons to facilitate movement to independent living within a specified time frame.

“*Value of the building*” means the monetary value assigned to a building by an independent real estate appraiser or as otherwise reasonably established by the recipient or the subrecipient.

265—42.3(16) Eligible applicants. City governments, county governments, and private, nonprofit organizations are eligible applicants under the ESG program. City or county governments may apply on behalf of a nonprofit service provider within their jurisdictions when the nonprofit service

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provider serves homeless and near-homeless clients by providing overnight shelter, meals, clothing, transportation, counseling, child care, legal services, medical services, transitional housing services, and other services eligible under the ESG program as determined by HUD.

265—42.4(16) Eligible activities. Eligible activities are based on guidelines established by the Stewart B. McKinney Homeless Assistance Act of 1987 and are further defined in 24 CFR Part 576 and the HUD Desk Guide. Activities assisted by this program may include only the following:

42.4(1) Construction. Rehabilitation, renovation, or conversion of buildings for use in the provision of services for the homeless.

42.4(2) Essential services—new or increased level of services. Provision of essential services if the service is a new service or quantifiable increase in the level of service. ESG program funds may not be used to replace existing funding sources for services; however, once a new or increased level of service meets the standards, ESG program funds may be used to continue funding the service in subsequent years. No more than 30 percent of the IFA annual grant amount may be used for this purpose.

42.4(3) Operating costs. Payment of emergency shelter and transitional housing operating costs including shelter maintenance, operations, rent, repairs, security, fuel, equipment, insurance, utilities, food and furnishings. Staff salaries, including fringe benefits, paid under the operating cost category are limited to 10 percent of the grant amount. Maintenance and security costs are not subject to the 10 percent standard.

42.4(4) Prevention of homelessness. Payment for eligible activities that assist in the prevention of homelessness. Grants may be made for homeless prevention as long as the total amount of such grants does not exceed 30 percent of the total emergency shelter grants program allocation. Examples of eligible activities include, but are not limited to, short-term subsidies to help defray rent and utility arrearages for families faced with eviction or termination of utility services; security deposits or first month's rent to enable a family to acquire its own rental unit; programs to provide mediation services for landlord-tenant disputes; or programs to provide legal representation to indigent tenants in eviction proceedings. Other possible types of homeless prevention efforts include making needed payments to prevent a home from falling into foreclosure.

42.4(5) Administrative costs. A recipient may use a portion of a grant received for administrative purposes as determined by IFA. The maximum allowed for these administrative costs shall be 5 percent of the state ESGP allocation. IFA reserves the authority for distribution of administrative funds.

265—42.5(16) Ineligible activities. As a general rule, any activity that is not authorized under the provisions of P.L. 100-628 is ineligible to be carried out with ESG program funds. The following are items specifically listed as ineligible in 24 CFR Part 576.

1. Acquisition or new construction of an emergency shelter for the homeless;
2. Rehabilitation administration, such as preparation of work specifications, loan processing, or inspections;
3. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities unless the activity complies with all requirements as outlined in 24 CFR Part 576.23(a) and (b).

265—42.6(16) Application procedures. IFA will issue requests for proposals from eligible applicants as often as the state expects funding from HUD. Requests for proposals will combine the ESG program with the SAF program. The proposals must be submitted on forms prescribed by IFA and must, at a minimum, include the amount of funds requested, a description of the need for the funds, documentation of other available funding sources, the source of required local match, and the estimated number of persons to be served by the applicant. Maximum and minimum grant awards will be established by IFA for each competition.

265—42.7(16) Application review process. The following procedures will be used in the review of applications.

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42.7(1) Review; threshold criteria; eligible activities.

a. Review of applications. Applications will be reviewed by a panel appointed by IFA. Applications will be reviewed based on priorities established during each competition round, in accordance with the state of Iowa consolidated plan for housing and community development. Applicant experience and capacity, as well as past performance, are top priorities. Other review criteria include, but are not limited to, program design, community need, program accessibility, program partnerships, the number of persons or households served, and how well the program leverages other resources.

b. Threshold criteria. IFA will identify threshold criteria that all programs must meet in order to be eligible.

c. Activities eligible during funding cycle. Each competition round will also specify which of the total eligible program activities will be supported during that competition round.

42.7(2) If an application contains an activity determined to be ineligible, at IFA's discretion, the ineligible activity may be deleted from the application or referred to another funding source or the application may be disqualified.

42.7(3) IFA reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application.

42.7(4) IFA staff may review applications with other state agencies or other groups with expertise in the area of serving homeless persons before making final funding recommendations. Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources.

42.7(5) Based on the review process, IFA may revise the overall funding request by activity or funding level and recommend a final funding figure to the IFA board of directors for approval.

42.7(6) IFA reserves the right to negotiate all aspects of a funding request prior to final approval.

42.7(7) IFA shall establish the term of each funding award.

265—42.8(16) Matching requirement. Each subrecipient of ESG program funds must match the grant amount with an equal amount. In calculating the amount of matching funds, the following may be included: the value of any donated material or building used in the project, the value of any lease on a building used in the project, any salary paid to staff of the subrecipient or to any state subrecipient in carrying out the ESG program, and the time and services contributed by volunteers at the rate of \$5 per hour. For purposes of this rule, IFA will determine the value of any donated material or building, or any lease, using any method reasonably calculated to establish fair market value. IFA may allow an exemption of matching funds up to a maximum of \$100,000 of the state allocation received from HUD for the subrecipients least capable of providing such matching amounts. The subrecipient must document its need to participate in this exemption from matching requirements and must receive prior approval from IFA before the exemption will be effective.

265—42.9(16) Funding awards.

42.9(1) *Awards on behalf of multiple applicants.* A city or county government or nonprofit organization may be designated, at the discretion of IFA, to administer a contract for multiple applicants within a prescribed geographic area.

42.9(2) *Right to negotiate.* IFA reserves the right to negotiate the amount of the funding award, the scale of the project, and alternative methods for completing the project.

42.9(3) *Special purpose awards.* IFA may, at its discretion, award any remaining funds as it sees fit within the ESG program regulations.

265—42.10(16) Restrictions placed on recipients and subrecipients.

42.10(1) *Use as provider of homeless services.* Any building for which ESG program funds are used must be maintained as a provider of homeless services for not less than a three-year period or for not less than a ten-year period if the funding amounts are used for major rehabilitation or conversion of the building. If program funds are used for operating and maintenance costs, the recipient must continue to provide homeless services for at least one year. In calculating the applicable time period, the beginning dates of the three- and ten-year periods are determined as follows:

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a. In the case of a building that was not operated as a provider of services for the homeless before receipt of ESG program funds, on the date of initial occupancy as a provider of services to the homeless.

b. In the case of a building that was operated as a provider of services to the homeless before the receipt of ESG program funds, on the date that those funds are first obligated to the homeless service provider.

42.10(2) *Building standards.* Any building for which ESG program funds are used for renovation, conversion, rehabilitation, or major rehabilitation must comply with all state and local building codes and ordinances and any other applicable legal requirements.

42.10(3) *Participation by homeless individuals and families.*

a. A recipient or subrecipient of ESG program funds must certify that it involves, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating assisted facilities and in providing services.

b. Local government recipients or subrecipients or qualified recipients or subrecipients must have the participation of at least one homeless person or formerly homeless person on their board of directors or equivalent policymaking entity. The Secretary of HUD may issue a waiver to the recipient or subrecipient if the recipient or subrecipient agrees to otherwise consult with homeless or formerly homeless individuals when making policy decisions.

42.10(4) *Termination of assistance and grievance procedure.* Recipients and subrecipients must establish and implement a formal process to terminate assistance to individuals or families who violate program requirements. This process must include a hearing that provides individuals a full opportunity to address issues of noncompliance.

42.10(5) *Data reporting system.* Recipients and subrecipients shall participate in the HUD-approved Homeless Management Information System (HMIS) adopted by IFA as required in the executed contract.

42.10(6) *Ensuring confidentiality.* Recipients and subrecipients must develop and implement procedures to guarantee the confidentiality of records pertaining to any individual to whom family violence prevention or treatment services are provided. In addition, the address or location of any family violence shelter shall not be disclosed to any person except with written authorization of the shelter director.

265—42.11(16) Compliance with applicable federal and state laws and regulations. All recipients and subrecipients shall comply with the Iowa Code governing activities performed under this program and with all applicable provisions of the Stewart B. McKinney Homeless Assistance Act of 1987 and its implementing regulations. Use of ESG program funds must comply with the following additional requirements.

42.11(1) *Nondiscrimination and equal opportunity.* All recipients and subrecipients must comply with the following:

a. The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107 (June 1, 1999); and Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2002d) and implementing regulations at 24 CFR Part 1 (June 1, 1999).

b. Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.

c. The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07).

d. The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

42.11(2) *Auditing.* All recipients and subrecipients must comply with auditing requirements as outlined in the Single Audit Act of 1996 and the implementing regulations found in OMB Circular A-133.

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265—42.12(16) Administration.

42.12(1) Contracts. Upon selection of an application for funding, IFA will either initiate a contract or authorize another entity to initiate a contract on IFA's behalf. If a local city or county government or a nonprofit organization is designated as the recipient, the subrecipients covered through the contract shall remain responsible for adherence to the requirements of the ESG program, including the federal ESG program rules and the state program rules as set forth herein. These rules and applicable federal and state laws and regulations become part of the contract. Certain activities may require that permits or clearances be obtained from other state or federal agencies before the start of the project. Funding awards may be conditioned upon the timely completion of these requirements.

42.12(2) Record keeping and retention. Financial records, supporting documents, statistical records, and all other records pertinent to the funded program shall be retained by the recipient and the subrecipient. Private, nonprofit recipients and subrecipients covered through an ESG program contract from a local city or county government or nonprofit organization are responsible for ensuring that pertinent records of their ESG program funds be made available to the administering city or county or nonprofit organization and to IFA upon request. Proper record retention must be in accordance with the following:

a. Records for any assisted activity shall be retained for three years after the end of the grant period and, if applicable, until audit procedures are completed and accepted by IFA.

b. Representatives of the Secretary of the U.S. Department of Housing and Urban Development, the Inspector General, the General Accounting Office, the state auditor's office, and IFA shall have access to all books, accounts, documents, records, and other property belonging to or in use by a recipient or subrecipient pertaining to the receipt of assistance under these rules.

42.12(3) Reporting requirements. Recipients and subrecipients shall submit reports to IFA as prescribed in the contract. Reports include:

a. HMIS data reports. All recipients and subrecipients of ESG program funds are required to submit regular reports on clients served using the current HMIS reporting process as prescribed by IFA; provided, however, that a recipient or subrecipient that qualifies as a domestic violence shelter shall not be required to report personally identifiable information about its homeless domestic violence clients. "Personally identifiable information" shall include any information that the reporting domestic violence shelter reasonably determines could be used to identify a particular client.

b. Requests for funds. Recipients and subrecipients must submit requests for funds during the contract year at intervals and using forms as prescribed by IFA. IFA may perform any review or field inspections it deems necessary to ensure program compliance, including review of recipient and subrecipient records and reports. When problems of compliance are noted, IFA may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the remedies for noncompliance set forth in 42.12(5).

42.12(4) Amendments to contracts. Contracts may be amended on an individual basis in emergency situations. Any request to amend a contract must be submitted in writing to IFA. IFA will determine if the request to amend is justified based on the material presented in the letter of request. No amendment is valid until approved in writing by IFA.

42.12(5) Remedies for noncompliance. At any time, IFA may, for cause, find that a recipient or subrecipient is not in compliance with the requirements under this program. Reasons for a finding of noncompliance include, but are not limited to, the recipient's or subrecipient's use of program funds for activities not described in its application, the recipient's or subrecipient's failure to complete approved activities in a timely manner, the recipient's or subrecipient's failure to comply with any applicable state or federal rules or regulations, or the recipient's or subrecipient's lack of continuing capacity to carry out the approved program in a timely manner. At IFA's discretion, remedies for noncompliance may include the following:

a. Issue a warning letter stating that continued failure to comply with program requirements within a stated period of time will result in a more serious action.

b. Condition a future award.

c. Direct the recipient or subrecipient to stop incurring costs with grant funds.

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- d.* Require that some or all of the awarded funds be remitted to the state.
- e.* Reduce the level of funds the recipient or subrecipient would otherwise be entitled to receive.
- f.* Elect not to provide future award funds to the recipient or subrecipient until appropriate actions are taken to ensure compliance.

These rules are intended to implement Iowa Code section 16.5(1)“*m*” and 42 U.S.C. Sections 11371 through 11378.

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