



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”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

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

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STEPHANIE A. HOFF, Deputy Editor		(515)281-8157
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CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2009

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 24 '08	Jan. 14 '09	Feb. 3 '09	Feb. 18 '09	Feb. 20 '09	Mar. 11 '09	Apr. 15 '09	July 13 '09
Jan. 9	Jan. 28	Feb. 17	Mar. 4	Mar. 6	Mar. 25	Apr. 29	July 27
Jan. 23	Feb. 11	Mar. 3	Mar. 18	Mar. 20	Apr. 8	May 13	Aug. 10
Feb. 6	Feb. 25	Mar. 17	Apr. 1	Apr. 3	Apr. 22	May 27	Aug. 24
Feb. 20	Mar. 11	Mar. 31	Apr. 15	Apr. 17	May 6	June 10	Sep. 7
Mar. 6	Mar. 25	Apr. 14	Apr. 29	May 1	May 20	June 24	Sep. 21
Mar. 20	Apr. 8	Apr. 28	May 13	***May 13***	June 3	July 8	Oct. 5
Apr. 3	Apr. 22	May 12	May 27	May 29	June 17	July 22	Oct. 19
Apr. 17	May 6	May 26	June 10	June 12	July 1	Aug. 5	Nov. 2
May 1	May 20	June 9	June 24	***June 24***	July 15	Aug. 19	Nov. 16
May 13	June 3	June 23	July 8	July 10	July 29	Sep. 2	Nov. 30
May 29	June 17	July 7	July 22	July 24	Aug. 12	Sep. 16	Dec. 14
June 12	July 1	July 21	Aug. 5	Aug. 7	Aug. 26	Sep. 30	Dec. 28
June 24	July 15	Aug. 4	Aug. 19	***Aug. 19***	Sep. 9	Oct. 14	Jan. 11 '10
July 10	July 29	Aug. 18	Sep. 2	Sep. 4	Sep. 23	Oct. 28	Jan. 25 '10
July 24	Aug. 12	Sep. 1	Sep. 16	Sep. 18	Oct. 7	Nov. 11	Feb. 8 '10
Aug. 7	Aug. 26	Sep. 15	Sep. 30	Oct. 2	Oct. 21	Nov. 25	Feb. 22 '10
Aug. 19	Sep. 9	Sep. 29	Oct. 14	Oct. 16	Nov. 4	Dec. 9	Mar. 8 '10
Sep. 4	Sep. 23	Oct. 13	Oct. 28	***Oct. 28***	Nov. 18	Dec. 23	Mar. 22 '10
Sep. 18	Oct. 7	Oct. 27	Nov. 11	***Nov. 12***	Dec. 2	Jan. 6 '10	Apr. 5 '10
Oct. 2	Oct. 21	Nov. 10	Nov. 25	***Nov. 25***	Dec. 16	Jan. 20 '10	Apr. 19 '10
Oct. 16	Nov. 4	Nov. 24	Dec. 9	***Dec. 9***	Dec. 30	Feb. 3 '10	May 3 '10
Oct. 28	Nov. 18	Dec. 8	Dec. 23	***Dec. 23***	Jan. 13 '10	Feb. 17 '10	May 17 '10
Nov. 12	Dec. 2	Dec. 22	Jan. 6 '10	Jan. 8 '10	Jan. 27 '10	Mar. 3 '10	May 31 '10
Nov. 25	Dec. 16	Jan. 5 '10	Jan. 20 '10	Jan. 22 '10	Feb. 10 '10	Mar. 17 '10	June 14 '10
Dec. 9	Dec. 30	Jan. 19 '10	Feb. 3 '10	Feb. 5 '10	Feb. 24 '10	Mar. 31 '10	June 28 '10
Dec. 23	Jan. 13 '10	Feb. 2 '10	Feb. 17 '10	Feb. 19 '10	Mar. 10 '10	Apr. 14 '10	July 12 '10

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
16	Friday, January 9, 2009	January 28, 2009
17	Friday, January 23, 2009	February 11, 2009
18	Friday, February 6, 2009	February 25, 2009

PLEASE NOTE:

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Friday, January 9, 2009, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Pesticides—timing of application near registered apiaries, record keeping, 45.26(3)“i,” 45.31

Notice **ARC 7432B** 12/17/08

COLLEGE STUDENT AID COMMISSION[283]

EDUCATION DEPARTMENT[281]“umbrella”

All Iowa opportunity foster care grant program—awards, 9.4(5) Filed **ARC 7437B** 12/17/08

Washington, D.C., internship grant, ch 16 Filed **ARC 7438B** 12/17/08

Barber and cosmetology arts and sciences tuition grant program, ch 17 Filed **ARC 7439B** 12/17/08

Chiropractic loan forgiveness program, ch 33 Filed **ARC 7441B** 12/17/08

CREDIT UNION DIVISION[189]

COMMERCE DEPARTMENT[181]“umbrella”

Update of references to Iowa Code, amendments to chs 1, 3, 6, 7, 9 to 17, 19, 23, 25

Filed **ARC 7471B** 12/31/08

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Guidelines on sedation, amendments to ch 29 Notice of Termination **ARC 7463B** 12/31/08

EDUCATION DEPARTMENT[281]

Open enrollment—method of finance, 17.10 Filed **ARC 7418B** 12/17/08

Community colleges, 21.3, 21.31, 21.32, 24.3, 24.5 Filed **ARC 7419B** 12/17/08

Funding for National Board Certification (NBC) teachers in Iowa, 84.1, 84.3(1)“e,” 84.4(1)

Filed **ARC 7417B** 12/17/08

ELDER AFFAIRS DEPARTMENT[321]

Iowa family caregiver support program, ch 14 Notice **ARC 7456B** 12/31/08

Senior living coordinating unit, 16.2(7), 16.4 Filed **ARC 7444B** 12/31/08

Office of substitute decision maker, ch 22 Filed **ARC 7445B** 12/31/08

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]“umbrella”

Application and renewal process, 3.2(3), 3.3 Notice **ARC 7433B** 12/17/08

Engineering licensure requirements, 4.1(4), 4.2(1) Notice **ARC 7434B** 12/17/08

Monument placement standards for land surveyors, 11.2, 11.7 Notice **ARC 7435B** 12/17/08

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Maximum annual Title V operating permit fee, 22.106 Filed **ARC 7473B** 12/31/08

Closure of existing MSWLF units, 113.2(8), 113.2(10)“a,” 113.3 Filed **ARC 7474B** 12/31/08

Used oil and used oil filters, 119.1 to 119.9 Filed **ARC 7475B** 12/31/08

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Appointment of officers to campaign committees, 4.4(1) Filed **ARC 7460B** 12/31/08

Statement of organization, 4.6(2) Filed **ARC 7461B** 12/31/08

Electronic filing of verified statement of registration, 4.32 Filed **ARC 7457B** 12/31/08

Filing of reports by 527 Committees, 4.34 Filed **ARC 7462B** 12/31/08

Electronic filing of Form DR-OTC, 4.35 Filed **ARC 7459B** 12/31/08

Campaign disclosure procedures—committee assessments, 4.59 Notice **ARC 7455B** 12/31/08

Electronic filing of Form PFD, 7.1, 7.3(5) Filed **ARC 7458B** 12/31/08

HISTORICAL DIVISION[223]

CULTURAL AFFAIRS DEPARTMENT[221]“umbrella”

State historical society of Iowa—award programs, 21.2, 21.3 Filed **ARC 7436B** 12/17/08

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

PUBLIC DEFENSE DEPARTMENT[601]“umbrella”

Membership requirements of joint E911 service boards; division organizational structure,

10.3(1)“a,” 10.15 Notice **ARC 7431B** 12/17/08

HUMAN SERVICES DEPARTMENT[441]

SSA program—annual adjustments to eligibility and payment levels, 51.4(1), 51.7, 52.1

Notice **ARC 7472B**, also Filed Emergency **ARC 7470B** 12/31/08**IOWA FINANCE AUTHORITY[265]**Second amended 2009 qualified allocation plan, 12.1 Filed **ARC 7469B** 12/31/08Jumpstart housing assistance program, ch 29 Notice of Termination **ARC 7468B** 12/31/08**IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]**Contribution rates for special service members, 4.6 Notice **ARC 7453B** 12/31/08**LIBRARIES AND INFORMATION SERVICES DIVISION[286]**

EDUCATION DEPARTMENT[281]"umbrella"

Waivers or variances from administrative rules, ch 10 Notice **ARC 7464B** 12/31/08Declaratory orders, ch 11 Notice **ARC 7465B** 12/31/08Petitions for rule making, ch 12 Notice **ARC 7466B** 12/31/08**NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Permits and easements for construction and related activities on public lands and waters, ch

13 Notice **ARC 7416B** 12/17/08Horsepower limitations—Lake Icaria, Adams County, 45.4(3)"b" Filed **ARC 7411B** 12/17/08Daily bag and possession limit—bluegill and crappie, 81.1, 81.2(12) Filed **ARC 7413B** 12/17/08Removal of trotlines, 85.1 Filed **ARC 7414B** 12/17/08Administrative fee for fishing tournament permit, 88.2 Filed **ARC 7415B** 12/17/08Depredation permit fees, 106.11(4)"c" Filed **ARC 7410B** 12/17/08**NATURAL RESOURCES DEPARTMENT[561]**

Septic tank time-of-transfer requirements; exemption for electronic tower and wind turbine

leases, 9.1(4)"a," 9.2(1) Notice **ARC 7454B** 12/31/08**PHARMACY BOARD[657]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Pharmacist licenses, 2.11(2), 2.12, 2.13(1) Filed **ARC 7424B** 12/17/08Prescription processing documentation, 6.8 Filed **ARC 7425B** 12/17/08Transfer of prescriptions by pharmacists or pharmacist-interns, 6.9 Notice **ARC 7447B** 12/31/08Electronic transmission or scanning of a prescription or record, 6.16(4), 8.15(1), 9.18(7),
10.22(2), 21.7(3)"c," 21.9, 21.12, 21.14 to 21.16 Notice **ARC 7448B** 12/31/08Emergency room visit—drugs dispensed to patients, 7.12 Filed **ARC 7426B** 12/17/08In-process checking of compounding functions, 13.3(2) Notice of Termination **ARC 7423B** 12/17/08Testing and quarantine of sterile compounds, 13.24(4), 13.24(6) Notice **ARC 7446B** 12/31/08Centralized prescription filling and processing, 18.5(1) Filed **ARC 7427B** 12/17/08Nonpayment of state debt; discipline, ch 32, 36.1(4) Filed **ARC 7428B** 12/17/08**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Board of cosmetology arts and sciences, rescind chs 59, 62; amend chs 60, 61, 63 to 65

Filed **ARC 7451B** 12/31/08Board of physical and occupational therapy, rescind chs 199, 204, 205, 210; amend chs 200,
202, 203, 206, 207, 209 Filed **ARC 7440B** 12/17/08Board of physical and occupational therapy, 201.3, 206.1, 208.3 Notice **ARC 7442B** 12/17/08Sign language interpreters and transliterators—temporary licensure, 361.2, 362.2, 362.3(2)
Notice **ARC 7407B** 12/17/08**PUBLIC HEALTH DEPARTMENT[641]**Continuing education for plumbing and mechanical systems professionals, ch 30 Notice **ARC 7429B** 12/17/08**PUBLIC SAFETY DEPARTMENT[661]**

Delay of implementation of requirements for permits and inspections, 552.1

Filed Emergency **ARC 7421B** 12/17/08**REAL ESTATE COMMISSION[193E]**

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

Approval standards for courses of instruction, 17.7(3) Filed **ARC 7408B** 12/17/08

REVENUE DEPARTMENT[701]Interest rate—calendar year 2009, 10.2(28) Filed **ARC 7467B** 12/31/08**SECRETARY OF STATE[721]**Revenue purpose statement ballots, 21.803 Filed **ARC 7450B** 12/31/08Voting systems, amendments to ch 22 Notice of Termination **ARC 7449B** 12/31/08**TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]**ICN authorized use and users—Iowa Hospital Association, 7.1, 7.4(5) Filed **ARC 7422B** 12/17/08**TRANSPORTATION DEPARTMENT[761]**Close-clearance warning signs along railroad tracks, ch 813 Notice of Termination **ARC 7452B** 12/31/08**TREASURER OF STATE[781]**Iowa educational savings plan trust—payment schedules, 16.4(2), 16.7(1) Filed **ARC 7406B** 12/17/08**UTILITIES DIVISION[199]****COMMERCE DEPARTMENT[181]“umbrella”**Natural gas and electric plant additions, gas distribution main extensions, and electric line extensions, 19.3(10), 20.3(13) Notice **ARC 7420B** 12/17/08Electric load service limiters, 20.1(3), 20.4(15), 20.4(23) Notice **ARC 7409B** 12/17/08Revisions to rules governing certificates of franchise authority for cable and video service, 44.2, 44.3 Filed **ARC 7430B** 12/17/08**ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS**

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

EDITOR’S NOTE: Terms ending April 30, 2011.Senator Jeff Angelo
P.O. Box 604
Creston, Iowa 50801Representative Marcella R. Frevert
P.O. Box 324
Emmetsburg, Iowa 50536Senator Michael Connolly
2600 Renaissance Drive, #3
Dubuque, Iowa 52001Representative David Heaton
510 East Washington
Mt. Pleasant, Iowa 52641Senator Thomas Courtney
2200 Summer Street
Burlington, Iowa 52601Representative David Jacoby
2308 North Ridge Drive
Coralville, Iowa 52241Senator John P. Kibbie
P.O. Box 190
Emmetsburg, Iowa 50536Representative Linda Upmeyer
2175 Pine Avenue
Garner, Iowa 50438Senator James Seymour
901 White Street
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AGENCY	HEARING LOCATION	DATE AND TIME
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]		
Pesticides—timing of application near registered apiaries, record keeping, 45.26(3)“i,” 45.31 IAB 12/17/08 ARC 7432B	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 7, 2009 2 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Emission standards—Brick and Boiler MACTs, 23.1(4)“dd,” “dj” IAB 12/3/08 ARC 7395B	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	January 5, 2009 1 p.m.
Iowa antidegradation implementation procedure, 61.2(2), 61.3 IAB 11/19/08 ARC 7368B	Waitt Building Iowa Lakeside Laboratory Milford, Iowa	January 8, 2009 7 p.m.
	Public Library 304 Franklin St. Manchester, Iowa	January 14, 2009 10 a.m.
	Room 115, Suite 102 Northeast Iowa Community College 1220 3rd Ave. Waukon, Iowa	January 14, 2009 6 p.m.
	Film Room, Public Library 321 Main St. Davenport, Iowa	January 15, 2009 1 p.m.
Assessment policy and procedure for underground storage tank owners and operators, 135.2, 135.8(1)“e,” 135.9(4)“f,” 135.10 IAB 12/3/08 ARC 7400B	Fourth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	January 6, 2009 1:30 p.m.
HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]		
Membership requirements of joint E911 service boards, 10.3(1)“a,” 10.15 IAB 12/17/08 ARC 7431B	Conference Room, Building W-4 Camp Dodge 7105 N.W. 70th Ave. Johnston, Iowa	January 8, 2009 1 p.m.
IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM[495]		
Contribution rates for special service members, 4.6 IAB 12/31/08 ARC 7453B	7401 Register Dr. Des Moines, Iowa	January 20, 2009 9 a.m.
NATURAL RESOURCE COMMISSION[571]		
Permits and easements for construction and related activities on public lands and waters, ch 13 IAB 12/17/08 ARC 7416B (ICN Network)	Heritage Classroom C, Room 157 State Historical Building 600 E. Locust St. Des Moines, Iowa	January 8, 2009 6 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
NATURAL RESOURCE COMMISSION[571] (Cont'd)		
	State Room AEA 267 Regional Office 9184B 265th St. Clear Lake, Iowa	January 8, 2009 6 p.m.
	Room 024, Looft Hall Iowa Western Community College 2700 College Rd. Council Bluffs, Iowa	January 8, 2009 6 p.m.
	Room 2, Keystone AEA 2310 Chaney Rd. Dubuque, Iowa	January 8, 2009 6 p.m.
	Room 117, Kirkwood Comm. College 1816 Lower Muscatine Rd. Iowa City, Iowa	January 8, 2009 6 p.m.
	Great Prairie AEA 2814 N. Court St. Ottumwa, Iowa	January 8, 2009 6 p.m.
	Distance Learning Center Spirit Lake High School 2701 Hill Ave. Spirit Lake, Iowa	January 8, 2009 6 p.m.
NATURAL RESOURCES DEPARTMENT[561]		
Septic tank time-of-transfer requirements; exemption for electronic tower and wind turbine leases, 9.1(4)"a," 9.2(1) IAB 12/31/08 ARC 7454B	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 23, 2009 1 p.m.
PROFESSIONAL LICENSURE DIVISION[645]		
Board of physical and occupational therapy, 201.3, 206.1, 208.3 IAB 12/17/08 ARC 7442B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	January 6, 2009 10 to 10:30 a.m.
Sign language interpreters and transliterators—temporary licensure, 361.2, 362.2, 362.3(2) IAB 12/17/08 ARC 7407B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	January 6, 2009 9 to 9:30 a.m.
PUBLIC HEALTH DEPARTMENT[641]		
Continuing education for plumbing and mechanical systems professionals, ch 30 IAB 12/17/08 ARC 7429B (ICN Network)	ICN Room, Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	January 6, 2009 10 a.m. to 2 p.m.
	Public Library 529 Pierce St. Sioux City, Iowa	January 6, 2009 10 a.m. to 2 p.m.
	Public Library 400 Willow Ave. Council Bluffs, Iowa	January 6, 2009 10 a.m. to 2 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
PUBLIC HEALTH DEPARTMENT[641] (Cont'd)		
	Public Library 415 Commercial St. Waterloo, Iowa	January 6, 2009 10 a.m. to 2 p.m.
	Conference Room A Ottumwa Regional Health Center 1001 E. Pennsylvania Ottumwa, Iowa	January 6, 2009 10 a.m. to 2 p.m.
	Public Library 2950 Learning Campus Dr. Bettendorf, Iowa	January 6, 2009 10 a.m. to 2 p.m.
UTILITIES DIVISION[199]		
Electric load service limiters, 20.1(3), 20.4 IAB 12/17/08 ARC 7409B	350 Maple St. Des Moines, Iowa	February 5, 2009 10 a.m.

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

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

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

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

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
 Agricultural Development Authority[25]
 Soil Conservation Division[27]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF INDUSTRY COUNCIL, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
CITIZENS’ AIDE[141]
CIVIL RIGHTS COMMISSION[161]
COMMERCE DEPARTMENT[181]
 Alcoholic Beverages Division[185]
 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Bureau[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
 Real Estate Appraiser Examining Board[193F]
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ARC 7463B**DENTAL BOARD[650]****Notice of Termination**

Pursuant to the authority of Iowa Code section 147.76, the Iowa Dental Board terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on August 27, 2008, as **ARC 7107B**, proposing to amend Chapter 29, "Deep Sedation/General Anesthesia, Conscious Sedation and Nitrous Oxide Inhalation Analgesia," Iowa Administrative Code.

The Notice proposed to update board rules to reflect revisions to the American Dental Association's guidelines on sedation. The amendments also required that a dentist utilizing moderate sedation on pediatric (ages 12 and under) or medically compromised patients must have completed additional training approved by the Board, unless the dentist has been providing these services for five years preceding July 1, 2008, without adverse occurrences.

The Board is terminating the rule making commenced in **ARC 7107B** to give the Board and its Anesthesia Credentials Committee additional time to study the potential impact of the proposed changes. The Board will also be seeking to further define "antianxiety premedication" or "minimal sedation."

ARC 7456B**ELDER AFFAIRS DEPARTMENT[321]****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 231.14, 231.23A and 249H.10, the Elder Affairs Department hereby gives Notice of Intended Action to adopt new Chapter 14, "Iowa Family Caregiver Support Program," Iowa Administrative Code.

The proposed new chapter provides support services for family caregivers of persons aged 60 and over and for grandparents or persons who are relative caregivers of children. It also establishes standards for those services and includes a severability rule.

Any interested person may make written suggestions or comments on the proposed chapter on or before January 21, 2009. Such written suggestions or comments should be directed to the Department of Elder Affairs, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319; E-mailed to lisa.burk@iowa.gov; or faxed to (515)242-3300.

These rules are intended to implement Iowa Code sections 231.23A and 249H.10.

The following amendment is proposed.

Adopt the following **new** 321—Chapter 14:

CHAPTER 14

IOWA FAMILY CAREGIVER SUPPORT PROGRAM

321—14.1(231,249H) Purpose. The purpose of the family caregiver support program is to provide support services for family caregivers for older individuals and for grandparents or persons who are relative caregivers of children. The program shall be called the Iowa family caregiver support program.

321—14.2(231,249H) Definitions. Words and phrases used in this chapter are as defined in 321 IAC 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

ELDER AFFAIRS DEPARTMENT[321](cont'd)

“*Child*” means an individual who is not more than 18 years of age or who is an individual with a disability.

“*Family caregiver*” means an adult family member, 18 years of age or older, or another adult individual selected by the consumer or the consumer’s legal representative, who is an informal provider of in-home or community care to an older individual or to a person of any age with Alzheimer’s disease, a related disorder, or a neurological or organic brain dysfunction.

“*Grandparent*” or “*relative caregiver*” means a grandparent or stepgrandparent of a child; or a relative of a child by blood, marriage or adoption who is not a parent and who is 55 years of age or older and:

1. Lives with the child; and
2. Is the primary caregiver of the child because the biological or adoptive parent is unable or unwilling to serve as the primary caregiver of the child; and
3. Has a legal relationship to the child, such as legal custody or guardianship, or is raising the child informally.

“*Older individual*” means a person 60 years of age or older.

“*Respite care*” means temporary, substitute support or living arrangements for care recipients in order to provide a brief period of relief or rest for caregivers.

“*Supplemental services*” means services or items that are provided on a limited basis to complement the care provided by the caregiver.

321—14.3(231,249H) Eligibility for services. In order to be eligible for services under this chapter, a family caregiver shall be providing informal in-home or community care to:

1. An older individual; or
2. A person of any age with Alzheimer’s disease, a related disorder, or a neurological or organic brain dysfunction; or
3. A child or children not more than 18 years of age; or
4. An adult child or children aged 19 through 59 with a disability.

321—14.4(231,249H) Priorities for service. In determining eligibility for services for categories as defined in rule 14.3(231,249H) of this chapter, equal priority shall be given to persons in all categories listed below. The area agencies on aging (AAA) will determine if the grandparent component of the program is offered based on the availability of funds.

Family Caregivers	Grandparents and Relative Caregivers
Individuals of any age with Alzheimer’s disease or related disorders.	Children with severe disabilities.
Older individuals with the greatest social and economic needs (with particular attention to low-income individuals) who are providing care to individuals 60 years of age or older.	Older individuals with the greatest social and economic needs (with particular attention to low-income individuals) who are providing care to individuals 60 years of age or older.
	Older individuals providing care to persons with severe disabilities, including children with severe disabilities.

321—14.5(231,249H) Coordination. The AAA and AAA contractors shall coordinate activities with other community agencies and volunteer organizations to provide the types of services described in this chapter.

321—14.6(231,249H) Service categories. Each AAA shall provide all of the following categories of service under this chapter. Services may be provided to individuals or to groups directly, or through contract procedures as specified in 321 IAC 6. The services include:

ELDER AFFAIRS DEPARTMENT[321](cont'd)

14.6(1) Information about available services. This may include, but is not limited to, providing to family caregivers newsletters, seminars or other types of group presentations which identify and explain the various services that may be available.

14.6(2) Access to services. This may include, but is not limited to: information, assistance, referral, outreach, and adequate follow-up procedures to ensure that, to the maximum extent practicable, individuals receive the needed services that are available within their communities.

14.6(3) Counseling, training and support groups. This may include, but is not limited to, the following services:

a. Individual or group support programs that develop or strengthen informal or family support systems.

b. Formal or informal opportunities for individuals to acquire knowledge, experience or skills in caregiving.

c. Counseling to enable the caregiver and family to resolve problems or to relieve temporary stresses. Mental health and behavioral health services shall be provided by a mental health professional licensed in this state.

14.6(4) Respite care. This may include, but is not limited to:

a. In-home respite.

b. Respite provided by the care recipient attending an adult day service program, senior center or other nonresidential program.

c. Institutional respite provided by placing the recipient in a setting such as a nursing facility for a short period of time.

d. Children attending summer camps or similar short-term care while the children are being cared for by grandparents.

14.6(5) Supplemental services. This may include, but is not limited to:

a. Chore services such as heavy housework, yard work, or sidewalk maintenance.

b. An emergency in-home or wearable response system.

c. Legal assistance.

d. Material aid in the form of goods or services such as food, smoke detectors, eyeglasses, security devices, or other similar aid.

e. Assisted transportation using vehicles which may include provision of assistance, including an escort, to a person with physical or cognitive difficulties.

321—14.7(231,249H) Conflict of interest. Conflict of interest includes any action or failure to act that may be an actual or perceived conflict between official duties and personal interest. Conflict of interest exists when the family caregiver program or any entity or individual:

1. Uses an official position for private gain (other than salary).

2. Gives preferential treatment to any entity or individual or fails to act impartially in the conduct of official duties.

3. Impedes or adversely affects governmental efficiency or economy.

4. Engages in conduct that could adversely affect the confidence of the public in the integrity of the family caregiver program.

5. Creates circumstances where it might reasonably be perceived that an entity's or individual's judgment could be influenced by the nature of the circumstances.

6. Uses any property of the person giving care or the person receiving care for personal use.

7. Provides another direct service to a consumer assigned to the family caregiver program.

8. The family caregiver program disproportionately chooses one provider over another provider or indicates it may be attempting to influence the selection of a specific provider.

321—14.8(231,249H) Confidentiality. Except by written consent of the consumer or the consumer's legal representative, the use or disclosure by any person of any information concerning a consumer for any purpose not directly connected with the administration of the responsibilities of the department, AAA, or authorized service provider is prohibited.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

321—14.9(231,249H) Quality standards.**14.9(1) AAA staff requirements.** Each AAA shall:

- a. Evaluate the full-time equivalent for its family caregiver program, considering current funding levels among other factors, and shall staff the program to best meet the needs of the service delivery area.
- b. Employ or contract for a designated family caregiver specialist with the following demonstrated competencies:

- (1) A bachelor's degree in the human services field or an associate's degree in the human services field and two years of employment in information and referral positions, which may be substituted for a bachelor's degree. Family caregiver specialists employed prior to [insert the effective date of this chapter] are exempt from this requirement.

- (2) If the applicant or prospective contractor does not have the certification required in paragraph "a" of subrule 14.9(2), the applicant shall have three years of prior employment in information and referral positions.

14.9(2) Certification.

- a. A family caregiver specialist shall possess and maintain a current Certification for Information and Referral (I&R) Specialists in Aging (CIRS-A) from the Alliance of Information and Referral Systems at the time of employment or contract; or

- b. If employed on or prior to [insert the effective date of this chapter], a family caregiver specialist shall obtain the certification required in paragraph "a" of this subrule within six months of [insert the effective date of this chapter] or upon meeting eligibility requirements for certification which include:

- (1) At least one year of employment in I&R for specialists with a bachelor's or higher degree; or
- (2) Two years of employment in I&R for specialists with an associate/community college degree;

or

- (3) Three years of employment in I&R for specialists with a high school diploma or GED.

- c. Part-time staff and volunteers shall possess and maintain a CIRS-A.

14.9(3) Training. The family caregiver specialist shall attend during the term of employment annual and other family caregiver specialist training when provided by the department.**14.9(4) Local contract monitoring.** The AAA shall utilize a system to monitor all service providers' performance under the contract and promptly ensure that any problems that arise are corrected. All contracts shall be created and monitored under the provisions of 321 IAC 6.11(231) or 321 IAC 5.15(231), as applicable.

- a. For the purposes of this subrule, monitoring means any planned, ongoing, or periodic activity that measures outcomes and ensures contractor compliance with the terms and conditions of the contract and customer satisfaction and also ensures that the contractor meets the needs of the caregiver.

- b. The AAA shall conduct caregiver evaluations to determine the quality of services and goods provided, including but not limited to customer satisfaction surveys, inspections, and evaluation of goods and services provided.

- c. Monitoring activities shall include:

- (1) Periodic contact, including on-site visits, to maintain a continuous dialogue with the contractor and to review progress on a regular basis.

- (2) Requiring the contractor to submit progress reports or other appropriate data based on predefined contract criteria. These reports shall include documentation indicating where and how moneys received were expended and results of caregiver performance evaluations and customer satisfaction surveys.

- (3) Reviewing the contractor's reports and verifying the services provided to determine if those services adhere to the contract. Substandard performance shall be identified and addressed appropriately, up to and including cancellation of the contract. Any corrective action shall be completed as soon as possible to maintain quality service to the consumer.

- (4) Comparing contract billings with the terms contained in the contract to ensure that costs or payments are within contract parameters.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

321—14.10(231,249H) Reports. The AAA shall record all services and submit all fiscal and performance reports for this program to the department in accordance with current instructions issued by the department.

321—14.11(231,249H) Failure to meet program requirements; waiver of standards. When an AAA fails to meet the requirements of this chapter, the department shall follow procedures outlined in 321 IAC 4. Provisions of this chapter may be waived pursuant to 321 IAC 11.

321—14.12(231,249H) Severability. Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

These rules are intended to implement Iowa Code chapters 231 and 249H.

ARC 7455B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

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 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The proposed amendments clarify that a county statutory committee (county central committee) is to be treated as a "county" committee for purposes of assessing a civil penalty. The proposed amendments also clarify that a committee is considered to be a "repeat delinquency" when the committee files two or more reports late within a calendar year, regardless of whether or not the treasurer of the committee has changed during the year.

The proposed amendments do not contain a waiver provision, but all assessed civil penalties are subject to a currently existing waiver provision.

Any interested person may make written comments on the proposed amendments on or before January 20, 2009. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

These amendments are intended to implement Iowa Code section 68B.32A(8).

The following amendments are proposed.

ITEM 1. Amend subrule 4.59(2) as follows:

4.59(2) County and local committee assessments. County, county statutory, city, school, other political subdivision, and local ballot issue committees shall be assessed civil penalties for late-filed reports in accordance with the following schedule:

Date report received	First-time delinquency	Repeat delinquency by same treasurer of a committee in 12-month period
1 to 14 consecutive days delinquent	\$20	\$50
15 to 30 consecutive days delinquent	\$50	\$100
31 to 45 consecutive days delinquent	\$100	\$200

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

ITEM 2. Amend subrule 4.59(3) as follows:

4.59(3) State committee assessments. Statewide, general assembly, state statutory, and state political committees, and a judge standing for retention shall be assessed civil penalties for late-filed reports, except for supplementary and special election reports, in accordance with the following schedule:

Date report received	First-time delinquency	Repeat delinquency by same treasurer of a committee in 12-month period
1 to 14 consecutive days delinquent	\$50	\$100
15 to 30 consecutive days delinquent	\$100	\$200
31 to 45 consecutive days delinquent	\$200	\$300

ARC 7472B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6 and 2008 Iowa Acts, Senate File 2425, section 12, the Department of Human Services proposes to amend Chapter 51, "Eligibility," and Chapter 52, "Payment," Iowa Administrative Code.

These amendments implement the annual adjustments to eligibility and payment levels in the State Supplementary Assistance Program that are necessary to meet the federal "pass-along" requirements specified in Title XVI of the Social Security Act and federal regulations at 20 CFR 416.2095 and 416.2096. The state of Iowa uses the payment levels method of compliance, which requires the state to increase the payment amounts and income limits for State Supplementary Assistance categories effective January 1 of each year as necessary to meet the minimum levels required by the federal government. The minimum levels are indexed by the cost-of-living increase in federal Social Security and Supplemental Security Income (SSI) benefits, which is 5.8 percent for calendar year 2009.

Changes necessary to meet federal pass-along requirements for 2009 are as follows:

- Increasing the income limit and payment standard for a dependent relative from \$325 per month to \$344 per month.
- Increasing the income limits for eligibility for a dependent relative supplement by \$56 per month for an eligible individual (from \$962 to \$1018) and by \$74 per month for an eligible couple (from \$1281 to \$1355).
- Increasing the family life home income limit by \$37 per month (from \$799 to \$836).
- Increasing the maximum family life home payment by \$34 per month (from \$708 to \$742).
- Increasing the maximum residential care per diem rate by \$1.19 (from \$26.95 to \$28.14).

State legislation also requires the Department to increase the personal needs allowance for residents of residential care facilities at the same percentage and at the same time as federal Social Security and SSI benefits are increased. Therefore, these amendments increase the residential care facility and family-life home personal needs allowances by \$3 per month (from \$91 to \$94).

These amendments do not provide for waivers in specified situations because the amendments benefit the people affected by increasing payment levels. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 7470B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Any interested person may make written comments on the proposed amendments on or before January 21, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement 2008 Iowa Acts, Senate File 2425, sections 12 and 32.

ARC 7468B

IOWA FINANCE AUTHORITY[265]**Notice of Termination**

Pursuant to the authority of Iowa Code section 17A.3(1)“b” and Iowa Code Supplement section 16.5(1)“r,” the Iowa Finance Authority terminates the rule making initiated by its Notice of Intended Action to adopt Chapter 29, “Jumpstart Housing Assistance Program,” Iowa Administrative Code, published in the Iowa Administrative Bulletin on October 8, 2008, as **ARC 7254B**.

The Notice of Intended Action was published to solicit comments on the adoption of Chapter 29, “Jumpstart Housing Assistance Program,” Iowa Administrative Code. Chapter 29 was also Adopted and Filed Emergency as **ARC 7253B**, published concurrently with the Notice of Intended Action. No public comment was received on the Notice. Subsequent to that publication, it was deemed necessary to adopt certain material amendments to the chapter; those amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on October 22, 2008, as **ARC 7281B**.

Because the Notice published as **ARC 7254B** has been superseded by the subsequent amendments to the version of Chapter 29 that was Adopted and Filed Emergency and published as **ARC 7253B**, the Authority is terminating the Notice of Intended Action published as **ARC 7254B**.

ARC 7453B

IOWA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM[495]**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 97B.4 and 97B.15, the Iowa Public Employees’ Retirement System (IPERS) hereby gives Notice of Intended Action to amend Chapter 4, “Employers,” Iowa Administrative Code.

The proposed amendments implement the new contribution rates for special service members as provided by the legislature effective July 1, 2009.

There are no waiver provisions included in the proposed amendments.

Any person may make written suggestions or comments on the proposed amendments on or before January 20, 2009. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515)281-3081. Comments may also be submitted by fax to (515)281-0045 or by E-mail to adminrule@ipers.org.

A public hearing will be held on January 20, 2009, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Persons who attend the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495](cont'd)

These amendments were prepared after consultation with IPERS administration, the Benefits Advisory Committee, and Investment, Legal, Operations and Benefits Divisions.

These amendments are intended to implement Iowa Code Supplement section 97B.4 and Iowa Code section 97B.15.

The following amendments are proposed.

ITEM 1. Amend subrule 4.6(2) as follows:

4.6(2) Contribution rates for sheriffs and deputy sheriffs.

	Effective July 1, 2007	Effective July 1, 2008	Effective July 1, 2009
Combined rate	15.40%	15.04%	<u>15.24%</u>
Employer	7.70%	7.52%	<u>7.62%</u>
Employee	7.70%	7.52%	<u>7.62%</u>

ITEM 2. Amend subrule 4.6(3) as follows:

4.6(3) Contribution rates for protection occupation.

	Effective July 1, 2007	Effective July 1, 2008	Effective July 1, 2009
Combined rate	14.11%	14.08%	<u>15.34%</u>
Employer	8.47%	8.45%	<u>9.20%</u>
Employee	5.64%	5.63%	<u>6.14%</u>

ARC 7464B**LIBRARIES AND INFORMATION SERVICES DIVISION[286]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.9A and 256.52, the Commission of Libraries hereby gives Notice of Intended Action to adopt new Chapter 10, "Waivers or Variances from Administrative Rules," Iowa Administrative Code.

The rules are designed to implement Iowa Code section 17A.9A, which permits agencies to adopt procedures for granting waivers and variances from administrative rules. The rules establish the processes and requirements for requesting a waiver or variance from an administrative rule of the Libraries and Information Services Division. The rules are being proposed in response to a request for rule making filed by a public library.

Interested persons may make written comments on the proposed rules on or before 4:30 p.m. on January 20, 2009. Such written material should be directed to the State Librarian, State Library, 1112 E. Grand Avenue, Des Moines, Iowa 50319, or by facsimile to (515)281-6191. Persons who want to convey their views orally should contact the State Librarian at (515)281-4105.

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

The following amendment is proposed.

LIBRARIES AND INFORMATION SERVICES DIVISION[286](cont'd)

Adopt the following **new** 286—Chapter 10:

CHAPTER 10
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

286—10.1(17A) Scope of chapter. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the commission in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

286—10.2(17A) Definitions.

“*Commission*” means the commission of libraries established by Iowa Code section 256.52.

“*Division*” means the division of libraries and information services of the department of education.

“*Person*” means an individual, library, government or governmental subdivision or agency, partnership or association, or any legal entity.

“*Waiver or variance*” means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

286—10.3(17A) Applicability.

10.3(1) The commission may grant a waiver or variance from a rule adopted by the commission only if (1) the commission has jurisdiction over the rule; (2) no statute or rule otherwise controls the granting of a waiver or variance from the rule from which waiver or variance is requested; and (3) the requested waiver or variance is consistent with applicable statutes, constitutional provisions, or other provisions of law.

10.3(2) No waiver or variance may be granted from a requirement which is imposed by statute.

286—10.4(17A) Commission discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the commission upon consideration of all relevant factors. Each petition for a waiver or variance shall be evaluated by the commission based on the unique, individual circumstances set out in the petition.

10.4(1) Criteria for waiver or variance. In determining whether a waiver or variance should be granted, the commission shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver or variance is sought establishes administrative deadlines, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons. The commission may, in response to a completed petition, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the commission finds all of the following:

a. The application of the rule would result in an undue hardship on the person for whom the waiver or variance is requested;

b. The waiver or variance from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. The provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

10.4(2) Special waiver or variance rules not precluded. These uniform waiver and variance rules shall not preclude the commission from granting waivers or variances in other contexts if a statute or other rule authorizes the commission to do so and the commission deems it appropriate to do so.

LIBRARIES AND INFORMATION SERVICES DIVISION[286](cont'd)

286—10.5(17A) Requester's responsibilities in filing a petition for waiver or variance.

10.5(1) Application. All petitions for waiver or variance must be submitted in writing to the State Library, Ola Babcock Miller Building, 1112 E. Grand Avenue, Des Moines, Iowa 50319. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

10.5(2) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the requester:

- a. A description and citation of the specific rule from which a waiver or variance is requested.
- b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
- c. The relevant facts that the petitioner believes would justify a waiver or variance under each of the four criteria specified in paragraphs "a" through "d" of subrule 10.4(1).
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver or variance.
- e. A history of any prior contacts between the commission and the petitioner or between the division and the petitioner within the past five years.
- f. Any information known to the requester regarding the treatment of similar cases by the commission.
- g. The name, address, and telephone number of any public agency or political subdivision that also regulates the activity in question or that might be affected by the granting of a waiver or variance.
- h. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver or variance.

10.5(3) Burden of persuasion. When a petition is filed for a waiver or variance from a rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the commission should exercise the commission's discretion to grant the petitioner a waiver or variance.

286—10.6(17A) Notice. The commission shall acknowledge a petition upon receipt. The commission shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the commission may give notice to other persons. To accomplish this notice provision, the commission may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the commission attesting that notice has been provided.

286—10.7(17A) Commission's responsibilities regarding petition for waiver or variance.

10.7(1) Additional information. Prior to issuing an order granting or denying a waiver or variance, the commission may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the commission may, on the commission's own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the commission.

10.7(2) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (1) to any petition for a waiver or variance of a rule filed within a contested case; (2) when the commission so provides by rule or order; or (3) when a statute so requires.

10.7(3) Ruling. An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

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10.7(4) Conditions. The commission may place any condition on a waiver or variance that the commission finds desirable to protect the public health, safety, and welfare.

10.7(5) Narrowly tailored exception. A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

10.7(6) Time period of waiver. A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the commission, a waiver may be renewed if the commission finds that grounds for a waiver continue to exist.

10.7(7) Time for ruling. The commission shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the commission shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

10.7(8) When deemed denied. Failure of the commission to grant or deny a petition within the required time period shall be deemed a denial of that petition by the commission.

10.7(9) Service of order. Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

286—10.8(17A) Public availability. All orders granting or denying waivers and variances under this chapter shall be indexed, filed and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver or variance and orders granting or denying a waiver or variance petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information that the commission is authorized or required to keep confidential. The commission may accordingly redact confidential information from petitions or orders prior to public inspection.

286—10.9(17A) Voiding or cancellation. A waiver or variance is void if the material facts upon which the request or petition is based are not true or if material facts have been withheld. A waiver or variance issued by the commission pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and opportunity for hearing, the commission issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with any conditions contained in the order.

286—10.10(17A) Violations. Violation of conditions in the waiver or variance order is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

286—10.11(17A) Defense. After the commission issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

286—10.12(17A) Judicial review. Granting or denying a request for waiver or variance is final agency action under Iowa Code chapter 17A. Judicial review of the decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

286—10.13(17A) Summary reports. Semiannually, the division shall prepare a summary report identifying the rules for which a waiver has been granted or denied by the commission, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the commission's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected

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the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

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

ARC 7465B**LIBRARIES AND INFORMATION SERVICES DIVISION[286]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.9 and 256.52, the Commission of Libraries hereby gives Notice of Intended Action to adopt new Chapter 11, "Declaratory Orders," Iowa Administrative Code.

The rules are designed to implement Iowa Code section 17A.9, which requires agencies to adopt rules that provide for the form, content, and filing of petitions for declaratory orders, the procedural rights of persons in relation to the petitions, and the disposition of the petitions. The rules describe the classes of circumstances in which the agency will not issue a declaratory order. Declaratory orders must be consistent with the public interest and with the general policy of this chapter to facilitate and encourage agency issuance of reliable advice.

Interested persons may make written comments on the proposed rules on or before January 20, 2009. Such written material should be directed to the State Librarian, State Library, 1112 E. Grand Avenue, Des Moines, Iowa 50319, or by facsimile to (515)281-6191. Persons who want to convey their views orally should contact the State Librarian at (515)281-4105.

These rules are intended to implement Iowa Code sections 17A.9 and 256.52.

The following amendment is proposed.

Adopt the following **new** 286—Chapter 11:

CHAPTER 11
DECLARATORY ORDERS

286—11.1(17A) Definitions.

"Division" means the division of libraries and information services of the department of education.

"Person" means an individual, library, government or governmental subdivision or agency, partnership or association, or any legal entity.

286—11.2(17A) Petition for declaratory order. Any person may file a petition with the division for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the division, at the State Library, Ola Babcock Miller Building, 1112 E. Grand Avenue, Des Moines, Iowa 50319. A petition is deemed filed when it is received by the division. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose. The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative and a statement indicating the person to whom communications concerning the petition should be directed. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

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DIVISION OF LIBRARIES AND INFORMATION SERVICES

Petition by (Name of Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER
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The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner’s interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner’s knowledge, those questions have been decided by, are pending determination by, or are under investigation by any governmental entity.
7. The names and addresses of other persons or a description of any class of persons known by petitioner to be affected by or interested in the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by rule 11.8(17A).

286—11.3(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the division shall give notice of the petition to all persons not served by the petitioner pursuant to whom notice is required by any provision of law. The division may also give notice to any other persons.

286—11.4(17A) Intervention.

11.4(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 15 days of the filing of a petition for declaratory order (after time for notice under rule 11.3(17A) and before 30-day time for division action under rule 11.9(17A)) shall be allowed to intervene in a proceeding for a declaratory order.

11.4(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the division.

11.4(3) A petition for intervention shall be filed at the State Library, Ola Babcock Miller Building, 1112 E. Grand Avenue, Des Moines, Iowa 50319. Such a petition is deemed filed when it is received by that office. The division will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. The petition must be dated and signed by the intervenor or the intervenor’s representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor’s representative, and a statement indicating the person to whom communications should be directed. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DIVISION OF LIBRARIES AND INFORMATION SERVICES

Petition by (Name of Original Petitioner) for a Declaratory Order on (Cite provisions of law involved).	}	PETITION FOR INTERVENTION
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The petition for intervention must provide the following information:

1. Facts supporting the intervenor’s standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.

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

286—11.5(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The division may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

286—11.6(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the State Librarian, State Library, Ola Babcock Miller Building, 1112 E. Grand Avenue, Des Moines, Iowa 50319.

286—11.7(17A) Service and filing of petitions and other papers.

11.7(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with a filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

11.7(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the State Librarian, State Library, Ola Babcock Miller Building, 1112 E. Grand Avenue, Des Moines, Iowa 50319.

286—11.8(17A) Consideration. Upon request by petitioner, the division must schedule a brief and informal meeting between the original petitioner, all intervenors, and a member of the division to discuss the questions raised. The division may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the division by any person.

286—11.9(17A) Action on petition. Within the time allowed by Iowa Code section 17A.9, after receipt of a petition for a declaratory order, the division shall take action on the petition as required by Iowa Code section 17A.9.

286—11.10(17A) Refusal to issue order.

11.10(1) The division shall not issue a declaratory order where prohibited by Iowa Code section 17A.9 and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

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

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

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

10. The petitioner requests that the division determine whether a statute is unconstitutional on its face.

11.10(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

11.10(3) A refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue a ruling.

286—11.11(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

286—11.12(17A) Copies of orders. Copies of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

286—11.13(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the division, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the division. The issuance of a declaratory order constitutes final agency action on the petition.

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

ARC 7466B**LIBRARIES AND INFORMATION SERVICES DIVISION[286]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 256.52, the Commission of Libraries hereby gives Notice of Intended Action to adopt new Chapter 12, "Petitions for Rule Making," Iowa Administrative Code.

The rules are designed to implement Iowa Code section 17A.7, which mandates agencies to adopt procedures for interested persons to use to petition an agency requesting adoption, amendment, repeal, or review of administrative rules.

Interested persons may make written comments on the proposed rules on or before January 20, 2009. Such written material should be directed to the State Librarian, State Library, 1112 E. Grand Avenue, Des Moines, Iowa 50319, or by facsimile to (515)281-6191. Persons who want to convey their views orally should contact the State Librarian at (515)281-4105.

These rules are intended to implement Iowa Code sections 17A.7 and 256.52.

LIBRARIES AND INFORMATION SERVICES DIVISION[286](cont'd)

The following amendment is proposed.

Adopt the following **new** 286—Chapter 12:

CHAPTER 12
PETITIONS FOR RULE MAKING

286—12.1(17A,256) Petition for rule making. A petition requesting the adoption, amendment, or repeal of a rule shall be filed with the division of libraries and information services, at the State Library, Ola Babcock Miller Building, 1112 E. Grand Avenue, Des Moines, Iowa 50319. A petition is deemed filed when it is received by the division. The division shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the division an extra copy for this purpose.

12.1(1) The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

DIVISION OF LIBRARIES AND INFORMATION SERVICES		
Petition by (Name of Petitioner) for the Adoption/Amendment/Repeal of (Cite rule involved).	}	PETITION FOR RULE MAKING

12.1(2) The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the petition is based.
2. The precise citation to the present rule if the petition is for the amendment or repeal of the same.
3. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, and any other relevant law.
4. A summary of the reasons for requesting the adoption, amendment or repeal of a rule.
5. Full disclosure of the petitioner’s interest in the outcome of the petition.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the issue(s) raised by the petition and whether, to the petitioner’s knowledge, that issue(s) has been decided by, is pending determination by, or is under investigation by, any other governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the issue(s) presented in the petition.

12.1(3) The petition must be dated and signed by the petitioner or the petitioner’s representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner’s representative and a statement indicating the person to whom communications concerning the petition should be directed.

286—12.2(17A,256) Inquiries. Inquiries concerning the status of a petition for rule making may be made to the State Librarian, State Library, Ola Babcock Miller Building, 1112 E. Grand Avenue, Des Moines, Iowa 50319.

These rules are intended to implement Iowa Code sections 17A.7 and 256.52.

ARC 7454B**NATURAL RESOURCES DEPARTMENT[561]****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 558.69, the Department of Natural Resources hereby gives Notice of Intended Action to amend Chapter 9, "Groundwater Hazard Documentation," Iowa Administrative Code.

The proposed amendments have two purposes. The first purpose is to implement the septic tank time-of-transfer requirements adopted by the Iowa Legislature in 2008 Iowa Acts, Senate File 261. The second purpose is to provide an exemption for leases related to electronics towers and wind turbines.

Any interested person may make written suggestions or comments on the proposed amendments by submitting those comments on or before January 23, 2009. Written comments should be directed to Jon C. Tack, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034; fax (515)281-8895; E-mail jon.tack@dnr.iowa.gov.

Also, a public hearing will be held on Friday, January 23, 2009, at 1 p.m. in the Fifth Floor West Conference Room of the Wallace State Office Building, 502 E. 9th Street, 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 amendments.

These amendments are intended to implement Iowa Code section 455B.172 as amended by 2008 Iowa Acts, Senate File 261, and section 558.69.

The following amendments are proposed.

ITEM 1. Amend paragraph **9.1(4)"a"** as follows:

a. Any recorded lease of land which has a term of five years or more, except leases related to the construction or maintenance of cell phone, television, radio or similar electronics towers and leases related to the construction or maintenance of electricity-generating wind turbines. Leases or easements reserving rights to the future construction of the tower and wind turbine structures exempted by this subrule are similarly exempted;

ITEM 2. Amend subrule 9.2(1) as follows:

9.2(1) The transferor, ~~their~~ or the transferor's agent or attorney shall sign department Form 542-0960, "Groundwater Hazard Statement," which may be obtained from the department or local county recorder. An agent or attorney may sign the form for the transferor, but in doing so the agent or attorney represents that a good faith inquiry of the transferor has been made regarding the information contained in the form, and that ~~the information~~ is correct. The department hereby adopts by reference Form 542-0960 "Groundwater Hazard Statement," as amended through [insert effective date of these amendments]. For all real estate transactions dated July 1, 2009, or later, a county recorder shall accept only the amended and revised form, as adopted by reference. The department authorizes the reproduction of Form 542-0960 by any person through photocopying or electronic means so long as the general format and wording are not altered in the reproduction thereof.

ARC 7447B**PHARMACY BOARD[657]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 6, "General Pharmacy Practice," Iowa Administrative Code.

The amendments were approved at the November 19, 2008, regular meeting of the Board of Pharmacy.

The proposed amendments authorize the transfer of prescriptions by pharmacists or pharmacist-interns from one pharmacy to another pursuant to the request of a patient and establish required procedures and record keeping relating to such transfer.

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

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on January 20, 2009. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code section 124.301 and Iowa Code section 155A.34 as amended by 2008 Iowa Acts, chapter 1016, section 6.

The following amendments are proposed.

ITEM 1. Amend subrule 6.9(3) as follows:

6.9(3) Communication. The transfer is communicated directly between pharmacists, directly between pharmacist-interns under the direct supervision of pharmacists at the respective pharmacies, directly between a pharmacist and a pharmacist-intern under the direct supervision of a pharmacist, or as authorized in subrule 6.9(9).

ITEM 2. Amend subrule 6.9(5) as follows:

6.9(5) Record of transfer out. The pharmacist or pharmacist-intern transferring the prescription drug order information shall:

- a. Invalidate the prescription drug order;
- b. Record on or with the invalidated prescription drug order the following information:
 - (1) The name, address, and, for a controlled substance, the DEA registration number of the pharmacy to which such prescription is transferred;
 - (2) The name of the pharmacist or pharmacist-intern receiving the prescription drug order information;
 - (3) The name of the pharmacist or pharmacist-intern transferring the prescription drug order information; and
 - (4) The date of the transfer.

ITEM 3. Amend subrule 6.9(8) as follows:

6.9(8) Record of transfer received. The pharmacist or pharmacist-intern receiving the transferred prescription drug order information shall:

- a. Indicate that the prescription drug order has been transferred;
- b. Record on or with the transferred prescription drug order the following information:
 - (1) Original date of issuance and date of dispensing, if different from date of issuance;
 - (2) Original prescription number;
 - (3) Number of valid refills remaining, the date of last refill, and, for a controlled substance, the dates and locations of all previous refills;

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- (4) Name, address, and, for a controlled substance, the DEA registration number of the pharmacy from which such prescription drug order information is transferred;
- (5) The date of the transfer;
- (6) Name of the pharmacist or pharmacist-intern receiving the prescription drug order information;
- (7) Name of the pharmacist or pharmacist-intern transferring the prescription drug order information; and
- (8) If transferring a controlled substance prescription from a pharmacy utilizing a shared electronic database system as described in subrule 6.9(9) to a pharmacy outside that shared system, the pharmacy name, location, DEA registration number, and prescription number from which the prescription was originally filled.

ITEM 4. Amend subrule 6.9(9) as follows:

6.9(9) *Electronic transfer between pharmacies.* Pharmacies electronically accessing the same prescription drug order records via a real-time, on-line database may electronically transfer prescription information, including controlled substance prescription information, up to the maximum refills permitted by law and the prescriber's authorization, if the following requirements are met.

a. The data processing system shall have a mechanism to send ~~a message to~~ the transferring pharmacy a message containing the following information:

- (1) The fact that the prescription drug order was transferred;
- (2) The unique identification number of the prescription drug order transferred;
- (3) The name, address, and DEA registration number of the pharmacy to which the prescription drug order was transferred and the name of the pharmacist or pharmacist-intern receiving the prescription information; and
- (4) The date and time of transfer.

b. A pharmacist or pharmacist-intern under the direct supervision of a pharmacist in the transferring pharmacy shall review the message and document the review by signing and dating a hard copy of the message or logbook containing the information required on the message as soon as practical, but in no event more than 72 hours from the time of such transfer.

c. For transfers of controlled substance prescriptions, all information requirements included in subrules 6.9(1) and 6.9(3) through 6.9(8) shall be satisfied in the electronic system. Transfers of controlled substance prescriptions shall also identify the pharmacy name, address, DEA registration number, and prescription number from which the prescription was originally filled.

ARC 7448B

PHARMACY BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 6, "General Pharmacy Practice," Chapter 8, "Universal Practice Standards," Chapter 9, "Automated Medication Distribution Systems," Chapter 10, "Controlled Substances," and Chapter 21, "Electronic Data in Pharmacy Practice," Iowa Administrative Code.

These amendments were approved at the November 19, 2008, regular meeting of the Board of Pharmacy.

The proposed amendments require that any prescription transmitted via facsimile to a pharmacy and any electronic record maintained by a pharmacy must be clear, legible records or images of the

PHARMACY BOARD[657](cont'd)

original prescription or record. The amendments are intended to ensure that the electronic transmission or scanning of a prescription or record that was prepared in hard copy utilizing paper that includes security features, such as the appearance of a “void” message upon copying or scanning, is not rendered illegible or obscured as a result of those security features.

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

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on January 20, 2009. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 124.301, 124.306, 124.308, 155A.27, and 155A.35.

The following amendments are proposed.

ITEM 1. Amend subrule 6.16(4) as follows:

6.16(4) *Alternative data retention system.* Records, except when specifically required to be maintained in original or hard-copy form, may be maintained in an alternative data retention system, such as a data processing system or direct imaging system provided:

a. The records maintained in the alternative system contain all of the information required on the manual record; ~~and~~

b. The data processing system is capable of producing a hard copy of the record, within two business days, upon the request of the board, its representative, or other authorized local, state, or federal law enforcement or regulatory agencies; ~~and~~

c. The information maintained in the alternative system is not obscured or rendered illegible due to security features of the original hard-copy record.

ITEM 2. Amend subrule 8.15(1) as follows:

8.15(1) *Alternative methods.* A licensed pharmacy may, by means of its employee or by use of a common carrier, pick up or deliver prescriptions to the patient or the patient’s caregiver as follows:

a. At the office or home of the prescriber.

b. At the residence of the patient or caregiver.

c. At the hospital or medical care facility in which a patient is confined.

d. At an outpatient medical care facility where the patient receives treatment only pursuant to the following requirements:

(1) The pharmacy shall obtain and maintain the written authorization of the patient or patient’s caregiver for receipt or delivery at the outpatient medical care facility;

(2) The prescription shall be delivered directly to or received directly from the patient, the caregiver, or an authorized agent identified in the written authorization;

(3) A prescription authorized by a prescriber not treating the patient at the outpatient medical care facility may be transmitted to the pharmacy by the authorized agent via facsimile provided that the means of transmission does not obscure or render the prescription information illegible due to security features of the paper utilized by the prescriber to prepare the prescription and provided that the original written prescription is delivered to the pharmacy prior to delivery of the filled prescription to the patient; and

(4) The outpatient medical care facility shall store the patient’s filled prescriptions in a secure area pending delivery to the patient.

e. At the patient’s or caregiver’s place of employment only pursuant to the following requirements:

(1) The pharmacy shall obtain and maintain the written authorization of the patient or patient’s caregiver for receipt or delivery at the place of employment;

(2) The prescription shall be delivered directly to or received directly from the patient, the caregiver, the prescriber, or an authorized agent identified in the written authorization; and

(3) The pharmacy shall ensure the security of confidential information as defined in subrule 8.16(1).

PHARMACY BOARD[657](cont'd)

ITEM 3. Amend subrule 9.18(7) as follows:

9.18(7) *Verification prior to dispensing.* A pharmacist at the managing pharmacy shall approve each prescription before it leaves the remote site. If the qualified certified pharmacy technician at the remote site enters original or new prescription information into the automated pharmacy system, the pharmacist at the managing pharmacy shall, prior to approving dispensing of the drug via the AMDS, verify the information entered against an electronic or video image of the original prescription. The technician may transmit the prescription to the pharmacist by scanning the prescription into the automated pharmacy system ~~or~~ provided that the means of scanning, transmitting, or storing the image shall not obscure the prescription information or render the prescription information illegible due to security features of the paper utilized by the prescriber to prepare the original prescription. Alternatively, the technician may make the original prescription available to the pharmacist by placing the prescription in an appropriate position to facilitate viewing of the original prescription with video communication between the remote site and the managing pharmacy. Using the video communication component of the automated pharmacy system, the pharmacist shall verify the accuracy of the drug dispensed and shall check the prescription label for accuracy. The dispensing record, the patient profile, and the prescription label shall identify both the pharmacist who approved dispensing the prescription and the certified pharmacy technician who completed the dispensing and delivery of the prescription to the patient.

ITEM 4. Amend subrule 10.22(2) as follows:

10.22(2) *Requirements of emergency prescription.* In the case of an emergency situation as defined herein, a pharmacist may dispense a controlled substance listed in Schedule II pursuant to an electronic transmission or upon receiving oral authorization of a prescribing individual practitioner provided that:

a. The quantity prescribed and dispensed is limited to the smallest available quantity to meet the needs of the patient during the emergency period. Dispensing beyond the emergency period requires a written prescription manually signed by the prescribing individual practitioner.

b. If the pharmacist does not know the prescribing individual practitioner, the pharmacist shall make a reasonable effort to determine that the authorization came from an authorized prescriber. The pharmacist shall record the manner by which the authorization was verified and include the pharmacist's name or unique identification.

c. The pharmacist shall prepare a temporary written record of the emergency prescription. The temporary written record shall consist of a hard copy of the electronic transmission or a written record of the oral transmission authorizing the emergency dispensing. If the emergency prescription is transmitted by the practitioner's agent, the record shall include the name and title of the individual who transmitted the prescription.

d. If the emergency prescription is transmitted via electronic transmission, the means of transmission shall not obscure or render the prescription information illegible due to security features of the paper utilized by the prescriber to prepare the written prescription, and the hard-copy record of the electronic transmission shall not be obscured or rendered illegible due to such security features.

~~d. e.~~ Within seven days after authorizing an emergency prescription, the prescribing individual practitioner shall cause a written prescription for the emergency quantity prescribed to be delivered to the dispensing pharmacist. In addition to conforming to the requirements of 657—10.21(124,126,155A), the prescription shall have written on its face "Authorization for Emergency Dispensing" and the date of the emergency order. The written prescription may be delivered to the pharmacist in person or by mail, but if delivered by mail it must be postmarked within the seven-day period. The written prescription shall be attached to and maintained with the temporary written record prepared pursuant to paragraph "c."

~~e. f.~~ The pharmacist shall notify the board if the prescribing individual fails to deliver a written prescription. Failure of the pharmacist to so notify the board, or failure of the prescribing individual to deliver the required written prescription as herein required, shall void the authority conferred by this subrule.

PHARMACY BOARD[657](cont'd)

ITEM 5. Amend paragraph **21.7(3)“c”** as follows:

c. When a prescription prepared pursuant to this subrule is transmitted to a pharmacy via facsimile, or when a prescription prepared pursuant to this subrule is scanned into an electronic record system, the watermark or background will not appear or the word “void” or “copy” will appear. The means of transmission via facsimile and the means of scanning into an electronic record system shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare the prescription. It is the responsibility of the pharmacist to verify the validity of the prescription as provided by rule 657—8.19(124,126,155A) or 657—21.3(124,155A).

ITEM 6. Amend rule 657—21.9(124,155A) as follows:

657—21.9(124,155A) Facsimile transmission (fax) of a prescription. A pharmacist may dispense noncontrolled and controlled drugs, excluding Schedule II controlled substances, pursuant to a prescription faxed to the pharmacy by the prescribing practitioner or the practitioner’s agent. The means of transmission shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription. The faxed prescription drug order shall serve as the original prescription, shall be maintained for a minimum of two years from the date of last fill or refill, and shall contain all information required by Iowa Code section 155A.27, including the prescriber’s signature or electronic signature. The faxed prescription drug order, if transmitted by the practitioner’s agent, shall identify the transmitting agent and shall include the prescriber’s signature or electronic signature. The receiving pharmacist shall be responsible for verifying the authenticity of an electronically transmitted prescription or of an electronic signature as provided by rule 657—8.19(124,126,155A) or 657—21.3(124,155A). This rule shall apply to a prescription drug order transmitted pursuant to 657—subrule 8.15(1), paragraph “d.”

ITEM 7. Amend rule 657—21.12(124,155A) as follows:

657—21.12(124,155A) Prescription drug orders for Schedule II controlled substances. A pharmacist may dispense Schedule II controlled substances pursuant to an electronic transmission to the pharmacy of a written, signed prescription from the prescribing practitioner provided that the original written, signed prescription is received by the pharmacist prior to the actual dispensing of the controlled substance. If the emergency authorization is transmitted to the pharmacy by the practitioner’s agent, the transmission shall include the name and title of the individual who transmitted the prescription. The means of transmission shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription. The original prescription shall be verified against the transmission at the time the substance is actually dispensed, shall be properly annotated, and shall be retained with the electronic transmission for filing.

ITEM 8. Amend rule 657—21.14(124,155A) as follows:

657—21.14(124,155A) Facsimile transmission of a prescription for Schedule II narcotic substances—parenteral. A prescription for a nonoral dosage unit of a Schedule II narcotic substance to be compounded for the direct administration to a patient by parenteral, intravenous, intramuscular, subcutaneous, or intraspinal infusion may be transmitted by a practitioner or the practitioner’s agent to the pharmacy via facsimile. If the prescription is transmitted by the practitioner’s agent, the transmission shall include the name and title of the individual who transmitted the prescription. The means of transmission shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription. The facsimile serves as the original written prescription.

ITEM 9. Amend rule 657—21.15(124,155A), introductory paragraph, as follows:

657—21.15(124,155A) Facsimile transmission of Schedule II controlled substances—long-term care facility patients. A prescription for any Schedule II controlled substance for a resident of a long-term care facility may be transmitted by the practitioner or the practitioner’s agent to the

PHARMACY BOARD[657](cont'd)

dispensing pharmacy via facsimile. If the prescription is transmitted by the practitioner's agent, the transmission shall include the name and title of the individual who transmitted the prescription. The means of transmission shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription.

ITEM 10. Amend rule 657—21.16(124,155A), introductory paragraph, as follows:

657—21.16(124,155A) Facsimile transmission of Schedule II controlled substances—hospice patients. A prescription for a Schedule II controlled substance for a patient enrolled in a hospice care program licensed pursuant to Iowa Code chapter 135J or a program certified or paid for by Medicare under Title XVIII may be transmitted via facsimile by the practitioner or the practitioner's agent to the dispensing pharmacy. If the prescription is transmitted by the practitioner's agent, the transmission shall include the name and title of the individual who transmitted the prescription. The means of transmission shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription.

ARC 7446B

PHARMACY BOARD[657]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby gives Notice of Intended Action to amend Chapter 13, "Sterile Compounding Practices," Iowa Administrative Code.

The amendments were approved at the November 19, 2008, regular meeting of the Board of Pharmacy.

The proposed amendments combine the requirements for testing and quarantine of sterile compounds into a single subrule, including rescinding a duplicative subrule, and clarify the products and criteria for quarantine and testing.

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

Any interested person may present written comments, data, views, and arguments on the proposed amendments not later than 4:30 p.m. on January 20, 2009. Such written materials may be sent to Terry Witkowski, Executive Officer, Board of Pharmacy, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688; or by E-mail to terry.witkowski@iowa.gov.

These amendments are intended to implement Iowa Code sections 124.301, 155A.2, 155A.13, and 155A.13A.

The following amendments are proposed.

ITEM 1. Amend subrule 13.24(4) as follows:

13.24(4) Testing and quarantine requirements. All high-risk preparations, except those for inhalation and ophthalmic administration, that are prepared in groups of 25 or more identical single-dose containers or in multiple-dose vials for administration to multiple patients, or that are exposed longer than 12 hours at 2 to 8 degrees Celsius ~~and~~ or longer than 6 hours at warmer than 8 degrees Celsius before they are sterilized, shall be quarantined and tested to ensure that the preparations are sterile and that they do not contain excessive bacterial endotoxins before they are dispensed or administered.

ITEM 2. Rescind subrule **13.24(6)**.

ARC 7449B**SECRETARY OF STATE[721]****Notice of Termination**

Pursuant to the authority of Iowa Code section 17A.3(1)“b,” the Secretary of State terminates the rule making initiated by the Notice of Intended Action published in the Iowa Administrative Bulletin on October 8, 2008, as **ARC 7266B** proposing to amend Chapter 22, “Voting Systems,” Iowa Administrative Code.

The proposed amendment to Chapter 22 was also Adopted and Filed Emergency as **ARC 7264B**. The period for comments has passed without any comments being submitted. The Secretary of State finds no further need to proceed with rule making for **ARC 7266B**.

ARC 7452B**TRANSPORTATION DEPARTMENT[761]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation terminates the rule making initiated by its Notice of Intended Action published in the July 30, 2008, Iowa Administrative Bulletin as **ARC 7003B** proposing to adopt new Chapter 813, “Close-Clearance Warning Signs Along Railroad Tracks,” Iowa Administrative Code.

The Notice proposed a new chapter concerning close-clearance warning signs along railroad tracks where the clearance between the tracks and an obstruction along the tracks physically impedes a person who is lawfully riding on the side of a train from clearing the obstruction.

The Department intends to renounce the proposed new chapter to incorporate further changes.

ARC 7470B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6 and 2008 Iowa Acts, Senate File 2425, section 12, the Department of Human Services amends Chapter 51, "Eligibility," and Chapter 52, "Payment," Iowa Administrative Code.

These amendments implement the annual adjustments to eligibility and payment levels in the State Supplementary Assistance Program that are necessary to meet the federal "pass-along" requirements specified in Title XVI of the Social Security Act and federal regulations at 20 CFR 416.2095 and 416.2096. The state of Iowa uses the payment levels method of compliance, which requires the state to increase the payment amounts and income limits for State Supplementary Assistance categories effective January 1 of each year as necessary to meet the minimum levels required by the federal government. The minimum levels are indexed by the cost-of-living increase in federal Social Security and Supplemental Security Income (SSI) benefits, which is 5.8 percent for calendar year 2009.

Changes necessary to meet federal pass-along requirements for 2009 are as follows:

- Increasing the income limit and payment standard for a dependent relative from \$325 per month to \$344 per month.
- Increasing the income limits for eligibility for a dependent relative supplement by \$56 per month for an eligible individual (from \$962 to \$1018) and by \$74 per month for an eligible couple (from \$1281 to \$1355).
- Increasing the family life home income limit by \$37 per month (from \$799 to \$836).
- Increasing the maximum family life home payment by \$34 per month (from \$708 to \$742).
- Increasing the maximum residential care per diem rate by \$1.19 (from \$26.95 to \$28.14).

State legislation also requires the Department to increase the personal needs allowance for residents of residential care facilities at the same percentage and at the same time as federal Social Security and SSI benefits are increased. Therefore, these amendments increase the residential care facility and family life home personal needs allowances by \$3 per month (from \$91 to \$94).

These amendments do not provide for waivers in specified situations because the amendments benefit the people affected by increasing payment levels. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on December 10, 2008.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary and impracticable because these amendments implement 2008 Iowa Acts, Senate File 2425, section 12, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1) and (2), that the normal effective date of these amendments should be waived because the amendments confer a benefit by increasing income limits and payments and because emergency rule making is authorized by 2008 Iowa Acts, Senate File 2425, section 12.

These amendments are also published herein under Notice of Intended Action as **ARC 7472B** to allow for public comment.

These amendments are intended to implement 2008 Iowa Acts, Senate File 2425, sections 12 and 32.

These amendments will become effective January 1, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule 51.4(1) as follows:

51.4(1) Income. Income of a dependent relative shall be less than ~~\$325~~ \$344. When the dependent's income is from earnings, an exemption of \$65 shall be allowed to cover work expense.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend rule 441—51.7(249) as follows:

441—51.7(249) Income from providing room and board. In determining profit from furnishing room and board or providing family life home care, ~~\$325~~ \$344 per month shall be deducted to cover the cost, and the remaining amount treated as earned income.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

ITEM 3. Amend subrules 52.1(1) and 52.1(2) as follows:

52.1(1) Protective living arrangement. The following assistance standards have been established for state supplementary assistance for persons living in a family life home certified under rules in 441—Chapter 111.

\$708 <u>\$742</u>	Care allowance
\$91 <u>\$94</u>	Personal allowance
\$799 <u>\$836</u>	Total

52.1(2) Dependent relative. The following assistance standards have been established for state supplementary assistance for dependent relatives residing in a recipient’s home.

a. Aged or disabled client and a dependent relative	\$962 <u>\$1018</u>
b. Aged or disabled client, eligible spouse, and a dependent relative	\$1281 <u>\$1355</u>
c. Blind client and a dependent relative	\$984 <u>\$1040</u>
d. Blind client, aged or disabled spouse, and a dependent relative	\$1303 <u>\$1377</u>
e. Blind client, blind spouse, and a dependent relative	\$1325 <u>\$1399</u>

ITEM 4. Amend subrule 52.1(3), introductory paragraph, as follows:

52.1(3) Residential care. Payment to a recipient in a residential care facility shall be made on a flat per diem rate of \$17.86 or on a cost-related reimbursement system with a maximum per diem rate of ~~\$26.95~~ \$28.14. The department shall establish a cost-related per diem rate for each facility choosing this method of payment according to rule 441—54.3(249).

ITEM 5. Amend subparagraph **52.1(3)“a”(2)** as follows:

(2) An allowance of ~~\$91~~ \$94 to meet personal expenses and Medicaid copayment expenses.

[Filed Emergency 12/10/08, effective 1/1/09]

[Published 12/31/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/31/08.

ARC 7471B**CREDIT UNION DIVISION[189]****Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 17A, the Credit Union Division hereby amends Chapters 1, 3, 6, 7, 9 to 17, 19, 23, and 25, Iowa Administrative Code.

The purpose of these amendments is to update references to Iowa Code chapter 533.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 5, 2008, as **ARC 7319B**. No comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 533.

These amendments will become effective on February 4, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 1, 3, 6, 7, 9 to 17, 19, 23, 25] is being omitted. These amendments are identical to those published under Notice as **ARC 7319B**, IAB 11/5/08.

[Filed 12/10/08, effective 2/4/09]

[Published 12/31/08]

[For replacement pages for IAC, see IAC Supplement 12/31/08.]

ARC 7444B**ELDER AFFAIRS DEPARTMENT[321]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department hereby adopts amendments to Chapter 16, "Senior Living Coordinating Unit," Iowa Administrative Code.

These amendments allow the Senior Living Coordinating Unit to appoint work groups to research and make recommendations on issues to be considered by the Unit and reduce the number of required meetings.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 10, 2008, as **ARC 7129B**. The public comment period on this Notice ended October 1, 2008.

Two comments regarding the amendments to Chapter 16 were received. One comment was unrelated to the amendments. The second comment expressed concern over the reduction in the number of annual meetings held by the Senior Living Coordinating Unit (from six to four).

The consensus among members of the Senior Living Coordinating Unit is that fewer meetings will result in improved attendance, thereby increasing the odds of achieving a quorum at the meetings. No changes were made as a result of this comment.

These amendments are identical to those published under Notice.

The Commission adopted these amendments during its regularly scheduled meeting on December 3, 2008.

These amendments will become effective February 4, 2009.

These amendments are intended to implement Iowa Code chapters 21, 231 and 249H.

The following amendments are adopted.

ITEM 1. Adopt the following **new** subrule 16.2(7):

16.2(7) The unit may, on an as-needed basis, appoint work groups related to specific issues.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

ITEM 2. Amend rule 321—16.4(21,231,249H) as follows:

321—16.4(21,231,249H) Meetings. The unit shall meet a minimum of ~~six~~ four times a year. Meeting dates shall be set by members of the unit at the first meeting following July 1 of each year. The chairperson may call a special meeting upon five days' notice.

[Filed 12/4/08, effective 2/4/09]

[Published 12/31/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/31/08.

ARC 7445B

ELDER AFFAIRS DEPARTMENT[321]

Adopted and Filed

Pursuant to the authority of Iowa Code section 231.14 and Iowa Code chapters 231E and 633, the Elder Affairs Department hereby adopts new Chapter 22, "Office of Substitute Decision Maker," Iowa Administrative Code.

This new chapter implements the office of substitute decision maker as created in Iowa Code chapter 231E and establishes standards and procedures for those appointed as substitute decision makers. It also establishes the qualifications of consumers eligible for services.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 10, 2008, as **ARC 7133B**. The public comment period on this Notice ended October 1, 2008.

Two comments regarding new Chapter 22 were received. One expressed concern that the services offered to consumers would result in a heavy caseload for the Elder Affairs Department. The Department will only serve as a substitute decision maker in cases of last resort, when no other decision maker is available.

The second comment expressed concerns about monthly fees that may be charged to consumers based upon their assets, as outlined in subrule 22.13(4), and fees for the sale of real estate, as outlined in paragraph 22.13(5)"b." The Department believes that these fees are both reasonable and justified. No changes were made as a result of the comments.

Since publication of the Notice, one editorial change has been made. In rule 22.6(231E,633), two references to the term "ward" have been changed to "consumer" in order to ensure consistency throughout the chapter.

The Commission adopted these rules during its regularly scheduled meeting on December 3, 2008.

These rules will become effective February 4, 2009.

These rules are intended to implement Iowa Code chapters 231E and 633.

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 22] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 7133B**, IAB 9/10/08.

[Filed 12/4/08, effective 2/4/09]

[Published 12/31/08]

[For replacement pages for IAC, see IAC Supplement 12/31/08.]

ARC 7473B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 22, "Controlling Pollution," Iowa Administrative Code.

The purpose of this amendment is to increase the maximum dollar per-ton fee specified in 567—subrule 22.106(1). This is the maximum fee that the Environmental Protection Commission can establish on the first 4,000 tons of actual emissions of each regulated air pollutant emitted annually from sources subject to the Title V operating permit program. There are currently 273 sources in the state that are subject to this program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 8, 2008, as **ARC 7220B**. A public hearing was held on November 12, 2008. The Department received one written comment prior to the end of the public comment period on November 13, 2008. One written comment was also received at the public hearing. No oral comments were received. Based on consideration of the comments received, the Department has changed the duration of the fee cap from five to three years. The Department has also revised the proposed fee cap from \$62 to \$56, which is estimated to provide sufficient funding for three years rather than the proposed five years. A public participation responsiveness summary is available from the Department upon request.

Budget projections and estimates of actual emissions indicate that the annual Title V fee will have to be increased above \$39 per ton to maintain the current level of service in state fiscal years 2010 through 2012. The Department will continue to work with interested parties to examine alternate fee scenarios.

The increase from \$39 per ton to \$56 per ton is based on budget projections for the next three state fiscal years and on estimates of actual emissions during this period. Basing the maximum fee on budget projections for the next three state fiscal years should prevent the need for the Commission to change the maximum dollar per-ton fee provision in subrule 22.106(1) again for at least this period of time. The need to increase the maximum fee to maintain the current level of services is the result of the combination of projected increases in staff salaries due to negotiated contract increases, including indirect costs; increased equipment and operating costs for the state's ambient air monitoring network; and projected decreases in actual emissions.

This amendment is intended to implement Iowa Code section 455B.133.

This amendment will be effective on February 4, 2009.

The following amendment is adopted.

Amend subrule 22.106(1) as follows:

22.106(1) Fee established. Any person required to obtain a Title V permit shall pay an annual fee based on the total tons of actual emissions of each regulated air pollutant, beginning November 15, 1994. Beginning July 1, 1996, Title V operating permit fees will be paid on or before July 1 of each year. The fee shall be based on actual emissions required to be included in the Title V operating permit application and the annual emissions statement for the previous calendar year. The department and the commission will review the fee structure on an annual basis and adjust the fee as necessary to cover all reasonable costs required to develop and administer the programs required by the Act. The department shall submit the proposed budget for the following fiscal year to the commission no later than the March meeting. The commission shall set the fee based on the reasonable cost to run the program and the proposed budget no later than the May commission meeting of each year. The commission shall provide an opportunity for public comment prior to setting the fee. The commission shall not set the fee higher than ~~\$39~~ \$56 per ton without adopting the change pursuant to formal rule making.

[Filed 12/10/08, effective 2/4/09]

[Published 12/31/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/31/08.

ARC 7474B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.304, the Environmental Protection Commission hereby amends Chapter 113, “Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Nonhazardous Wastes,” Iowa Administrative Code.

The amendment to subrule 113.2(8) arose from public comments to and an objection placed upon this subrule on December 11, 2007, by the Administrative Rules Review Committee pursuant to Iowa Code section 17A.4(5). The Administrative Rules Review Committee determined that subrule 113.2(8) is unreasonable and stated, “These members are concerned that subrule 113.2(8) constitutes an improper regulatory taking.” The legal effect of this objection is to shift the burden of proof to the Department in any legal challenge to the subrule. Such legal challenge has been filed.

In June of 2007 the Department proposed and the Commission adopted existing subrule 113.2(8) for the following purposes:

1. To provide protection of groundwater to the maximum extent practical in compliance with Iowa Code section 455E.5(1);
2. To achieve compliance with the Federal Resource Conservation and Recovery Act and applicable regulations adopted by the United States Environmental Protection Agency; and
3. To the extent specific Iowa municipal solid waste landfills have existing groundwater contamination, to minimize the risk of additional contamination at those sites.

In light of the contradictory or unclear positions taken by the U.S. EPA since the adoption of existing subrule 113.2(8), the comments received from the regulated public, and the actions of the Administrative Rules Review Committee, the Commission has determined that it is appropriate to review and revise subrule 113.2(8). Ultimately, the Commission has determined that the revision of subrule 113.2(10) and rule 567—113.3(455B) are necessary to effectuate the revision of subrule 113.2(8).

As part of this revision, the Commission is also adding paragraph 113.2(8)“d” to address questions that have arisen in regard to the current closure requirements for sites that were closed pursuant to the previous rule requirements.

The Commission approved a Notice of Intended Action on May 13, 2008, proposing amendments to subrule 113.2(8). The Notice of Intended Action was published in the Iowa Administrative Bulletin on June 4, 2008, as **ARC 6828B**. A public hearing was held July 10, 2008, with comments accepted through that date. Fifteen individuals commented on the proposed amendments to subrule 113.2(8). With the exception of a few individuals who supported the Notice of Intended Action as proposed, most commented that the proposed revision was insufficient because it was either too flexible in allowing some landfill agencies to avoid complying with the liner requirements and to continue placing waste in unlined areas or not flexible enough because it did not allow the use of the entire landfill cell, specifically the side slope over unlined areas, that was previously constructed and approved. Persons who are interested in viewing the public comments submitted by individuals and organizations may visit the Department’s Record Center on the 5th floor of the Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. Copies of the comments may also be requested by contacting the Record Center at (515)242-5818.

After review of the public comments and further analysis, the Department considered the following options in regard to the amendment of paragraph 113.2(8)“c.” The Commission’s decision is based upon a review of these options and the Department’s recommendations in regard thereto. The following summary is intended to serve as the response to the public comments received.

Option #1: Withdraw the proposed rule making.

The Department considered the environmental and regulatory impacts of withdrawing the rule making and retaining the existing rule. Existing paragraph 113.2(8)“c” reads as follows:

“c. Existing MSWLF units that have an approved leachate collection system and a basal liner beneath the unit that is either a composite liner or an alternative liner modeled at an approved point of compliance,

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but that is not continuous onto the sides of the unit, may continue to place waste after October 1, 2007, in those portions of the unit directly underlaid by the basal liner. Such units shall be brought into compliance in accordance with subrule 113.2(9) by constructing a leachate collection system and liner on the sides of the unit that meet the requirements of subrule 113.7(5) and are continuous beneath and onto the sides of the unit.”

This course of action maintains the maximum level of groundwater protection. However, the Department believes that a more narrowly tailored approach may allow the Department to achieve its environmental protection objectives while reducing the regulatory impacts on Iowa municipal solid waste landfills. Additionally, the existence of the objection on this subrule and the pending lawsuit create a level of uncertainty surrounding this subrule. Such uncertainty is contrary to the interest of the public or the regulated community and impedes the Department’s ability to implement current 567—Chapter 113.

Option #2: Adopt revised paragraph 113.2(8)“c” as set forth in the Notice of Intended Action.

The Department considered the environmental and regulatory impacts of adopting the amendments to subrule 113.2(8) as proposed in the Notice of Intended Action. The Notice of Intended Action proposed the following amendment to the language of paragraph 113.2(8)“c”:

“c. Existing MSWLF units that have an approved leachate collection system and a basal liner beneath the unit that is either a composite liner or an alternative liner modeled at an approved point of compliance, but that is not continuous onto the sides of the unit, may continue to place waste after October 1, 2007, in those portions of the unit directly underlaid by the basal liner. ~~Such units shall be brought into compliance in accordance with subrule 113.2(9) by constructing a leachate collection system and liner on the sides of the unit that meet the requirements of subrule 113.7(5) and are continuous beneath and onto the sides of the unit.~~ Any new unit or lateral expansion of an existing unit shall be constructed with a leachate collection system and liner that meet the requirements of subrule 113.7(5) and are continuous beneath and onto the sides of the new unit or lateral expansion of an existing unit.”

This course of action would maintain the requirement that all future disposal of solid waste be over a basal landfill liner that has been approved at some point by the Department while allowing municipal solid waste landfills to more fully recoup their investment in these compliant or previously compliant MSWLF units. The maximum level of groundwater protection is provided by the continued requirement that waste be deposited only over an approved basal liner to avoid the side slope area in question. The concerns raised in regard to this option relate to the fact that landfills which may never dispose of waste vertically over an unlined MSWLF unit in the future would still be required at the next time of construction to install a side liner over the top of an already approved basal liner so that the side liner is continuous with the basal liner in the horizontal expansion area. The Department now believes that a more narrowly tailored approach may allow the Department to achieve its environmental protection objectives while reducing the regulatory impacts on Iowa municipal solid waste landfills.

Option #3: Revert to pre-2007 rule language.

The parties opposed to the current language of paragraph 113.2(8)“c” have repeatedly proposed that the Department rescind paragraph 113.2(8)“c” and readopt the language of former subrule 113.7(1) which then read as follows:

“**113.7(1)** Design and construction. Sanitary disposal projects designed and constructed in accordance with rules in effect at the time of construction shall not be required to be redesigned or reconstructed due to subsequent rule changes unless the department finds that such facilities are causing pollution. Such facilities shall be brought into compliance with rules in effect at the time of reconstructing, enlarging, or otherwise modifying the sanitary disposal project, or at the time of permit renewal.”

This language is similar to that of existing paragraph 113.2(10)“a,” which reads as follows:

“a. Owners or operators of existing MSWLF units that have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner modeled at an approved point of compliance, shall not be required to redesign or reconstruct the approved leachate collection system or liner due to subsequent amendments to these rules unless the department finds that such facilities are causing pollution. This requirement shall not preclude compliance with paragraph 113.2(8)‘c.’”

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The primary difference between former subrule 113.7(1) and existing paragraph 113.2(10)“a” is that existing paragraph 113.2(10)“a” applies only to amendments adopted after December 10, 2007.

The Department has considered the environmental and regulatory impacts of readopting the language of former subrule 113.7(1) as final. The Department rejects the adoption of the language of former subrule 113.7(1) because the subrule could allow the continued use of the completely unlined landfills closed in 2007. Readoption of the language of the former subrule is also rejected because it does not specify what level of pollution is necessary to justify redesign or reconstruction and does not clarify whether the closure of noncompliant cells is required at the time of permit renewal, regardless of the existence of pollution. These issues remain unresolved with paragraph 113.2(10)“a.”

Option #4: Rescind paragraph 113.2(8)“c” and make changes elsewhere in 567—Chapter 113 to achieve the purposes of this rule making.

The Department has determined, and the Commission agrees, that the best way to effectuate the purpose stated in the Notice of Intended Action, to allow municipal solid waste landfills to continue to use previously approved landfill cells which have a basal liner and leachate collection system until those cells have been filled, is to rescind paragraph 113.2(8)“c,” to revise paragraph 113.2(10)“a” to require the installation of a separatory liner that meets current rule requirements only over previous waste disposal areas which have no liner already beneath the waste that is in place, to rescind the definition of “liner” found in rule 567—113.3(455B), and to add a definition of “vertical expansion” to rule 567—113.3(455B). This approach results in the replacement of the prescriptive requirements of current paragraph 113.2(8)“c” with requirements designed to:

1. Allow the Department to focus compliance efforts on those municipal solid waste landfills (MSWLFs) that have remaining disposal capacity over those unlined landfill units that are not in compliance with current liner and leachate collection system requirements.

2. Remove the three-year time frame for constructing a liner along the side slope over a noncompliant MSWLF unit by instead allowing site-specific conditions to dictate when or if the side liner is necessary.

3. Clarify that waste placement in areas over a previously filled MSWLF unit constitutes a vertical expansion by adding a definition for “vertical expansion.”

4. Clarify that, prior to the disposal of waste in vertical expansion areas, a separatory liner and leachate collection system must be installed between the vertical expansion and underlying noncompliant MSWLF unit that meet current rule requirements. This action ensures that all waste disposal activities occur over a compliant liner system with leachate collection.

5. Allow an agreed-to amount of time for continued waste placement in the vertical expansion area in order to obtain an adequate slope for building the separatory liner and leachate collection system.

6. Remove the definition of “liner” so that it is clear that the separatory liner in the vertical expansion area does not have to be connected to the basal liner in the horizontal expansion area. The removal of this definition is particularly beneficial in instances where the vertical expansion area has already received waste and would allow MSWLF owners to avoid having to construct a liner over areas that already have a compliant basal liner.

7. Address the objection filed by the Administrative Rules Review Committee in regard to existing paragraph 113.2(8)“c.”

8. Reduce the regulatory burden of paragraph 113.2(8)“c” on those MSWLFs with remaining disposal capacity only over compliant MSWLF units by not requiring construction of an additional liner over an existing basal liner and leachate collection system.

The Environmental Protection Commission has adopted 567 IAC 4.9(17A), which adopts by reference 561 IAC 4.9(17A), through which the Department has adopted the Iowa uniform rules on agency procedure for rule making. Rule 567—4.9(17A) of the uniform rules on agency procedure for rule making provides for variance between adopted rule and published notice of proposed rule adoption, as specified in subrules 4.9(1) and 4.9(2), which read as follows:

“4.9(1) The agency shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

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

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

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

“**4.9(2)** In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the department shall consider the following factors:

“a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

“b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

“c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.”

The Notice of Intended Action for this rule making stated: “The amendment is intended to allow municipal solid waste landfills to continue to use previously approved landfill cells which have a basal liner and leachate collection system until those cells have been filled.” The amendments contained herein include the revision of additional subrules but do no more than allow municipal solid waste landfills to continue to use previously approved landfill cells that have a basal liner and a leachate collection system until those cells have been filled as stated in the Notice of Intended Action.

The changes from the Notice of Intended Action have the following impacts:

1. Not to require the installation of a liner on top of existing waste at the next time of construction regardless of site-specific conditions that may or may not already exist.

2. To require the construction of a compliant liner only in those areas that do not already have in place an approved liner and leachate collection system, thereby avoiding the need for any excavation of waste or attempts to model a barrier layer that has already been covered.

3. Remove the definition of “liner” so that it is clear that the separatory liner in the vertical expansion area does not have to be connected to the basal liner in the horizontal expansion area. The removal of this definition is particularly beneficial in instances where waste has already been partially placed in areas of the vertical expansion area and again would allow MSWLF owners to avoid having to construct a liner over areas that already have a compliant basal liner. Removal of the definition of “liner” could also allow for the possibility of successfully modeling a liner design that does not have a continuous connection between the basal liner and other proposed liners to be employed.

4. To clearly define that waste disposal on top of or against the side slopes of previously filled MSWLF units is considered a vertical expansion of the underlying unit.

The final amendments are in conformity with the uniform rule as set forth above. The amendments are in regard to the same subject matter as the Notice of Intended Action. The amendments are a logical outgrowth of the Notice of Intended Action. Interested parties had sufficient notice that the Commission was proposing a rule making in regard to the continued use of previously approved MSWLF units.

These amendments are intended to implement Iowa Code section 455B.304.

These amendments shall become effective February 4, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule 113.2(8) as follows:

113.2(8) Closure of existing MSWLF units.

a. Existing MSWLF units that cannot make the demonstration specified in paragraph 113.6(2) “a,” pertaining to airports, in 113.6(2) “b,” pertaining to floodplains, or in 113.6(2) “f,” pertaining to unstable areas, must close in accordance with rule 113.12(455B) and conduct postclosure activities in accordance with rule 113.13(455B).

b. ~~Except as provided in paragraph 113.2(8) “e” below, existing~~ Existing MSWLF units that do not have an approved leachate collection system and a composite liner or a leachate collection system and

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an alternative liner modeled at an approved point of compliance shall cease accepting waste by October 1, 2007.

~~c. Existing MSWLF units that have an approved leachate collection system and a basal liner beneath the unit that is either a composite liner or an alternative liner modeled at an approved point of compliance, but that is not continuous onto the sides of the unit, may continue to place waste after October 1, 2007, in those portions of the unit directly underlaid by the basal liner. Such units shall be brought into compliance in accordance with subrule 113.2(9) by constructing a leachate collection system and liner on the sides of the unit that meet the requirements of subrule 113.7(5) and are continuous beneath and onto the sides of the unit.~~

d. Those portions of existing MSWLF units demonstrating placement of final cover in conformance with previously approved plans and specifications or regulations in effect at the time of such closure shall not be required to apply additional cover solely to achieve compliance with rule 113.12(455B).

ITEM 2. Amend paragraph **113.2(10)“a”** as follows:

a. Owners or operators of existing MSWLF units that have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner modeled at an approved point of compliance, shall not be required to redesign or reconstruct the ~~approved leachate collection system or liner~~ MSWLF units due to subsequent amendments to these rules ~~subsequent to such approval unless the department finds that such facilities are causing pollution. This requirement shall not preclude compliance with paragraph 113.2(8)“e.”~~ or that continued use of such facilities results in a vertical expansion on top of or against the side slopes of a previously filled noncompliant MSWLF unit. Prior to waste placement in the vertical expansion area, revised design plans shall be submitted to include construction of a separatory liner and leachate collection system that comply with all the requirements of subrule 113.7(5) to be placed between the area of vertical expansion and the underlying noncompliant MSWLF unit. The department, in conjunction with the MSWLF owner or operator, shall determine the maximum amount of time necessary for continued waste placement on top of or against the previously filled noncompliant MSWLF unit to achieve an adequate slope in order to maintain drainage of leachate to the leachate collection system after expected settlement.

ITEM 3. Rescind the definition of “Liner” in rule **567—113.3(455B)**.

ITEM 4. Adopt the following **new** definition in rule **567—113.3(455B)**:

“*Vertical expansion*” means additional waste placement on top of or against the side slopes of a previously filled MSWLF unit, whether active, closed, or inactive.

[Filed 12/10/08, effective 2/4/09]

[Published 12/31/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/31/08.

ARC 7475B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.304, the Environmental Protection Commission hereby amends Chapter 119, “Waste Oil,” Iowa Administrative Code.

The adopted amendments incorporate the changes made to Iowa Code section 455D.13 as amended by 2008 Iowa Acts, House File 2668. This legislation requires retailers that sell oil filters to post a sign informing their customers of the nearest collection site for used oil filters. It also requires businesses to recycle the used oil filters that they generate.

The adopted changes to Chapter 119 include the addition of collection requirements for used oil filters, the addition of signage requirements for filter retailers, updates to the signage requirements for oil retailers, removal of some of the Department’s responsibilities, and rescission of the state procurement

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regulations. The amendments also change the term “waste oil” to “used oil” to be consistent with Iowa Code section 455D.13 and EPA regulations.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7219B** on October 8, 2008. A public hearing was held on October 28, 2008; however, no comments were received at the hearing or during the public comment period. The adopted amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code section 455D.13.

These amendments will become effective February 4, 2009.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [119.1 to 119.9] is being omitted. These amendments are identical to those published under Notice as **ARC 7219B**, IAB 10/8/08.

[Filed 12/10/08, effective 2/4/09]

[Published 12/31/08]

[For replacement pages for IAC, see IAC Supplement 12/31/08.]

ARC 7460B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

Iowa Code section 68A.201 requires campaign committees to appoint certain officers. Some committees appoint officers that are not required under the statute. The amendment clarifies that a committee is only required to disclose on the statement of organization registering the committee with the Board those officers who are required by statute to be appointed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 24, 2008, as **ARC 7181B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on December 4, 2008.

This amendment is intended to implement Iowa Code section 68A.201.

This amendment will become effective on February 4, 2009.

The following amendment is adopted.

Amend subrule 4.4(1) as follows:

4.4(1) Committee officers. The committee shall disclose on the statement of organization the name, mailing address, telephone number, and office of each committee officer whom the committee is required by statute to appoint. Each candidate’s committee shall appoint a treasurer who shall be an Iowa resident and at least 18 years of age. ~~A candidate’s committee may also appoint a committee chairperson who is not limited by residency or age.~~ Every other committee shall appoint a separate treasurer and chairperson, each of whom shall be at least 18 years of age. The committee may appoint other officers not required by statute without restriction on residency or age, and the committee is not required to disclose these officers. Except for a candidate’s committee, every committee shall either have an Iowa resident as treasurer or shall maintain all of the committee’s funds in bank accounts in a financial institution in Iowa.

[Filed 12/8/08, effective 2/4/09]

[Published 12/31/08]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/31/08.

ARC 7461B**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendment clarifies that a candidate registering a committee by filing a Statement of Organization for one office who then files an amended Statement of Organization for another office must continue to file campaign disclosure reports regardless of whether the candidate has exceeded \$750 in campaign activities for the new office sought.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 24, 2008, as **ARC 7188B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on December 4, 2008.

This amendment is intended to implement Iowa Code section 68A.201.

This amendment will become effective on February 4, 2009.

The following amendment is adopted.

Amend subrule 4.6(2) as follows:

4.6(2) *New office sought.* A candidate who filed a statement of organization for one office but eventually seeks another office may file an amended statement of organization to reflect the change in office sought in lieu of dissolving the old committee and organizing a new committee. A candidate filing an amended statement of organization for a new office shall continue to file the required campaign reports regardless of whether the \$750 financial filing threshold for the new office has been exceeded. A candidate who has filed a statement of organization for one office and who then exceeds the financial activity threshold as set forth in Iowa Code section 68A.102(5) for a new office shall, within ten days of exceeding the threshold, file either an amended statement of organization disclosing information for the new office sought or organize and register a new committee.

[Filed 12/8/08, effective 2/4/09]

[Published 12/31/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/31/08.

ARC 7457B**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

A federal or out-of-state political committee that makes a contribution to an Iowa committee is required to file a Verified Statement of Registration (VSR) with each contribution in excess of \$50. The amendments reflect that a VSR filed electronically via the Board's Web site is deemed signed when electronically filed.

The amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on September 24, 2008, as **ARC 7185B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on December 4, 2008.

These amendments are intended to implement Iowa Code section 68A.201(5).

These amendments will become effective on February 4, 2009.

The following amendments are adopted.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

ITEM 1. Amend paragraph **4.32(2)“h”** as follows:

h. An attested statement that the jurisdiction with which the out-of-state committee is registered has reporting requirements substantially similar to those of Iowa Code chapter 68A. The statement shall include confirmation that the contribution is made from an account that does not accept contributions prohibited by Iowa Code section 68A.503 ~~as amended by 2007 Iowa Acts, Senate File 42, section 2,~~ unless the contribution from the out-of-state committee is made to an Iowa ballot issue committee.

ITEM 2. Amend subrule 4.32(3) as follows:

4.32(3) Signature. The VSR shall be signed by the individual filing the VSR on behalf of the out-of-state committee. A VSR that is filed electronically using the board's Web site is deemed signed when filed.

ITEM 3. Amend rule ~~351—4.32(68A)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 68A.201(5) ~~as amended by 2007 Iowa Acts, Senate File 39, section 3.~~

[Filed 12/8/08, effective 2/4/09]

[Published 12/31/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/31/08.

ARC 7462B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendment establishes the procedure by which reports filed with the Internal Revenue Service by a 527 Committee that engages in issue advocacy in Iowa are posted on the Board's Web site.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 24, 2008, as **ARC 7189B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on December 4, 2008.

This amendment is intended to implement Iowa Code section 68A.401A.

This amendment will become effective on February 4, 2009.

The following amendment is adopted.

Adopt the following new rule 351—4.34(68A):

351—4.34(68A) Copies of reports filed by 527 Committees. Iowa Code section 68A.401A requires the board to adopt a procedure for 527 Committees that file reports with the Internal Revenue Service and engage in issue advocacy in Iowa to file copies of those reports with the board. If a 527 Committee notifies the board that it is filing reports with the Internal Revenue Service, the 527 Committee will be deemed in compliance with Iowa Code section 68A.401A. The board will then establish on its Web site a link to the reports filed with the Internal Revenue Service, or the board will otherwise post on its Web site the reports filed with the Internal Revenue Service.

This rule is intended to implement Iowa Code section 68A.401A.

[Filed 12/8/08, effective 2/4/09]

[Published 12/31/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/31/08.

ARC 7459B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

A permanent organization that makes a contribution in excess of \$750 to an Iowa committee is required to file Form DR-OTC with the Board. The amendments reflect that Form DR-OTC may now be filed electronically via the Board's Web site.

The amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on September 24, 2008, as **ARC 7186B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on December 4, 2008.

These amendments are intended to implement Iowa Code sections 68A.102(18) and 68A.402.

These amendments will become effective on February 4, 2009.

The following amendments are adopted.

ITEM 1. Amend paragraph **4.35(1)"f"** as follows:

f. ~~The signature and date of the individual~~ date and signature of the person filing Form DR-OTC. A Form DR-OTC that is filed electronically using the board's Web site is deemed signed when filed.

ITEM 2. Amend subrule 4.35(2) as follows:

4.35(2) Place of filing. Form DR-OTC shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, ~~or filed by fax at (515)281-3701~~ (515)281-4073, or filed electronically using the board's Web site at www.iowa.gov/ethics.

ITEM 3. Amend subrule 4.35(3) as follows:

4.35(3) Time of filing. Form DR-OTC shall be filed with the board within ten days after the one-time contribution in excess of \$750 is made. The form must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or before the report due date. A faxed or electronically filed Form DR-OTC must be submitted on or before 11:59 p.m. of the tenth day after the organization of the committee is required. If the tenth day falls on a Saturday, Sunday, or holiday on which the board office is closed, the filing deadline is extended to the next working day when the board office is open.

[Filed 12/8/08, effective 2/4/09]

[Published 12/31/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/31/08.

ARC 7458B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 7, "Personal Financial Disclosure," Iowa Administrative Code.

Certain officials and employees of the executive branch and candidates for statewide office are required to file Form PFD with the Board. The amendments reflect that Form PFD may now be filed electronically via the Board's Web site.

The amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on September 24, 2008, as **ARC 7187B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on December 4, 2008.

These amendments are intended to implement Iowa Code sections 68B.32A(4), 68B.35 and 68B.35A.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

These amendments will become effective on February 4, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [7.1, 7.3(5)] is being omitted. These amendments are identical to those published under Notice as **ARC 7187B**, IAB 9/24/08.

[Filed 12/8/08, effective 2/4/09]

[Published 12/31/08]

[For replacement pages for IAC, see IAC Supplement 12/31/08.]

ARC 7469B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

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

This amendment replaces the current qualified allocation plan for the low-income housing tax credit program with the second amended 2009 qualified allocation plan, which is incorporated by reference in rule 265—12.1(16).

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 5, 2008, as **ARC 7294B**. The Authority received no public comments on the Second Amended Plan or the proposed amendment. This amendment was also Adopted and Filed Emergency and was published in the Iowa Administrative Bulletin on November 5, 2008, as **ARC 7293B**.

This amendment is intended to implement Iowa Code Supplement sections 16.5(1)“r,” Iowa Code sections 16.52, 17A.12, and 17A.16, and IRC Section 42.

The Iowa Finance Authority adopted this amendment on December 10, 2008.

This amendment will become effective on February 4, 2009.

The following amendment is adopted.

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 2009 ~~First~~ Second Amended Qualified Allocation Plan shall be the qualified allocation plan for the allocation of 2009 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 September 3, 2008.

[Filed 12/10/08, effective 2/4/09]

[Published 12/31/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/31/08.

ARC 7451B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences hereby rescinds Chapter 59, “Administrative and Regulatory Authority for the Board of Cosmetology

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

Arts and Sciences,” amends Chapter 60, “Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors of Cosmetology Arts and Sciences,” and Chapter 61, “Licensure of Salons and Schools of Cosmetology Arts and Sciences,” rescinds Chapter 62, “Fees,” and amends Chapter 63, “Sanitation for Salons and Schools of Cosmetology Arts and Sciences,” Chapter 64, “Continuing Education for Cosmetology Arts and Sciences,” and Chapter 65, “Discipline for Cosmetology Arts and Sciences Licensees, Instructors, Salons, and Schools,” Iowa Administrative Code.

These amendments rescind duplicative language found in 645—Chapters 4 and 5; clarify documentation requirements for licensure; update educational requirements for instructors to be consistent with educational programs available for instructor applicants; amend training requirements for certification in microdermabrasion, chemical peels, laser and intense pulsed light (IPL) based on public comments received following the adoption of amendments published as **ARC 6410B** in the November 21, 2007, issue of the Iowa Administrative Bulletin; reduce hours of continuing education required for license reactivation to be consistent with continuing education requirements for license renewal; clarify posting requirements for demonstrator permits, salons, and schools; and update rules to be consistent with legislative changes promulgated by 2008 Iowa Acts, House File 2212.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 8, 2008, as **ARC 7221B**. A public hearing was held on November 4, 2008, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No comments were received, and no changes have been made to the amendments published under Notice.

These amendments were adopted by the Board of Cosmetology Arts and Sciences on November 24, 2008.

These amendments will become effective on February 4, 2009.

These amendments are intended to implement Iowa Code chapters 21, 147, 157 and 272C.

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 [rescind Chs 59, 62; amend Chs 60, 61, 63 to 65] is being omitted. These amendments are identical to those published under Notice as **ARC 7221B**, IAB 10/8/08.

[Filed 12/5/08, effective 2/4/09]

[Published 12/31/08]

[For replacement pages for IAC, see IAC Supplement 12/31/08.]

ARC 7467B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code section 421.7(6), the Department of Revenue hereby adopts an amendment to Chapter 10, “Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments,” Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXI, No. 10, p. 1194, on November 5, 2008, as **ARC 7334B**.

Iowa Code section 421.7 requires the Director of Revenue to determine the interest rate for each calendar year. The Director has determined that the rate of interest on interest-bearing taxes arising under Iowa Code Title XVI shall be 8 percent for the calendar year 2009 (0.7 percent per month). The Department will also pay interest at the 8 percent rate on refunds.

This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective February 4, 2009, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This amendment is intended to implement Iowa Code section 421.7.

The following amendment is adopted.

REVENUE DEPARTMENT[701](cont'd)

Adopt the following **new** subrule 10.2(28):

10.2(28) Calendar year 2009. The interest rate upon all unpaid taxes which are due as of January 1, 2009, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2009. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2009. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2009.

[Filed 12/10/08, effective 2/4/09]

[Published 12/31/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/31/08.

ARC 7450B

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State hereby amends Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

The purpose of this amendment is to rescind the obsolete rule regarding SILO elections and replace it with a rule that sets forth the form of ballot to be used whenever the adoption, amendment or extension of a revenue purpose statement is proposed.

This amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin as **ARC 6991B** on July 30, 2008. In addition, this amendment was simultaneously Adopted and Filed Emergency as **ARC 6992B**, effective July 1, 2008.

Public comments were received during the Administrative Rules Review Committee meeting held on August 12, 2008, and during a subsequent meeting on September 18, 2008, from Mary Gannon, Attorney for the Iowa Association of School Boards. In addition, public comments were received from Christina L. Gruenhagen, Government Relations Counsel for the Iowa Farm Bureau. As a result of the comments received on the amendment and additional internal review, the Secretary of State made the following change to the Noticed amendment.

In subrule 21.803(3), the language was changed to clarify that the full text of the revenue purpose statement must be included on the ballot, even for extensions of current revenue purpose statements.

This amendment is intended to implement 2008 Iowa Acts, House File 2663, section 29.

This amendment was adopted by the Secretary of State on December 5, 2008.

This amendment shall become effective February 4, 2009, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Rescind rule 721—21.803(423E) and adopt the following **new** rule in lieu thereof:

721—21.803(82GA, HF2663) Revenue purpose statement ballots. When a school district wishes to adopt, amend or extend the revenue purpose statement specifying the uses of the funds received from the secure an advanced vision for education fund, which is also referred to as the "penny sales and services tax for schools," the following ballot formats shall be used.

21.803(1) Ballot to propose a revenue purpose statement. The ballot for an election to propose a revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

SECRETARY OF STATE[721](cont'd)

- YES
 NO

Summary: To adopt a revenue purpose statement specifying the use of money from the penny sales and services tax for schools received by _____ School District.

In the _____ School District, the following revenue purpose statement, which specifies the use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) shall be adopted:

(Insert here the revenue purpose statement that was adopted by the school board and that states the intended uses of the funds by the school district. The use or uses must be among the approved uses of the tax that are authorized by 2008 Iowa Acts, House File 2663, section 29.)

21.803(2) *Ballot to amend a revenue purpose statement.* The ballot for an election to decide a change in the revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

- YES
 NO

Summary: To authorize a change in the use of money from the penny sales and services tax for schools received by _____ School District.

In the _____ School District, the revenue purpose statement, which specifies the use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) shall be changed.

Proposed uses. If the change is approved, the revenue purpose statement shall read as follows:

(Insert here the revenue purpose statement that was adopted by the school board and that states the intended uses of the funds by the school district. The use or uses must be among the approved uses of the tax that are authorized by 2008 Iowa Acts, House File 2663, section 29.)

Current uses. If the change is not approved, the funds shall continue to be used as follows:

(Insert here the current revenue purpose statement or list the current voter-approved uses of the funds by the school district, if the school infrastructure local option tax was adopted before the revenue purpose statement was required.)

21.803(3) *Ballot to extend a revenue purpose statement.* The ballot for an election to extend a revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

- YES
 NO

Summary: To authorize _____ School District to continue to spend money from the penny sales and services tax for schools for the previously approved uses until (specify date or insert amended date).

SECRETARY OF STATE[721](cont'd)

_____ School District is authorized to extend the current revenue purpose statement which specifies use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) received from (date) until (specify date or insert amended date). If an extension is not approved, the current revenue purpose statement will expire on (date). If an extension is approved, the revenue purpose statement will read as follows:

(Insert here the revenue purpose statement, including the new expiration date. If there is not a predicted expiration date, the ballot language must state that the revenue purpose statement will remain in effect until it is changed.)

This rule is intended to implement 2008 Iowa Acts, House File 2663, section 29.

[Filed 12/5/08, effective 2/4/09]

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