



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee" include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [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: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

Subscriptions and Distribution	Telephone:	(515)281-3568
	Fax:	(515)281-8027
KATHLEEN K. BATES, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Assistant Editor	Fax:	(515)281-8157
		(515)281-4424

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PROFESSIONAL LICENSURE DIVISION[645]

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 DEPARTMENT[871]**

Notice, Employer records and reports,
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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(249A)	(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).

Schedule for Rule Making 2003

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
Jan. 3 '03	Jan. 22 '03	Feb. 11 '03	Feb. 26 '03	Feb. 28 '03	Mar. 19 '03	Apr. 23 '03	July 21 '03
Jan. 17	Feb. 5	Feb. 25	Mar. 12	Mar. 14	Apr. 2	May 7	Aug. 4
Jan. 31	Feb. 19	Mar. 11	Mar. 26	Mar. 28	Apr. 16	May 21	Aug. 18
Feb. 14	Mar. 5	Mar. 25	Apr. 9	Apr. 11	Apr. 30	June 4	Sept. 1
Feb. 28	Mar. 19	Apr. 8	Apr. 23	Apr. 25	May 14	June 18	Sept. 15
Mar. 14	Apr. 2	Apr. 22	May 7	May 9	May 28	July 2	Sept. 29
Mar. 28	Apr. 16	May 6	May 21	May 23	June 11	July 16	Oct. 13
Apr. 11	Apr. 30	May 20	June 4	June 6	June 25	July 30	Oct. 27
Apr. 25	May 14	June 3	June 18	June 20	July 9	Aug. 13	Nov. 10
May 9	May 28	June 17	July 2	July 4	July 23	Aug. 27	Nov. 24
May 23	June 11	July 1	July 16	July 18	Aug. 6	Sept. 10	Dec. 8
June 6	June 25	July 15	July 30	Aug. 1	Aug. 20	Sept. 24	Dec. 22
June 20	July 9	July 29	Aug. 13	Aug. 15	Sept. 3	Oct. 8	Jan. 5 '04
July 4	July 23	Aug. 12	Aug. 27	Aug. 29	Sept. 17	Oct. 22	Jan. 19 '04
July 18	Aug. 6	Aug. 26	Sept. 10	Sept. 12	Oct. 1	Nov. 5	Feb. 2 '04
Aug. 1	Aug. 20	Sept. 9	Sept. 24	Sept. 26	Oct. 15	Nov. 19	Feb. 16 '04
Aug. 15	Sept. 3	Sept. 23	Oct. 8	Oct. 10	Oct. 29	Dec. 3	Mar. 1 '04
Aug. 29	Sept. 17	Oct. 7	Oct. 22	Oct. 24	Nov. 12	Dec. 17	Mar. 15 '04
Sept. 12	Oct. 1	Oct. 21	Nov. 5	Nov. 7	Nov. 26	Dec. 31	Mar. 29 '04
Sept. 26	Oct. 15	Nov. 4	Nov. 19	***Nov. 19***	Dec. 10	Jan. 14 '04	Apr. 12 '04
Oct. 10	Oct. 29	Nov. 18	Dec. 3	Dec. 5	Dec. 24	Jan. 28 '04	Apr. 26 '04
Oct. 24	Nov. 12	Dec. 2	Dec. 17	***Dec. 17***	Jan. 7 '04	Feb. 11 '04	May 10 '04
Nov. 7	Nov. 26	Dec. 16	Dec. 31	Jan. 2 '04	Jan. 21 '04	Feb. 25 '04	May 24 '04
Nov. 19	Dec. 10	Dec. 30	Jan. 14 '04	Jan. 16 '04	Feb. 4 '04	Mar. 10 '04	June 7 '04
Dec. 5	Dec. 24	Jan. 13 '04	Jan. 28 '04	Jan. 30 '04	Feb. 18 '04	Mar. 24 '04	June 21 '04
Dec. 17	Jan. 7 '04	Jan. 27 '04	Feb. 11 '04	Feb. 13 '04	Mar. 3 '04	Apr. 7 '04	July 5 '04
Jan. 2 '04	Jan. 21 '04	Feb. 10 '04	Feb. 25 '04	Feb. 27 '04	Mar. 17 '04	Apr. 21 '04	July 19 '04

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
16	Friday, January 17, 2003	February 5, 2003
17	Friday, January 31, 2003	February 19, 2003
18	Friday, February 14, 2003	March 5, 2003

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*****

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. Bates, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses Interleaf 6 to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

bruce.carr@legis.state.ia.us and
kathleen.bates@legis.state.ia.us

2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, First Floor South, Grimes State Office Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies by the Governor's office, but not on the diskettes; diskettes are returned unchanged.

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

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2002 SUMMER EDITION

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To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)“b” by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
CREDIT UNION DIVISION[189]		
Forms and instructions, 1.4 IAB 12/25/02 ARC 2207B	Conference Room, Suite 370 200 E. Grand Des Moines, Iowa	January 14, 2003 10 a.m.
Organization, chartering and field membership of a credit union, 2.1, 2.5(1), 2.12, 2.13(1) IAB 12/25/02 ARC 2208B	Conference Room, Suite 370 200 E. Grand Des Moines, Iowa	January 14, 2003 10 a.m.
Examination and supervision fees, rescind ch 3 IAB 12/25/02 ARC 2209B	Conference Room, Suite 370 200 E. Grand Des Moines, Iowa	January 14, 2003 10 a.m.
Real estate lending, 9.1 to 9.3 IAB 12/25/02 ARC 2211B	Conference Room, Suite 370 200 E. Grand Des Moines, Iowa	January 14, 2003 10 a.m.
Commercial paper characteristics, 17.1 IAB 12/25/02 ARC 2212B	Conference Room, Suite 370 200 E. Grand Des Moines, Iowa	January 14, 2003 10 a.m.
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Denial or revocation of a license upon proof of conviction of certain criminal offenses, 11.35, 12.2(2) IAB 12/11/02 ARC 2198B	Room 3 North Grimes State Office Bldg. Des Moines, Iowa	January 14, 2003 1 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Water quality standards, 61.2, 61.3, 62.8(2), 72.50(2) IAB 1/8/03 ARC 2228B	Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa	February 3, 2003 1 p.m.
	Meeting Room A, Public Library 123 S. Linn St. Iowa City, Iowa	February 4, 2003 10 a.m.
	Meeting Room, City Hall 400 Claiborne Dr. Decorah, Iowa	February 4, 2003 7 p.m.
	Community Center 530 W. Bluff St. Cherokee, Iowa	February 6, 2003 10 a.m.
	Community Meeting Room 15 N. Sixth St. Clear Lake, Iowa	February 6, 2003 6:30 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 7, 2003 1 p.m.
	Community Center 106 W. Niagara Garnavillo, Iowa	February 11, 2003 7 p.m.
Construction of confinement feeding operations in 100-year flood plains of major water sources, 65.1, 65.7 to 65.9, 65.15, 70.2, 70.4, 71.3, 71.13, 72.2, 72.3, 72.13 IAB 1/8/03 ARC 2229B	Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa	February 3, 2003 2:30 p.m.
	Meeting Room A, Public Library 123 S. Linn St. Iowa City, Iowa	February 4, 2003 11:30 a.m.
	Meeting Room, City Hall 400 Claiborne Dr. Decorah, Iowa	February 4, 2003 8 p.m.
	Community Center 530 W. Bluff St. Cherokee, Iowa	February 6, 2003 11:30 a.m.
	Community Meeting Room 15 N. Sixth St. Clear Lake, Iowa	February 6, 2003 8 p.m.
	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 7, 2003 2:30 p.m.
Beneficial use determinations: solid by-products as resources and alternative cover material, ch 108 IAB 12/11/02 ARC 2166B	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 8, 2003 10 a.m.
Registration of waste tire haulers, ch 116 IAB 1/8/03 ARC 2230B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 29, 2003 1 p.m.

HUMAN SERVICES DEPARTMENT[441]

Medicaid reimbursement for nursing facilities, 81.6(20), 81.10 IAB 12/25/02 ARC 2214B	First Floor Southeast Conference Rm. Sides 1 and 2 Hoover State Office Bldg. Des Moines, Iowa	January 15, 2003 8:30 to 9:30 a.m.
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MEDICAL EXAMINERS BOARD[653]

Resident licensure, 8.4(2), 9.1, 9.3 to 9.5, 10.1, 10.3 IAB 1/8/03 ARC 2243B	Suite C 400 SW Eighth St. Des Moines, Iowa	January 28, 2003 3 p.m.
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State parks and recreation areas, 61.2, 61.4, 61.9(2) IAB 1/8/03 ARC 2227B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 28, 2003 9 a.m.
Nonresident deer hunting— zone license quotas, 94.6(1) IAB 12/11/02 ARC 2187B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 15, 2003 3 p.m.
Wildlife importation, transportation and disease monitoring— identification and disposal requirements, 104.11 IAB 12/11/02 ARC 2183B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 15, 2003 1 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Cosmetology arts and sciences examiners, 60.3; ch 61; 62.1 IAB 12/25/02 ARC 2204B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	January 14, 2003 9 to 11 a.m.
Funeral directors, 100.1 to 100.11 IAB 1/8/03 ARC 2225B	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	January 29, 2003 9 to 11 a.m.

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WORKFORCE DEVELOPMENT DEPARTMENT[871]

Employer records and reports, 22.1 to 22.11, 22.13 to 22.18 IAB 1/8/03 ARC 2224B	1000 E. Grand Ave. Des Moines, Iowa	January 28, 2003 9:30 a.m.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

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

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

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

The following list will be updated as changes occur:

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Soil Conservation Division[27]

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ARC 2228B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 61, “Water Quality Standards,” Chapter 62, “Effluent and Pretreatment Standards: Other Effluent Limitations or Prohibitions,” and Chapter 72, “Criteria for Approval,” Iowa Administrative Code.

The proposed amendments will:

1. Change the current Class A use from a single use designation of primary contact recreation to three designations as follows: Class A1 - Primary Contact Recreational Use, Class A2 - Secondary Contact Recreational Use, and Class A3 - Children’s Recreational Use.
2. Establish numerical criteria for bacteria using *E. coli* as the indicator bacteria (replacing fecal coliform) and change the time period when the standards apply.
3. Provide for the adoption by reference of “Surface Water Classification” in new subrule 61.3(5). This document includes the use classifications of all waters listed in current subrule 61.3(5).
4. Add the Class B(CW) Cold Water use designation to approximately a 1-mile segment of the upper portion of South Cedar Creek in Clayton County.
5. Correct and clarify the locations or names of several water bodies or both the locations and names in subrules 61.2(2) and 72.50(2).

Iowa’s current Class A designation only includes primary contact recreation use, which includes activities such as swimming, diving, water skiing, and water contact recreational canoeing. The proposed amendment will add secondary contact recreation and children’s recreation uses. Secondary contact recreation includes activities such as fishing, commercial and recreational boating and any limited contact incidental to shoreline activities. The third use, children’s recreation, was added at the request of the Water Quality Standards Technical Advisory Committee (TAC) and includes any recreational uses by children such as wading and splashing in small streams. These three recreational uses will be designated as Class A1, A2, and A3 waters, respectively. The existing Class A waters will be reassigned to one of these new use designations with most existing Class A waters being redesignated as Class A1 waters. A Class B(CW) Cold Water stream and several small urban streams are being reclassified either as A2 or A3. It is expected that more waters will be designated as A2 or A3 waters in the future.

The use of *E. coli* as the indicator bacteria is considered to be a more accurate method of predicting pathogenic risk to humans due to recreational uses than fecal coliform bacteria, the current standard. The proposed criteria for *E. coli* were developed using guidance provided in the U.S. Environmental Protection Agency document “Ambient Water Quality Criteria for Bacteria – 1986” and draft implementation guidance dated May 2002. The documents also recommend the

adoption of average (geometric mean) and single sample maximum value criteria for bacteria. The guidance also suggests that states adopt “tiered” bacteria standards, with higher levels of bacteria being allowed for waters having less frequent or less intensive use. The proposed *E. coli* standards for A1, A2 and A3 waters will establish both average and maximum values and use a tiered system, with the standards for A2 waters being higher. A3 waters, however, would have the same values as A1 waters even though children typically would not be swimming or diving in these waters as they would in A1 waters.

Iowa’s current fecal coliform criterion only applies to Class A uses from April 1 through October 31, which was considered the period when the water was being used for primary contact recreation. However, the TAC members recommended that the recreational season be from March 15 through November 15. Thus, it is being proposed that the *E. coli* criteria for Class A1, Class A2, and Class A3 will apply from March 15 through November 15 with the exception of waters designated as Class B(CW) Cold Water or Class HQ High Quality. Secondary contact recreational uses such as fishing may occur on Class B(CW) and Class HQ waters throughout the year, so the bacteria criteria are proposed to apply year-round to protect those uses.

With the proposed revision to the bacteria criteria, the “Supporting Document for Iowa Water Quality Management Plans, Chapter IV,” will require minor modifications. The modifications will include “end of pipe” bacteria limits for direct discharges to Class A waters, decay of *E. coli* along non-Class A waters, and the considerations of high flow cutoff.

The current bacteria criterion applies “except when the waters are materially affected by surface runoff.” Inherent in this provision is the assumption that recreational uses will not occur at high flows (e.g., during floods). However, the term “materially affected by surface runoff” is somewhat arbitrary, and comments are being sought on what, if any, should be the elevated stream flow regime at which the criteria do not apply. The term being used for this upper flow regime is “high flow cutoff” and is referenced in Item 3 of the proposed amendments. Several suggestions have been discussed, including bank full flows and peak stream flow which is exceeded statistically only 5 percent of the time (i.e., 95th percentile recurrence interval flow).

The proposed amendments also allow the Department to adopt by reference in new subrule 61.3(5) the classification of surface waters listed in current subrule 61.3(5). This action was recommended by the Administrative Code Editor to ease maintenance of and access to the list. “Surface Water Classification,” the document adopted by reference, will have a format similar to that of the classification of surface waters found in current subrule 61.3(5). This adoption by reference will allow the Department to easily access and maintain the surface water classifications. Any changes to the water body uses in “Surface Water Classification” will still require Commission approval.

The proposed amendments will extend the current Class B(CW) Cold Water use designation of South Cedar Creek in Clayton County approximately one mile upstream from the current cold water designation. The proposed Class B(CW) Cold Water designation would read: “187. S. Cedar Creek (aka Cedar Creek) N. line of S7, T92N, R3W, Clayton Co. to County Road C17 (SW 1/4, S18, T92N, R3W, Clayton Co.).” This amendment would be made in the Department’s document, “Surface Water Classification,” which is to be incorporated by reference in new subrule 61.3(5) as proposed in Item 7 below. The Department fisheries staff have performed a

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field evaluation of the creek and recommend that this General Use portion receive the cold water designation due to the water conditions, aquatic life and physical habitat supportive of this use designation. This one-mile section receives the treated wastewater from the city of Garnavillo.

The locations and names of several of the water bodies listed in subrule 61.3(5) are incorrect and the listings need to be modified. These changes are not substantive and are being made simply to correct and clarify the water body listings. Several of the water bodies listed in current subrule 61.3(5) are also listed in subrule 61.2(2) and subrule 72.50(2). The location and name changes made to current subrule 61.3(5) also need to be reflected in subrules 61.2(2) and 72.50(2). The classification of surface waters in current subrule 61.3(5) will be adopted by reference in accordance with new subrule 61.3(5).

Additional information on Iowa's Water Quality Standards can be found on the Department's Web site at <http://www.state.ia.us/dnr/organiza/epd/wtresrce/wquality/index.htm>.

Any person may submit written suggestions or comments on the proposed rule changes on or before February 25, 2003. Such written material should be submitted to Ralph Turkle, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319-0034, by fax (515)281-8895 or by E-mail to ralph.turkle@dnr.state.ia.us. Persons who have questions may contact Ralph Turkle at (515)281-7025.

Persons are invited to present oral or written comments at public hearings which will be held as follows:

February 3, 2003

1 p.m. — Municipal Utilities Conference Room
15 W. Third Street
Atlantic

February 4, 2003

10 a.m. — Iowa City Public Library
Meeting Room A
123 S. Linn Street
Iowa City

7 p.m. — Decorah City Hall Meeting Room
400 Claiborne Drive
Decorah

February 6, 2003

10 a.m. — Cherokee Community Center
530 W. Bluff Street
Cherokee

6:30 p.m. — Clear Lake Community Meeting
Room
15 N. Sixth Street
Clear Lake

February 7, 2003

1 p.m. — Wallace State Office Building
Fifth Floor Conference Room
900 East Grand Avenue
Des Moines

February 11, 2003

7 p.m. — Garnavillo Community Center
106 W. Niagara
Garnavillo

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

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

Copies of Environmental Protection Commission rules may be obtained from Cecilia Nelson, Records Center, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand, Des Moines, Iowa 50319-0034.

These amendments may have an impact upon small businesses.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendments are proposed.

ITEM 1. Amend subrule **61.2(2)**, paragraph "**b**," subparagraphs **(44)** and **(47)**, as follows:

(44) Bohemian Creek, mouth (Winneshiak County) to Howard County Road ~~58~~ V58 (west line of section 2, T97N, R11W, Howard County).

(47) Unnamed ~~Stream~~ *Creek* (aka Trout Run), mouth to south line of section 27, T98N, R8W, Winneshiak County.

ITEM 2. Amend subrules **61.2(4)**, **61.2(5)** and **62.8(2)** by striking "March 29, 2002" and inserting the effective date of this amendment.

ITEM 3. Amend subrule **61.3(1)**, paragraph "**b**," as follows:

b. Designated use segments. These are water bodies which maintain flow throughout the year, or contain sufficient pooled areas during intermittent flow periods to maintain a viable aquatic community of significance.

Designated use waters are to be protected for all uses of general use segments in addition to the specific uses assigned. Designated use segments include:

(1) Primary contact ~~recreation~~ *recreational use* (Class "~~A~~" "*A1*"). Waters in which recreational or other uses may result in prolonged and direct contact with the water, involving considerable risk of ingesting water in quantities sufficient to pose a health hazard. Such activities would include, but not be limited to, swimming, diving, water skiing, and water contact recreational canoeing.

(2) *Secondary contact recreational use* (Class "*A2*"). *Waters in which recreational or other uses may result in contact with the water that is either incidental or accidental. During the recreational use, the probability of ingesting appreciable quantities of water is minimal. Class A2 uses include fishing, commercial and recreational boating, any limited contact incidental to shoreline activities and activities where users do not swim or float in the water body while on a boating activity.*

(3) *Children's recreational use* (Class "*A3*"). *Waters in which recreational uses by children are common. Class A3 waters are water bodies having definite banks and bed with visible evidence of the flow or occurrence of water. This type of use would primarily occur in urban or residential areas.*

(2 4) Cold water aquatic life (Class "*B(CW)*"). Waters in which temperature, flow, and other habitat characteristics are suitable for the maintenance of a wide variety of cold water species, including nonreproducing populations of trout and associated aquatic communities.

(3 5) High quality water (Class "*HQ*"). Waters with exceptionally better quality than the levels specified in Tables 1, 2, and 3 and with exceptional recreational and ecological importance. Special protection is warranted to maintain the unusual, unique or outstanding physical, chemical, or biological characteristics which these waters possess.

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(4-6) High quality resource water (Class “HQR”). Waters of substantial recreational or ecological significance which possess unusual, outstanding or unique physical, chemical, or biological characteristics which enhance the beneficial uses and warrant special protection.

(5-7) Significant resource warm water (Class “B(WW)”). Waters in which temperature, flow and other habitat characteristics are suitable for the maintenance of a wide variety of reproducing populations of warm water fish and associated aquatic communities, including sensitive species.

(6-8) Limited resource warm water (Class “B(LR)”). Waters in which flow or other physical characteristics limit the ability of the water body to maintain a balanced warm water community. Such waters support only populations composed of species able to survive and reproduce in a wide range of physical and chemical conditions, and are not generally harvested for human consumption.

(7-9) Lakes and wetlands (Class “B(LW)”). These are artificial and natural impoundments with hydraulic retention times and other physical and chemical characteristics suitable to maintain a balanced community normally associated with lake-like conditions.

(8-10) Drinking water supply (Class “C”). Waters which are used as a raw water source of potable water supply.

ITEM 4. Amend subrule 61.3(2), paragraph “h,” as follows:

h. ~~Water~~ *The Escherichia coli (E. coli) content of water which enters a sinkhole or losing stream segment, regardless of the water body's designated use, shall not exceed a fecal coliform content of 200 Geometric Mean value of 126 organisms/100 ml or a sample maximum value of 235 organisms/100 ml, except when the waters are materially affected by surface runoff; exceed the high flow cutoff but in no case shall fecal coliform levels downstream from a discharge which may contain pathogens to humans be more than 200 organisms/100 ml higher than the background level upstream from the discharge.* No new wastewater discharges will be allowed on watercourses which directly or indirectly enter sinkholes or losing stream segments.

ITEM 5. Amend subrule 61.3(3), paragraph “a,” as follows:

a. Class “A” waters. Waters which are designated Class “~~A~~” “A1,” “A2,” or “A3” in subrule 61.3(5) are to be protected for ~~primary contact recreation~~ *primary contact, secondary contact, and children's recreational uses.* The general criteria of subrule 61.3(2) and the following specific criteria apply to all Class “A” waters.

(1) ~~From April 1 to October 31, the fecal coliform content shall not exceed 200 organisms/100 ml~~ *The Escherichia coli (E. coli) content shall not exceed the levels noted in the Bacteria Criteria Table, except when the waters are materially affected by surface runoff; but in no case shall fecal coliform levels downstream from a discharge which may contain pathogens to humans be more than 200 organisms/100 ml higher than the background level upstream from the discharge exceed the high flow cutoff.*

Bacteria Criteria Table (organisms/100 ml of water)

<u>Use</u>	<u>Geometric Mean</u>	<u>Sample Maximum</u>
<u>Class A1</u>		
3/15 – 11/15	126	235
11/16 – 3/14	Does not apply	Does not apply

<u>Use</u>	<u>Geometric Mean</u>	<u>Sample Maximum</u>
<u>Class A2 (Only)</u>		
3/15 – 11/15	630	2880
11/16 – 3/14	Does not apply	Does not apply
<u>Class A2 and B(CW) or HQ</u>		
Year-Round	630	2880
<u>Class A3</u>		
3/15 – 11/15	126	235
11/16 – 3/14	Does not apply	Does not apply

Class A1 - Primary Contact Recreational Use, Class A2 - Secondary Contact Recreational Use, Class A3 - Children's Recreational Use

When a water body is designated for more than one of the recreational uses, the most stringent criteria for the appropriate season shall apply.

(2) The pH shall not be less than 6.5 nor greater than 9.0. The maximum change permitted as a result of waste discharge shall not exceed 0.5 pH units.

ITEM 6. Amend subrule 61.3(3), paragraph “b,” introductory paragraph, as follows:

b. Class “B” waters. All waters which are designated as Class B(CW), B(WW), B(LR), or B(LW) are to be protected for wildlife, fish, aquatic, and semiaquatic life, ~~and secondary contact water uses.~~ The following criteria shall apply to all Class “B” waters designated in subrule 61.3(5).

ITEM 7. Rescind subrule 61.3(5) and adopt the following ~~new~~ subrule in lieu thereof:

61.3(5) Surface water classification. The department hereby incorporates by reference “Surface Water Classification,” effective [insert effective date]. This document may be obtained from the Records Center, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034, or on the department’s Web site at <http://www.state.ia.us/dnr/organiza/epd/wtresrce/wquality/index.htm>.

ITEM 8. Amend subrule 72.50(2), selected protected streams by county, as follows:

ALLAMAKEE COUNTY

Bear Creek, mouth (S1, ~~T100N, R5W~~ T99N, R6W, Allamakee Co.) to west county line;

Clear Creek, mouth (~~S29, T99N, R3W~~ S35, T100N, R5W, Allamakee Co.) to north line of S15, T100N, R5W;

Clear Creek, mouth (~~S35~~ S29, T100N, R5W, Allamakee Co.) to west line of S25, T99N, R4W;

Silver Creek, mouth (S4, T99N, R5W, Allamakee Co.) to south line of S31, T99N, R5W;

Teepie Creek, mouth (S24, T97N, R6W, Allamakee Co.) to north line of spring source in S11, T97N, R6W;

CLAYTON COUNTY

Buck Creek, mouth (S29, T93N, R2W, Clayton Co.) to west line of S9, T93N, R3W;

Roberts Creek, mouth (SE 1/4, S25, T93N, R5W, Clayton Co.) to confluence with an unnamed creek (SE 1/4, S15, T95N, R6W, Clayton Co.);

South Cedar Creek (a.k.a. Cedar Creek), mouth (S33, T92N, R3W, Clayton Co.) to north line of S30, T93N, ~~R4W~~ R3W, Clayton Co.;

FAYETTE COUNTY

Bear Creek, mouth (S8, T92N, R7W, Fayette Co.) to west line of S6, T92N, R7W;

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Volga River, east county line to confluence with an unnamed creek (NW 1/4, NE 1/4 of SE 1/4, S24, T93N, R10W, Fayette Co.);

HOWARD COUNTY

Beaver Creek, mouth (S19, T100N, R12W, Howard Co.) to south line of S29, T100N, R13W;

JACKSON COUNTY

~~Storybook Hollow~~ Storybook Hollow, mouth (S7, T86N, R4E, Jackson Co.) to south line of S12, T86N, R3E, Jackson Co.;

WINNESHIEK COUNTY

Unnamed tributary to Trout Creek (a.k.a. Trout Run), mouth (S27, T98N, R8W, Winneshiek Co.) to south line of S27, T98N, R8W;

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ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.200 and 455B.264, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 65, "Animal Feeding Operations," Chapter 70, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 71, "Flood Plain or Floodway Development—When Approval Is Required," and Chapter 72, "Criteria for Approval," Iowa Administrative Code.

The proposed amendments are intended to implement provisions of 2002 Iowa Acts, Senate File 2293, prohibiting the construction of confinement feeding operations in the one hundred year flood plain of major water sources.

2002 Iowa Acts, Senate File 2293, provides for two methods of identifying flood plains, a comprehensive identification process in which flood plains are identified by rule and a case-by-case process. The amendments being proposed address the case-by-case process, as the comprehensive identification process will take many years to complete. The case-by-case method uses alluvial soils as a potential indicator of flood plain land. If a confinement operation is to be located on an alluvial soil as indicated in county soil surveys published by the Natural Resources Conservation Service, the applicant for a confinement feeding operation permit must disclose that information on the application. If the alluvial soil is found to be within the flood plain of a major water source, a permit cannot be issued. Owners of proposed confinement feeding operations not needing construction permits and that will be located on alluvial soils must petition the Department for a declaratory order under the provisions of Iowa Code chapter 17A as to whether the flood plain prohibition applies.

The amendments as proposed essentially parrot the prohibition provisions of 2002 Iowa Acts, Senate File 2293, with regard to alluvial soils and construction on the one hundred year flood plain of major water sources. Major water sources as defined in 2002 Iowa Acts, Senate File 2293, have already been identified to implement previous acts regulating con-

finement feeding operations and are listed in Appendix B, Tables 1 and 2, of 567—Chapter 65.

These amendments also propose to define "one hundred year flood plain" in both the animal feeding operation rules (Chapter 65) and the flood plain development rules (Chapter 70, et seq.) to be consistent with standard terminology in the science and practice of hydraulics. Further, the proposed amendments clarify existing flood plain rules with respect to the regulatory thresholds and criteria for approval for all animal feeding operations. Other changes to definitions and rule provisions are proposed to ensure consistency in terminology.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 21, 2003. Written comments should be directed to Mr. Kelly Stone, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319-0034; fax (515)281-8895.

In addition to written comments, persons may present their views either orally or in writing at public hearings as listed below. Persons presenting comments will be asked to give their names and addresses for the record and to confine their remarks to the subject of these amendments. Any persons who have special requirements such as those relating to hearing or mobility impairments should contact the Department of Natural Resources prior to the hearing dates and advise of specific needs.

The public hearings will be held as follows:

Municipal Utilities Conference Room 15 W. Third Street Atlantic	February 3, 2003 2:30 p.m.
Iowa City Public Library Meeting Room A 123 S. Linn Street Iowa City	February 4, 2003 11:30 a.m.
Decorah City Hall Meeting Room 400 Claiborne Drive Decorah	February 4, 2003 8 p.m.
Cherokee Community Center 530 W. Bluff Street Cherokee	February 6, 2003 11:30 a.m.
Clear Lake Community Meeting Room 15 N. Sixth Street Clear Lake	February 6, 2003 8 p.m.
Wallace State Office Building Fifth Floor Conference Room 900 East Grand Avenue Des Moines	February 7, 2003 2:30 p.m.

Copies of the Environmental Protection Commission's rules may be obtained from Cecilia Nelson, Records Center, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034, or may be accessed through the following Web site: <http://www.legis.state.ia.us/IAC.html>.

These amendments may have an impact upon small businesses.

These amendments are intended to implement 2002 Iowa Acts, Senate File 2293.

The following amendments are proposed.

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ITEM 1. Amend rule **567—65.1(455B)** by inserting the following **new** definition in alphabetical order:

“One hundred year flood plain” means the same as defined in 567—70.2(455B,481A).

ITEM 2. Amend subrule **65.7(3)** by adding the following **new** paragraph “**d**”:

d. The department shall not issue a construction permit for a confinement feeding operation structure that is proposed to be located on the one hundred year flood plain of a major water source. Placing fill material on flood plain land to elevate the land above the one hundred year flood level will not be considered as removing the land from the one hundred year flood plain for the purpose of this subrule.

ITEM 3. Amend subrule **65.8(3)** as follows:

Amend paragraph “**c**” as follows:

c. ~~This rule Paragraphs “a” and “b”~~ shall not prohibit a person from completing the construction or expansion of an animal feeding operation structure, if either of the following applies:

(1) The person has an unexpired permit for the construction or expansion of the animal feeding operation structure.

(2) The person is not required to obtain a permit for the construction or expansion of the animal feeding operation structure.

Adopt **new** paragraphs “**d**” and “**e**” as follows:

d. A confinement feeding operation structure shall not be constructed on the one hundred year flood plain of a major water source. Placing fill material on flood plain land to elevate the land above the one hundred year flood level will not be considered as removing the land from the one hundred year flood plain for the purpose of this paragraph.

e. A person shall not construct a confinement feeding operation structure on land that contains alluvial soils, according to the Soil Survey published by the Natural Resources Conservation Service of the United States Department of Agriculture, unless the person has received verification from the department of natural resources that the proposed location of the structure is not on the one hundred year flood plain of a major water source. The verification shall be obtained as follows:

(1) If the person does not apply for a construction permit as provided in Iowa Code section 455B.200A and rule 567—65.9(455B), the person must petition the department for a declaratory order pursuant to Iowa Code section 17A.9 and 561—Chapter 6 to determine whether the location of the proposed confinement feeding operation structure is on the one hundred year flood plain of a major water source. The person is strongly encouraged to contact the department prior to submitting the petition to determine the nature and extent of information required for the petition to be considered complete. To be considered complete, the petition must include all information pursuant to 567—Chapters 70 to 76 necessary to determine if the confinement feeding operation structure is proposed to be located on a one hundred year flood plain. This information may include land surveys to determine elevations of the land within the footprint of the planned operation as well as flood plain and channel geometry. The department shall issue a declaratory order in response to a complete petition, notwithstanding any other provision provided in Iowa Code section 17A.9 to the contrary, within 30 days from the date that the complete petition is filed with the department. The declaratory order shall state whether or not the proposed location is on the one hundred year flood plain of a major water source and thus whether or not the prohibition for construction of a confinement feeding

operation structure on the one hundred year flood plain of a major water source, pursuant to paragraph “**d**,” applies to the proposed construction.

(2) If the person does apply for a construction permit as provided in Iowa Code section 455B.200A, the person must identify whether or not the land contains alluvial soils. The department shall determine if the confinement feeding operation structure is proposed to be located on the one hundred year flood plain of a major water source. If the proposed location of the confinement feeding operation structure is on the one hundred year flood plain of a major water source, the department shall disapprove the construction permit. In the event the proposed location of the confinement feeding operation structure is not on the one hundred year flood plain of a major water source, the department may issue a construction permit as provided in Iowa Code section 455B.200A and 567—65.9(455B) if all other applicable criteria are satisfied.

ITEM 4. Amend subrule **65.9(1)** by adopting **new** paragraph “**o**” as follows:

o. Information necessary for the department to determine: (1) if the confinement feeding operation is proposed to be located on a one hundred year flood plain; (2) if a flood plain development permit for the operation is required; and (3) if a flood plain development permit may be issued if one is required, pursuant to 567—Chapters 70 to 76. This information may include land surveys to determine elevations of the land within the footprint of the planned operation as well as flood plain and channel geometry.

ITEM 5. Amend subrule 65.15(10) as follows:

65.15(10) Flooding protection. ~~The top of a manure storage structure shall be constructed at least one foot above the elevation of the 100-year flood.~~

a. *An animal feeding operation structure proposed to be constructed on the one hundred year flood plain of any water source shall meet requirements as specified in 567—Chapters 70 to 76, unless otherwise prohibited according to 65.15(10) “b.”*

b. *A confinement feeding operation structure shall not be constructed on the one hundred year flood plain of a major water source.*

ITEM 6. Amend rule **567—70.2(455B)** as follows :

Amend the following definitions:

“Animal feeding operation structure,” as defined in 567—65.1(455B), means *a confinement building, an anaerobic lagoon, formed manure storage structure, or egg washwater storage structure, earthen manure storage basin, or confinement building.*

“Height of dam” means the vertical distance from the top of the dam to the natural bed of the stream or ~~watercourse~~ *water source* measured at the downstream toe of the dam or to the lowest elevation of the outside limit of the dam if it is not across a ~~watercourse~~ *water source*.

“Nominated stream” means the stream or ~~watercourse~~ *water source* named in the petition described in 567—Chapter 72 that seeks designation of a stream as a protected stream.

“Probable maximum flood” means the flood that may be expected from the most severe combination of critical ~~meteorological~~ *meteorological* and hydrologic conditions that are reasonably possible in the region, and is derived from probable maximum precipitation, the theoretical greatest depth of precipitation for a given duration that is physically possible over a particular drainage area at a certain time of year. The probable maximum precipitation within designated zones in Iowa has been determined by the National Weather Service.

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The probable maximum flood for any location within Iowa is determined by the department.

"Q100," "Q50," "Q25," "Q15," "Q10," et cetera², means a flood having a 1, 2, 4, 6, 7, 10, et cetera percent chance of being equalled, equaled or exceeded in any one year (100, 50, 25, 15, 10, et cetera, year flood) as determined by the department.

"Stream" means a ~~watercourse~~ *water source* that either drains an area of at least two square miles or has been designated as a protected stream in 567—Chapter 72.

"~~Watercourse~~² *Water source,*" as defined in 567—65.1(455B), means any lake, river, creek, ditch or other body of water or channel having definite banks and bed with visible evidence of the flow or occurrence of water, except such lakes or ponds without outlet to which only one landowner is riparian.

Insert the following **new** definitions in alphabetical order:

"Animal feeding operation" means the same as defined in 567—65.1(455B).

"Confinement feeding operation," as defined in 567—65.1(455B), means an animal feeding operation in which animals are confined to areas which are totally roofed.

"Confinement feeding operation building" or "confinement building," as defined in 567—65.1(455B), means a building used in conjunction with a confinement feeding operation to house animals.

"Confinement feeding operation structure," as defined in 567—65.1(455B), means an animal feeding operation structure that is part of a confinement feeding operation.

"Major water source," as defined in 567—65.1(455B), means a water source that is a lake, reservoir, river or stream located within the territorial limits of the state, or any marginal river area adjacent to the state, if the water source is capable of supporting a floating vessel capable of carrying one or more persons during a total of a six-month period in one out of ten years, excluding periods of flooding. Major water sources in the state are listed in Appendix B, Table 1 and Table 2 of 567—Chapter 65.

"Manure storage structure," as defined in 567—65.1(455B), means a formed manure storage structure or an unformed manure storage structure, as defined in 567—65.1(455B). A manure storage structure does not include an egg washwater storage structure.

"One hundred year flood plain" means a water source and the land adjacent to a water source that would be inundated by Q100 as defined in these rules.

ITEM 7. Amend subrule **70.4(3)**, paragraph "**a**," as follows:

a. General requirement of certified plans. An application shall not be considered complete until sufficient engineering plans have been submitted to enable the department to determine whether the project as proposed satisfies applicable criteria. The engineering plans shall contain information, as specified by the department, *which is needed for the department to conduct a technical review pursuant to paragraph 70.5(3) "b."* ~~The engineering plans shall including include~~ specifications, operation procedures and other information relating to environmental impacts. The engineering plans and other engineering information shall be certified by a registered professional engineer or, if applicable, a registered land surveyor, as required by Iowa Code chapter 542B. Duplicate copies of certified plans are required so that one copy can be returned to the applicant upon approval or disapproval of the application. An additional copy of the certified plans shall be required if the plans are incorporated as part of

an approval or disapproval order which is filed with a county recorder.

ITEM 8. Amend rule 567—71.3(455B), introductory paragraph, as follows:

567—71.3(455B) Dams. Approval by the department for construction, operation, or maintenance of a dam in the floodway or flood plain of any ~~watercourse~~ *water source* shall be required when the dimensions and effects of such dam exceed the thresholds established by this rule. EXCEPTION: Public road embankments with culverts which impound water only in temporary storage are exempt from the requirements of this rule and shall be reviewed under rules 71.1(455B) and 567—72.1(455B). Approval required by this rule shall be coordinated with approval for storage of water required by 567—Chapter 51. Approval by the department shall be required in the following instances:

ITEM 9. Amend 567—Chapter 71 by adding **new** rule 567—71.13(455B) as follows:

567—71.13(455B) Animal feeding operation structures. Approval by the department for construction, operation, and maintenance of animal feeding operation structures shall be required in the following instances.

71.13(1) Rural areas. In rural areas, any such facilities on the flood plain or floodway of any stream draining more than ten square miles.

71.13(2) Urban areas. In urban areas, any such facilities on the flood plain or floodway of any stream draining more than two square miles.

71.13(3) Adjacent to an impoundment. Any such facilities if any part of the facility is located on land that is naturally lower than the top of the dam.

ITEM 10. Amend subrule 72.2(9) as follows:

72.2(9) Encroachment on ~~an animal~~ a confinement feeding operation structure. A major water source, as identified in Appendix B, Tables 1 and 2 of 567—Chapter 65, or a ~~watercourse~~ *water source other than a major water source* shall not be constructed, expanded or diverted if the ~~watercourse~~ *water source or major water source* as constructed, expanded, or diverted is closer than the following distances from ~~an animal~~ *a confinement feeding operation structure unless a secondary containment barrier according to 567—subrule 65.15(17) is in place.* Measurement shall be from the closest point of the ~~animal~~ *confinement feeding operation structure* to the top of the bank of a stream channel or the ordinary high water mark of a lake, pond, *impoundment* or reservoir. *Farm ponds, privately owned lakes, and confinement feeding operations constructed with a secondary containment barrier pursuant to 567—subrule 65.15(17) are exempt from the separation distance requirements. The provisions of this subrule shall not be construed to allow construction of a confinement feeding operation structure on the flood plain of a major water source.*

a. ~~Minimum distance from separation between a watercourse to an animal~~ *water source other than a major water source and a confinement feeding operation structure is 200* 500 feet.

b. ~~Minimum distance from separation between a major water source to an animal and a confinement feeding operation structure is 500~~ 1,000 feet.

ITEM 11. Amend subrule 72.3(5) as follows:

72.3(5) Encroachment on ~~an animal~~ a confinement feeding operation structure. ~~The provisions of subrule 72.2(9) apply to any reservoir or impoundment resulting from the construction or modification of any dam. A dam shall not be~~

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constructed or modified so that the ordinary high water of the lake, pond or reservoir created by the dam is closer than the following distances from a confinement feeding operation structure unless a secondary containment barrier according to 567—subrule 65.15(17) is in place. Measurement shall be from the closest point of the confinement feeding operation structure to the water edge of the lake, pond or reservoir for a pool level at the elevation of the crest of the emergency spillway or at the top of dam elevation should the dam not have an emergency spillway.

a. Minimum separation between a water source other than a major water source and a confinement feeding operation structure is 500 feet.

b. Minimum separation between a major water source and a confinement feeding operation structure is 1,000 feet or such that the structure is not located on the one hundred year flood plain, whichever is greater.

ITEM 12. Amend 567—Chapter 72 by adding **new** rule 567—72.13(455B) as follows:

567—72.13(455B) Animal feeding operation structures. The following criteria shall apply to animal feeding operation structures.

72.13(1) Confinement feeding operation structures located on the flood plain of a major water source. As required by 567—Chapter 65, confinement feeding operation structures shall not be constructed on the one hundred year flood plain of a major water source. Placing fill material on flood plain land to elevate the land above the one hundred year flood level will not be considered as removing the land from the one hundred year flood plain for the purpose of this subrule.

72.13(2) Animal feeding operation structures located on the flood plain of any water source and confinement feeding operation structures located on the flood plain of a water source other than a major water source.

a. Location. Such structures shall not be located so as to individually or collectively conflict with rule 567—75.4(455B) governing the establishment of encroachment limits.

b. Flood protection. Flood protection for such structures shall be provided to the level necessary for high damage potential buildings or building complexes, pursuant to rule 567—72.5(455B).

ARC 2230B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 455D.111, the Environmental Protection Commission hereby gives Notice of Intended Action to rescind Chapter 116, “Registration of Waste Tire Haulers,” Iowa Administrative Code, and adopt a new Chapter 116 with the same title.

The current chapter is a direct adaptation of the Secretary of State’s rules formerly contained in 721—Chapter 44, “Registration of Waste Tire Haulers.” Through 2002 Iowa Acts, House File 2554, the responsibility for this registration process was transferred to this Department as of April 22, 2002. As such, the Commission originally adopted the same rules as those contained in 721—Chapter 44 on June 17, 2002, with only minor changes, to provide continuity in the issuance of registration certificates to waste tire haulers.

This proposed new chapter provides greater effectiveness, clarity, and consistency with legislative intent and statutory authority for waste tire management regulation and enforcement of the requirements therein. The intent of the registration process is to ensure the proper management of waste tires through those persons providing waste tire hauling and disposal services. As defined by Iowa law, a waste tire hauler is a person who transports for hire more than 40 waste tires in a single load for commercial purposes.

Any interested person may make written suggestions or comments on these proposed rules on or before January 29, 2003. Such written materials should be directed to Mel Pins, Energy and Waste Management Bureau, Iowa Department of Natural Resources, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons wishing to convey their views orally should contact Mel Pins at (515)281-8489 or at the Wallace State Office Building.

Also, there will be a public hearing on January 29, 2003, at 1 p.m. in the Fifth Floor East Conference Room of the Wallace State Office Building, Des Moines, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

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

These rules are intended to implement Iowa Code section 455D.111 (2002 Iowa Acts, House File 2554, section 4).

The following amendment is proposed.

Rescind 567—Chapter 116 and adopt the following **new** chapter in lieu thereof:

CHAPTER 116**REGISTRATION OF WASTE TIRE HAULERS**

567—116.1(455D) Purpose. The purpose of this chapter is to establish guidelines for the registration of waste tire haulers that provide waste tire collection and hauling services for a fee. The registration process shall ensure the proper management of waste tires collected by a waste tire hauler. This chapter shall not exempt a waste tire hauler from compliance with other applicable statutes or requirements regarding waste tires that are hauled to or from other states.

567—116.2(455D) Definitions. As used in this chapter:

“Passenger tire equivalent” means a conversion measurement that is used to estimate waste tire weights and volume amounts and in which one passenger car tire with a rim diameter of 17 inches or less is equal to 20 pounds. One cubic yard of volume shall contain 15 passenger tire equivalents. Tires larger than a passenger car tire shall be evaluated for volume using this conversion measurement.

“Permit” means a permit issued by the department to establish, construct, modify, own, or operate a waste tire storage or processing site.

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“Processing” means producing or manufacturing usable materials from waste tires.

“Processing site” means a site which is used for the processing of waste tires and which is owned or operated by a tire processor who has a permit for the site.

“Tire collector” means a permitted person or business that owns or operates a site used for the storage, collection, or deposit of more than 500 waste tires or an authorized vehicle recycler who is licensed by the department of transportation pursuant to Iowa Code section 321H.4 and who owns or operates a site used for the storage, collection, or deposit of more than 3,500 waste tires.

“Tire processor” means a permitted individual or business that processes tires through grinding, shredding, or other means, thereby producing a material that is readily suitable for marketing into product manufacturing, energy recovery, or other beneficial reuse markets. “Tire processor” does not mean a person who retreads tire casings or who collects and stores tires.

“Waste tire,” as defined in Iowa Code section 455D.11, means a tire that is no longer suitable for its originally intended purpose due to wear, damage, or defect. This definition shall include a tire mounted on a rim, but not on a vehicle. “Waste tire” does not include a nonpneumatic tire.

“Waste tire hauler” means a person who transports for hire more than 40 waste tires in a single load. This definition includes persons and businesses that collect fees to provide hauling and pick-up services for the disposal or removal of tires from other persons or businesses.

“Waste tire stockpile” means a permitted site that is used for the storage, collection, or deposit of waste tires or tire bales, including indoor, outdoor, and underground storage.

567—116.3(455D) Registration requirement. A waste tire hauler shall register with and obtain a certificate of registration from the department in accordance with this chapter before hauling waste tires in Iowa. Waste tire haulers that pick up tires within Iowa or that bring waste tires to Iowa for disposal, storage, or processing shall be required to register.

116.3(1) Registration exemption. A waste tire hauler shall not be required to register under the following circumstances:

a. The waste tire hauler only travels through the state with waste tires as a part of interstate commerce and does not pick up, deposit, transfer, store, or dispose of any waste tires in Iowa.

b. The waste tire hauler is a municipal, county, state, or other public agency, and the vehicles used for transport of the waste tires are owned and licensed by the public agency. The agency may only haul up to 10,000 waste tires within a 12-month period without obtaining a waste tire hauler’s registration.

116.3(2) Annual registration.

a. A waste tire hauler registration shall be valid for one year, and the waste tire hauler must annually renew the waste tire hauler registration in order to continue to provide waste tire hauling services within the state.

b. Initial registration of a waste tire hauler shall be valid upon the date of issuance by the department and shall be effective for a minimum 12-month period thereafter, with expiration of the initial registration to occur on either January 1 or July 1, whichever date occurs most closely after the initial 12-month registration period.

c. Subsequent annual renewals of the waste tire hauler’s registration shall then occur on either January 1 or July 1, subject to the date of the original expiration as referenced in 116.3(2)“b.”

567—116.4(455D) Registration form. A waste tire hauler shall submit the following information on a form prescribed by the department for application for or renewal of registration as a waste tire hauler.

1. The name of the waste tire hauler and any other names under which the waste tire hauler may do business.

2. The principal address of the waste tire hauler and any other address at which the waste tire hauler may do business.

3. A business telephone number.

4. The name and address of the principal officer of a corporate waste tire hauler or the principal owner or owners of a waste tire hauler operating a proprietorship or partnership.

5. The following information for each motor vehicle used by the waste tire hauler for hauling tires:

- The name and address of the owner of the vehicle.
- The vehicle identification number of the vehicle.
- The year, make, and model of the vehicle.
- The license plate number of the vehicle.
- The name of the state in which the vehicle is registered.

6. A statement that the waste tire hauler agrees to comply with the vehicle identification requirements contained in this chapter.

7. The name of the permitted facility for waste tire disposal, storage or processing, or of another site of end use where the waste tires will be transported.

8. A statement that the waste tire hauler shall pay all amounts due to any individual or group of individuals when due for damages caused by improper disposal of waste tires by the waste tire hauler or the waste tire hauler’s employee while acting within the scope of employment.

9. A statement that the waste tire hauler agrees to notify the department within 30 days of any change in the information contained in the registration form.

10. The signature of the waste tire hauler.

567—116.5(455D) Registration fee. An application for initial registration or renewal shall be accompanied by a fee of \$50.

567—116.6(455D) Bond form.

116.6(1) An application for registration or renewal shall not be approved by the department until the waste tire hauler has provided a bond in the sum of a minimum of \$10,000 on a form prescribed by the commissioner of insurance.

116.6(2) Bond requirements.

a. The bond shall be executed by a surety company authorized by the commissioner of insurance to do business in Iowa. The bond provided to the department shall be an original, or copy thereof. Facsimiles of the bond will not be accepted.

b. The surety shall name the state of Iowa as the obligee for the bond.

c. The bond shall be continuous in nature until canceled by the surety. The surety shall provide at least 30 days’ notice in writing to the waste tire hauler and the department in the event of any intent to cancel the bond.

d. The waste tire hauler shall provide the department with a statement from the surety with each waste tire hauler registration renewal application, noting that the bond is paid and current for the annual period for which the waste tire hauler has applied for registration renewal.

567—116.7(455D) Marking of equipment. The following information shall be displayed on each side of equipment used for the hauling of waste tires, in letters and figures large enough to be read easily at a distance of 50 feet and in a color in contrast to the background.

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1. The name of the registered waste tire hauler under whose authority the equipment is being operated.
2. The address of the registered waste tire hauler (city and state).
3. The registration number of the waste tire hauler, as assigned by the department. The hauler shall apply the following letters and symbol "IA TH#" preceding the assigned registration number.

567—116.8(455D) Disposition of waste tires collected.

116.8(1) All tires collected by a waste tire hauler for which a fee has been collected or is to be charged shall be defined as a solid waste and shall be regulated as such.

116.8(2) Upon receipt of waste tires from a person or business, the waste tire hauler shall handle the waste tires as follows:

- a. The waste tires shall be directly transported to a tire collector, tire processor, or waste tire stockpile site, as permitted and approved by the department or applicable local or state agencies.
- b. The waste tires must be transported to a permitted site within 72 hours of initial pick up from the generator of the waste tires.
- c. The waste tire hauler may not establish or operate any intermediate storage, waste sorting, transfer, or processing activities regarding the waste tires collected, unless such activities occur at a facility or site for which a waste tire stockpile permit or processing permit has been issued in accordance with 567—117(455B).

567—116.9(455D) Reporting requirements. A registered waste tire hauler shall make a semiannual report to the department on a form provided or approved by the department. The report shall provide the department with appropriate information to ensure that waste tires recovered by the waste tire hauler have been handled properly for disposal or processing. Failure of the waste tire hauler to submit a timely report will result in denial of the waste tire hauler's renewal of registration.

116.9(1) Reporting period. The waste tire hauler shall submit semiannual reports to the department according to the following schedule:

- a. For waste tires collected during the six-month period beginning January 1 through June 30, the hauler shall submit a report by the following September 1.
- b. For waste tires collected during the six-month period beginning July 1 through December 31, the hauler shall submit a report by March 1 of the following year.

116.9(2) Information required. The semiannual report shall include the following information. All waste tire quantities determined by count or weight shall be reported in passenger tire equivalents.

- a. Quantity of waste tires collected by the waste tire hauler from within Iowa for the reporting period.
- b. Quantity of waste tires that are brought to Iowa by the waste tire hauler from out-of-state sources.
- c. Final disposition of all the waste tires collected during the reporting period by listing each tire collector, tire processor, waste tire stockpile site, or other beneficial site of end use, as approved by the department, and the total quantities of waste tires that the hauler has delivered to each.

116.9(3) Documentation and record keeping. The waste tire hauler shall keep appropriate records, including but not limited to receipts, invoices, or manifests, to document all quantities of waste tires hauled and disposed of by the waste tire hauler for the reporting period. These records shall be kept by the waste tire hauler for a minimum of three years,

and shall be available for audit or inspection at the request of the department.

These rules are intended to implement Iowa Code section 455D.11I.

ARC 2244B**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 239B.4, the Department of Human Services proposes to rescind Chapter 48, "Family Investment Program Eligibility Under Self-Employment Demonstration Projects," Iowa Administrative Code.

This chapter has become obsolete since Family Investment Program income and resource waivers for entrepreneurial training participants were eliminated effective April 1, 2002. Changes in the Family Investment Program over the 12 years that the federal Self-Employment Investment Demonstration Project and the Iowa Self-Employment Household Incentive Program operated made the waivers unnecessary and ineffective. The last waivers issued under the previous policy will expire by April 1, 2003.

This amendment does not provide for waivers in specified situations because there will be no clients eligible for these projects after April 1, 2003.

Any interested person may make written comments on the proposed amendment on or before January 29, 2003. Comments should be directed to the Rules Administrator, Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515) 281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

This amendment is intended to implement Iowa Code section 239B.7.

The following amendment is proposed.

Rescind and reserve **441—Chapter 48.**

ARC 2243B**MEDICAL EXAMINERS
BOARD[653]****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 147.76 and 272C.3, the Board of Medical Examiners hereby gives Notice of Intended Action to amend Chapter 8, "Fees,"

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Chapter 9, "Permanent Physician Licensure," and Chapter 10, "Resident, Special and Temporary Physician Licensure," Iowa Administrative Code.

The Board approved the proposed amendments to Chapters 8, 9 and 10 during a telephone conference call held on December 18, 2002.

The proposed amendments make the following changes in resident licensure:

- Define the acronyms for the names of several accrediting bodies and the terms "resident training program," "board-approved resident training program" and "resident physician";
- Change the term "postgraduate training" to "resident training";
- Change the period of a resident physician license from two years with annual renewals to a license period that extends until the expected date of completion of the resident training program with the option of an extension, if warranted;
- Require that a resident must be enrolled in a board-approved resident training program in order to qualify for a resident physician license;
- Establish licensure requirements for residents and faculty involved in an out-of-state resident training program when a portion of the training occurs in Iowa;
- Provide an exception to licensure related to residents and faculty in federal facilities;
- Eliminate the license renewal process on resident physician licenses;
- Establish a process for applying for an extension and the Board review process of that request for an extension of a resident physician license;
- Require the director of a resident training program to update the Board annually on each resident's progress and whether any warnings have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action;
- Require the director of a resident training program to notify the Board within one month of a resident licensee's terminating from the program;
- Establish an extension process for those already holding a resident physician license;
- Increase the new resident physician license fee from \$75 to \$100, institute an extension fee of \$25, and increase the fee for a late extension to \$50; and
- Allow those enrolled in a resident training program to sit for the third licensure examination without having to complete seven months of resident training.

Any interested person may present written comments on these proposed amendments not later than 4 p.m. on January 28, 2003. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medical Examiners, 400 S.W. 8th Street, Suite C, Des Moines, Iowa 50309-4686, or sent by E-mail to ann.mowery@ibme.state.ia.us.

There will be a public hearing on January 28, 2003, at 3 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medical Examiners office is located at 400 S.W. 8th Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapters 17A, 147, 148, 150, 150A, and 272C.

The following amendments are proposed.

ITEM 1. Amend subrule 8.4(2) as follows:

8.4(2) Fees for resident physician licensure. For provisions for resident physician licensure, see 653—Chapter 10,

"Resident, Special and Temporary Physician Licensure." The following fees apply to resident physician licensure.

- a. Application for a resident physician license, ~~\$75~~ \$100.
- b. ~~Renewal~~ Extension of a resident physician license, \$25.
- c. Late fee for *extension* of a resident physician license, ~~\$25~~ \$50, to be paid in addition to the ~~renewal~~ extension fee.

ITEM 2. Amend rule **653—9.1(147,148,150,150A)** as follows:

Amend the following definitions:

"ACGME" means Accreditation Council for Graduate Medical Education, ~~the an accreditation body of the American Medical Association that accredits postgraduate training programs in medicine and surgery that is responsible for accreditation of post-medical school training programs in medicine and surgery in the United States of America.~~ The board approves *resident training* programs accredited by ACGME.

"AOA" means the American Osteopathic Association. The board approves osteopathic medical education programs with AOA accreditation; the board approves AOA-accredited ~~postgraduate~~ *resident* training programs in osteopathic medicine and surgery at hospitals for graduates of accredited osteopathic medical schools. The board recognizes specialty certification by AOA. The board recognizes continuing medical education accredited by the Council on Continuing Medical Education of AOA.

Adopt the following **new** definitions in alphabetical order:

"Board-approved resident training program" means a hospital-affiliated graduate medical education program accredited by ACGME, AOA, RCPSC, or CFPC at the time the applicant is enrolled in the program.

"CFPC" means the College of Family Physicians of Canada, an organization that accredits graduate medical education in family practice in Canada.

"RCPSC" means the Royal College of Physicians and Surgeons of Canada, an organization that accredits graduate medical education in Canada.

"Resident physician" means a physician enrolled in an internship, residency or fellowship.

"Resident training program" means a hospital-affiliated graduate medical education program that enrolls interns, residents or fellows and may be referred to as a postgraduate training program for purposes of licensure.

Rescind the following definitions:

~~"College of Family Physicians of Canada" means an organization that accredits postgraduate training programs in Canada. The board approves programs accredited by the College of Family Physicians of Canada.~~

~~"Postgraduate training" means graduate medical education, e.g., an internship, residency or fellowship, in a hospital-affiliated training program approved by the board at the time an applicant was enrolled in the program.~~

~~"Royal College of Physicians and Surgeons" means an organization that accredits postgraduate training programs in Canada. The board approves programs accredited by the Royal College of Physicians and Surgeons.~~

ITEM 3. Amend **9.3(1)"c"(3)"3"** as follows:

3. Have successfully passed either a basic science examination administered by a United States or Canadian medical licensing authority or SPEX; and have successfully completed three years of ~~postgraduate~~ *resident* training in a program approved by the board; and *have* submitted evidence of five years of active practice without restriction as a licensee of any United States or Canadian jurisdiction; or

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ITEM 4. Amend **9.3(1)“d”** as follows:

d. Have successfully completed one year of ~~postgraduate~~ *resident* training in a hospital-affiliated program approved by the board at the time the applicant was enrolled in the program.

(1) The program shall have been 12 months of progressive training in not more than two specialties and in not more than two programs approved for ~~postgraduate~~ *resident* training by the board.

(2) ~~Postgraduate~~ *Resident* training approved by the board shall be accredited by an accrediting agency recognized by the board for the purpose of accrediting ~~postgraduate~~ *resident* training programs.

(3) The board approves ~~postgraduate~~ *resident* training programs accredited by:

1. ACGME;
2. AOA;
3. ~~The Royal College of Physicians and Surgeons of Canada RCPSC~~; and
4. ~~College of Family Physicians of Canada CFPC~~.

(4) The board shall accept each 12 months of practice as a special licensee as equivalent to one year of ~~postgraduate~~ *resident* training in a hospital-affiliated program approved by the board.

ITEM 5. Amend **9.4(2)“d”(4)** as follows:

(4) Document successful completion of a minimum of seven calendar months of ~~postgraduate~~ *resident* training in a program approved by the board at the time of the application for Step 3 *or enrollment in a resident training program approved by the board at the time of the application for Step 3*. ~~Candidates shall have completed their postgraduate training by the last day of the month in which the examination is taken.~~

ITEM 6. Amend **9.4(2)“e”(6)** as follows:

(6) Successful completion of a progressive three-year ~~postgraduate~~ *resident* training program is required if the applicant passes the examination after more than six attempts on Step 1 or six attempts on Step 2 or three attempts on Step 3.

ITEM 7. Amend **9.4(6)“a”(3)** and **9.4(6)“a”(4)** as follows:

(3) A candidate shall have successfully completed a minimum of seven calendar months of ~~postgraduate~~ *resident* training in a program approved by the board at the time of the application for Level 3 *or enrollment in a resident training program approved by the board at the time of the application for Level 3*. ~~Candidates shall have completed their postgraduate training by the last day of the month in which the examination is taken.~~

(4) Successful completion of a progressive three-year ~~postgraduate~~ *resident* training program is required if the applicant passes the examination after more than six attempts on Level 1 or six attempts on Level 2 or three attempts on Level 3.

ITEM 8. Amend **9.4(6)“b”(3)** and **9.4(6)“b”(4)** as follows:

(3) A candidate shall have successfully completed a minimum of seven calendar months of ~~postgraduate~~ *resident* training in a program approved by the board at the time of the application for NBOME Part 3. Candidates shall have completed their ~~postgraduate~~ *resident* training by the last day of the month in which the examination is taken.

(4) Successful completion of a three-year ~~postgraduate~~ *resident* training program is required if the applicant passes

the examination after six attempts on Part 1 or six attempts on Part 2 or three attempts on Part 3.

ITEM 9. Amend **9.5(2)“i”** as follows:

i. Documentation of successful completion of one year of ~~postgraduate~~ *resident* training approved by the board as specified in paragraph 9.3(1)“d.” An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

ITEM 10. Amend rule **653—10.1(147,148,150,150A)** by adopting the following **new** definitions in alphabetical order:

“ACGME” means Accreditation Council for Graduate Medical Education, an accreditation body that is responsible for accreditation of post-medical school training programs in medicine and surgery in the United States of America.

“Board-approved resident training program” means a hospital-affiliated graduate medical education program accredited by ACGME, AOA, RCPSC, or CFPC at the time the applicant is enrolled in the program.

“CFPC” means the College of Family Physicians of Canada.

“RCPSC” means the Royal College of Physicians and Surgeons of Canada.

“Resident physician” means a physician enrolled in an internship, residency or fellowship.

“Resident training program” means a hospital-affiliated graduate medical education program that enrolls interns, residents or fellows and may be referred to as a postgraduate training program for purposes of licensure.

ITEM 11. Amend subrule 10.3(1) as follows:

10.3(1) General provisions.

a. The resident physician license shall authorize the licensee to practice as ~~a resident physician~~ *an intern, resident or fellow* while under the supervision of a licensed practitioner of medicine and surgery or osteopathic medicine and surgery in ~~an institution or a board-approved resident training program in Iowa approved for this purpose by the board~~. *When the ACGME, AOA, RCPSC, or CFPC fails to offer accreditation for a fellowship or the fellowship fails to seek accreditation, the board may approve a training program for purposes of resident physician licensure. However, completion of one or more years of a program that lacks such accreditation does not fulfill the one-year resident training requirement for permanent licensure.*

b. An Iowa resident physician license or an Iowa permanent physician license is required of any resident physician practicing in Iowa.

c. ~~A resident physician license shall expire two years following the date of issuance and may be renewed annually thereafter at the discretion of the board.~~ *A resident physician license issued on or after February 14, 2003, shall expire on the expected date of completion of the resident training program as indicated on the licensure application. A resident physician license may be extended thereafter at the discretion of the board.*

d. A resident physician license is valid only for practice in the program designated in the application. When the physician leaves that program, the license shall immediately become inactive. *The director of the resident training program shall notify the board within 30 days of the licensee’s terminating from the program.*

e. A resident physician licensee who changes ~~residency~~ *resident training* programs shall apply for a new resident physician license as described in subrule 10.3(3). *Such changes include a transfer to a different program in the same*

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institution, a move to a program in another institution, or becoming a fellow after completing a residency in the same core program. An individual who contracts with an institution to be in two programs from the time of application for the resident license shall not be required to apply for another resident license for the second program. For example, if a residency requires one year in internal medicine prior to three years in dermatology, the individual may apply initially for a four-year resident license to cover the bundled program. Relicensure is not required if the individual holds a permanent physician license in Iowa.

f. An Iowa resident physician license is required for a resident enrolled in an out-of-state training program where a portion of the training occurs in Iowa. The licensee shall be under the supervision of an Iowa-licensed physician who is on the faculty of the resident training program. The resident physician license shall expire on the expected date of completion of the Iowa portion of the training program.

g. An Iowa license is not required for residents when they are training in a federal facility in Iowa. An Iowa license is not required for faculty who are teaching in and employed by a federal facility in Iowa and who are licensed in another state.

h. The director of a resident training program that enrolls a resident with an Iowa resident physician license shall report annually on October 1 on the resident's progress and whether any warnings have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action. The board shall inform the program directors on September 1 of the impending deadline.

f.i. A resident physician licensee shall notify the board of any change in name within one month of making the name change. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

g.j. A resident physician licensee's file shall be closed and labeled "deceased" when the board receives a copy of the physician's death certificate.

ITEM 12. Amend 10.3(3)"a"(1) as follows:

(1) Pay a nonrefundable application fee of ~~\$75~~ \$100; and

ITEM 13. Amend subrules 10.3(6) to 10.3(9) as follows:

10.3(6) Renewal Extension of a resident physician license.

a. ~~If the resident physician licensee has not qualified for and received a permanent license, the board shall send a renewal notice by regular mail to the residency program at least 60 days prior to the expiration date of the resident physician license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of responsibility for renewing that license. On or after February 14, 2003, the board shall issue a resident license for the full period of the resident training program. The board shall offer to all who hold a current, active resident license on February 13, 2003, an extension of the license to the expected completion date of the resident training program. A licensee who wishes to extend the license shall submit the extension application materials within two months of the offer.~~

b. If the licensee fails to complete the program by the expiration date on the license, the licensee has a one-month grace period in which to complete the program or secure an extension from the board. The resident physician shall apply for renewal for one year by submitting the following:

(1) ~~A completed renewal application that documents why the individual has not obtained a permanent license;~~

(2) The renewal fee of \$25; and

(3) ~~A statement from the director of the residency program about the individual's progress in the program and whether any warnings have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action.~~

~~No documentation of continuing medical education or mandatory training on identifying and reporting abuse is required since a resident is in training.~~

c. The resident physician licensee is responsible for applying for an extension if the licensee has not been granted permanent physician licensure and the licensee will not complete the program within the grace period. The following extension application materials are due in the board office prior to the expiration of the license:

(1) A letter requesting an extension and providing an explanation of the need for an extension;

(2) The extension fee of \$25; and

(3) A statement from the director of the resident training program attesting to the new expected date of completion of the program and the individual's progress in the program and whether any warnings have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action.

~~No documentation of continuing medical education or mandatory training on identifying and reporting abuse is required since a resident is in training.~~

~~d. Failure of the licensee to renew extend a license within one month following the expiration date shall cause the license to become inactive and invalid. For example, a license that expires on June 26 becomes inactive and invalid on July 26. A licensee whose license is inactive is prohibited from practice until the license is renewed extended or replaced by a permanent medical physician or new resident physician license.~~

~~e. To renew extend an inactive resident license within one year of becoming inactive, an applicant shall submit the following:~~

(1) ~~A renewal application that documents why the individual has not obtained a permanent license~~ A letter requesting an extension and providing an explanation of the need for an extension;

(2) The ~~renewal~~ extension fee of \$25;

(3) A ~~\$25~~ 50 late fee; and

(4) A statement from the director of the ~~residency~~ resident training program attesting to the new expected date of completion of the program and ~~about~~ the individual's progress in the program and whether any warnings have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action.

~~No documentation of continuing medical education or mandatory training on identifying and reporting abuse is required since a resident is in training.~~

~~e.f. If more than one year has passed since the resident license became inactive, the applicant shall apply for a new resident license as described in subrule 10.3(3).~~

10.3(7) Review process for extending a resident license. The process below shall be utilized to review each request for an extension of a resident license.

a. An extension request shall be considered open from the date the required letters and nonrefundable extension fee are received in the board office.

b. After reviewing each request for extension, staff shall notify the licensee or designee about how to resolve any problems identified by the reviewer.

c. If the final review indicates no questions or concerns regarding the applicant's qualifications for continued licen-

MEDICAL EXAMINERS BOARD[653](cont'd)

sure, staff may grant administratively an extension to a resident license.

d. If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, the executive director, the director of licensure and administration, and the director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for licensure.

(1) If there is no current concern, staff shall grant administratively an extension to a resident license.

(2) If any concern exists, the application shall be referred to the committee.

e. Staff shall refer to the committee for review matters which include, but are not limited to, falsification of information in the request, criminal record, substance abuse, competency, physical or mental illness, or educational disciplinary history.

f. If the committee is able to eliminate questions or concerns without dissension from staff or a committee member, the committee may direct staff to grant administratively an extension to a resident license.

g. If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

(1) Request an investigation;

(2) Request that the licensee appear for an interview;

(3) Grant a license under certain terms and conditions or with certain restrictions;

(4) Request that the licensee withdraw the request for an extension; or

(5) Deny a request for an extension of the license.

h. The board shall consider applications and recommendations from the committee and shall:

(1) Request an investigation;

(2) Request that the licensee appear for an interview;

(3) Grant an extension to the resident physician license;

(4) Grant an extension to the resident physician license under certain terms and conditions or with certain restrictions;

(5) Request that the licensee withdraw the request for an extension; or

(6) Deny a request for an extension of the license. The board may deny an extension of a license for any grounds on which the board may discipline a license. The procedure for appealing a license denial of an extension is set forth in 653—9.15(147,148,150,150A).

~~10.3(7)~~ (8) An Iowa resident physician who changes residency resident training programs in Iowa. A resident physician who changes residency resident training programs shall acquire new resident physician licensure or permanent licensure prior to entering the new residency resident training program. Such changes include a transfer to a different program in the same institution, a move to a program in another institution, or becoming a fellow after completing a residency in the same core program. An individual who contracts with an institution to be in two programs from the time of application for the resident license shall not be required to apply for another resident license for the second program. A resident physician licensee applying for a new resident license shall submit the following:

a. A nonrefundable resident licensure application fee of ~~\$75~~ \$100;

b. to d. No change.

~~10.3(8)~~ (9) Discipline of a resident license. The board may discipline a license for any of the grounds for which licensure may be revoked or suspended as specified in Iowa

Code section 147.55 or 148.6, Iowa Code chapter 272C, and 653—12.4(272C).

~~10.3(9)~~ (10) Transition from a resident license to a permanent license. When a resident physician receives a permanent Iowa license, the resident physician license shall immediately become inactive.

ARC 2227B**NATURAL RESOURCE
COMMISSION[571]****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 subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 61, "State Parks and Recreation Areas," Iowa Administrative Code.

These amendments accomplish the following:

1. Remove references to Springbrook State Park from 61.4(1)"g."

2. Set fees for rental of the Springbrook Conservation Education Center at Springbrook State Park.

3. Remove Bobwhite State Park from the list of state parks and from the list of areas where after-hours fishing is allowed and add Bobwhite State Park to the list of state parks managed by another governmental entity. The park is now managed by the Wayne County Conservation Board.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 28, 2003. Such written materials should be directed to the Parks, Recreation and Preserves Division, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Division at (515)281-5207 or TDD (515)242-5967 or at the Division offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on January 28, 2003, at 9 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, 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.

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

These amendments are intended to implement Iowa Code sections 461A.3, 461A.44, 461A.46, 461A.47, and 461A.57.

The following amendments are proposed.

ITEM 1. Amend rule ~~571—61.2(461A)~~ by deleting "Bobwhite" from the list of areas in the definition of "state park" and by adding "Bobwhite" to the list of areas in the definition of "state park managed by another governmental entity."

NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 2. Amend subrule **61.4(1)**, paragraph “g,” subparagraph (1), introductory paragraph, as follows:

(1) Dolliver Memorial State Park, Webster County, ~~and Springbrook State Park, Guthrie County~~. Rental includes use of restroom and shower facility at Dolliver Memorial State Park.

ITEM 3. Rescind subrule **61.4(1)**, paragraph “g,” subparagraph (2), and renumber subparagraph (3) as (2).

ITEM 4. Amend subrule **61.4(1)** by adopting the following new paragraph “h”:

h. Springbrook State Park conservation education center rental. The conservation education center may be rented as a group camp facility or as an educational group facility.

(1) Linen service. Linen service includes bedding, pillows, towels and washcloths. The linen service fee stated below shall be charged. School groups are required to use the linen service. All other groups may elect to use the linen service.

(2) Concessionaire. All groups that utilize the classroom building and use education center staff for programs must use the concessionaire for all meals. All other groups may elect to use the kitchenette at the fee stated below or use the concessionaire or a combination of both.

(3) Classroom. All day use groups using the classroom or library must pay the appropriate fee. Overnight groups wishing to use the classroom facility for non-conservation education activities (such as quilters’ meetings or family reunions) must pay the appropriate classroom fee.

(4) Reservations. School groups and DNR camps may reserve the center three years in advance. All other groups may reserve the center a year in advance on a first-come, first-served basis. There is no reservation fee. Fees shall be paid upon arrival at the facility.

(5) Damage deposit. The damage deposit shall be paid on a separate instrument from the rental fee.

(6) Overnight rental fees. These fees do not include tax.

1. Kindergarten through grade 12—\$5 per person per night.

2. Adults—\$15 per person per night.

3. Families—\$160 per dorm per night.

(7) Other services. These fees do not include tax.

1. Linen service—\$5 per person per night.

2. Family linen service—\$160 per dorm per night.

3. Kitchenette rental—\$30 per day or night.

4. Classroom rental—\$100 per day or night.

5. Library rental—\$50 per day or night.

6. Dining hall rental, day use only—\$100 per day.

7. Dining hall with kitchenette rental, day use only—\$130 per day.

(8) Damage deposit—\$50 per visit.

(9) Check-out times for dorms.

1. Monday – Saturday, 8 a.m.

2. Sunday, 9 a.m.

ITEM 5. Rescind and reserve subrule **61.9(2)**.

ARC 2225B**PROFESSIONAL LICENSURE
DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Mortuary Science Examiners hereby gives Notice of Intended Action to amend Chapter 100, “Funeral Directors,” Iowa Administrative Code.

These proposed amendments adopt new rule 645—100.3(156) regarding permanent identification tags, renumber successive rules and revise the rules covering crematories.

Any interested person may make written comments on the proposed amendments no later than January 29, 2003, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, or by E-mail to ebaird@idph.state.ia.us.

A public hearing will be held on January 29, 2003, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

A waiver provision is not included. The Division has adopted a uniform waiver rule.

These amendments are intended to implement Iowa Code chapters 147, 156 and 272C.

The following amendments are proposed.

ITEM 1. Amend **645—Chapter 100**, title, as follows:

*PRACTICE OF FUNERAL DIRECTORS,
FUNERAL ESTABLISHMENTS, AND
CREMATION ESTABLISHMENTS*

ITEM 2. Amend rule **645—100.1(156)**, definitions of “cremated remains” and “final disposition,” as follows:

“Cremated remains” means the ~~body of a deceased person, including any form of body prosthesis that has been permanently attached or implanted in the body~~ *bone fragments which remain after the cremation process is completed.*

“Final disposition” means the place where human remains may be interred, *cremated*, entombed, enshrined, scattered or otherwise disposed of.

ITEM 3. Amend subrule 100.2(2) as follows:

100.2(2) *International Conference of Funeral Service Examining Boards of the United States of America, Inc.* The funeral director shall refer to the current outline of Funeral Service Task Analysis of the *International Conference of Funeral Service Examining Boards of the United States of America, Inc.* for current guidelines when referring to rules ~~100.3(142,156), 100.4(135,144)~~ *100.4(142,156), 100.5(135,144), and 100.5(156)* *100.6(156)*. These tasks reflect a minimum framework detailing the responsibilities of a funeral di-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

rector commencing with the initial notification of death through the final disposition of human remains.

ITEM 4. Renumber rules **645—100.3(142,156)** to **645—100.8(144)** as **645—100.4(142,156)** to **645—100.9(144)** and adopt the following new rule 645—100.3(156):

645—100.3(156) Permanent identification tag. The funeral director who assumes final disposition or who arranges for removal and transfer of the dead human remains shall attach a permanent identification tag encased in a durable and long-lasting material. The identification tag shall be attached to the ankle or wrist of the deceased before burial, cremation, donation, or shipment out of state. The tag shall contain the name of the deceased, date of birth, date of death and social security number of the deceased and the name and license number of the funeral home in charge of disposition.

ITEM 5. Amend renumbered subrule **100.4(1)**, paragraph “**d**,” as follows:

d. Obtain authorization for embalming *from an authorized person*.

ITEM 6. Renumber rule **645—100.11(156)** as **645—100.10(156)**.

ITEM 7. Amend renumbered subrule **100.10(1)**, paragraph “**a**,” subparagraph (3), as follows:

(3) If applicable, the name of the funeral director who sent the human remains and the name *and license number* of the funeral director’s associated funeral establishment.

ITEM 8. Amend renumbered subrule **100.10(1)**, paragraph “**b**,” subparagraph (3), as follows:

(3) The name of the person to whom the cremated remains are released and the name *and license number* of the funeral establishment, cemetery, family or other person or entity with which they are affiliated.

ITEM 9. Amend renumbered subrule **100.10(4)**, paragraph “**a**,” subparagraph (3), as follows:

(3) If applicable, the name *and license number* of the funeral establishment and funeral director who obtained the cremation authorization form signed by the authorizing person.

ITEM 10. Amend renumbered subrule **100.10(5)**, paragraphs “**a**,” “**d**,” “**f**,” and “**o**,” as follows:

a. A crematory shall have the right to schedule the cremation at its own convenience unless the crematory has received specific instruction to the contrary on the cremation authorization form and within the parameters of rule ~~100.4(135,144)~~ *100.5(135,144)*.

d. Whenever a crematory is unable or unauthorized to cremate human remains immediately upon taking custody of the remains, the crematory shall place the human remains in a holding facility in accordance with the crematory rules and regulations and within the parameters of rule ~~100.4(135,144)~~ *100.5(135,144)*.

f. Under no circumstances shall an alternative container or casket be opened at the cremation establishment except to ~~verify identity~~, to facilitate proper cremation, ~~or to confirm that no health hazard implants or materials are present~~.

o. A crematory shall maintain an identification system that shall ensure ~~that it shall be able to identify~~ the *identity* of human remains in its possession throughout all phases of the cremation process. *A noncombustible tag or disc that includes the name and license number of the crematory and the city and state where the crematory is located shall be attached to the plastic bag with the cremated remains or placed*

in amongst the cremated remains.

ITEM 11. Rescind and reserve renumbered subrule **100.10(8)**.

ARC 2223B**WORKERS’ COMPENSATION
DIVISION[876]****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 86.8, the Workers’ Compensation Commissioner hereby gives Notice of Intended Action to amend Chapter 4, “Contested Cases,” Iowa Administrative Code.

This amendment modifies the existing rule on the requirements for filing petitions with the agency to initiate contested case proceedings seeking workers’ compensation benefits and describes when a single petition may be filed when there are multiple possible injury dates or employers.

The Division of Workers’ Compensation has determined that this proposed amendment will not necessitate additional annual expenditures exceeding \$100,000 by political subdivisions or agencies which contract with political subdivisions. Therefore, no fiscal note accompanies this Notice.

The Division of Workers’ Compensation has determined that this amendment will not have an impact on small business within the meaning of Iowa Code section 17A.4A.

Any interested person may make written suggestions or comments on this proposed amendment on or before January 28, 2003, to the Workers’ Compensation Commissioner, Division of Workers’ Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319.

The proposed amendment does not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers’ Compensation Division rules.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 2232B**. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code sections 17A.12, 85.27, 85.45 and 85.48.

ARC 2224B**WORKFORCE DEVELOPMENT
DEPARTMENT[871]****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 96.11, the Director of the Workforce Development Department hereby

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

gives Notice of Intended Action to amend Chapter 22, "Employer Records and Reports," Iowa Administrative Code.

The amendments to this chapter make corrections that were identified as a result of reviews conducted in accordance with Executive Order Number 8.

Interested persons, governmental agencies and associations may present written comments or statements on the proposed amendments not later than 4:30 p.m. on January 28, 2003, to Larry Venenga, Workforce Development Department, Unemployment Insurance Services Division, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

A public hearing will be held at 9:30 a.m. on January 28, 2003, at the above address. The proposed amendments are subject to revision after the Department considers all written and oral presentations. Persons who wish to convey their views orally should contact Larry Venenga at (515)281-5526 or at the above address.

These amendments are intended to implement Iowa Code sections 96.6(2), 96.7, 96.7(1), 96.7(2)"a"(1), 96.7(3), 96.7(4), 96.8(1), 96.8(3), 96.8(4), 96.11, 96.11(1), 96.11(2), 96.11(6), 96.11(6)"a," 96.11(6)"c"(2), 96.11(7), 96.11(11), 96.14, 96.14(1), 96.14(2), 96.16, 96.19(17), 96.19(18)"f," and 96.20(3).

The following amendments are proposed.

ITEM 1. Amend rule **871—22.1(96)** by adopting the following **new** implementation clause:

This rule is intended to implement Iowa Code section 96.11(6)"a."

ITEM 2. Amend rule 871—22.2(96) as follows:

871—22.2(96) Reports. Each employing unit shall make such reports at such times as the department may require, and shall comply with the instructions printed upon any report form issued by the department pertaining to the preparation and return of such report.

This rule is intended to implement Iowa Code section 96.11(1).

ITEM 3. Amend subrule **22.3(5)**, paragraph "**c**," subparagraph **(2)**, as follows:

(2) If an individual is leased to fill a temporary need from a company whose business is primarily to provide workers to fill temporary needs, the individual shall be considered to be the employee of the leasing company *as long as a written contract is in place.*

ITEM 4. Amend subrule **22.3(6)**, paragraph "**a**," as follows:

a. The social security number, name (last name first), total wages paid and taxable wages paid to each employee during the calendar quarter. *All corrections to previous reports submitted to the department must be listed and submitted on Form 68-0061, Employer's Wage Adjustment Report. See rules 871—23.3(96) through 871—23.6(96).*

ITEM 5. Amend subrule **22.3(6)** by rescinding paragraph "**n**."

ITEM 6. Amend rule **871—22.3(96)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 96.7, 96.11(7), and 96.11(11) and 96.19(17).

ITEM 7. Amend rule 871—22.4(96) as follows:

871—22.4(96) Reporting of earnings data on magnetic tape media.

22.4(1) Employers may, in lieu of the individual wage item listing on Form 65-5300, Employer's Contribution and Payroll Report, submit a magnetic ~~tape~~ *media* listing. Authorization for this reporting method will be given if the employer meets the specification requirements so as to be compatible with the department's computer capabilities. Such specifications will be furnished upon request.

22.4(2) A magnetic ~~tape~~ *media* listing does not relieve the employer's responsibility to timely file Form 65-5300. If all wages are reported on magnetic ~~tape~~ *media*, designate this on Form 65-5300 and enter the grand total of all wages on the 65-5300 grand total all pages line. If some wages are on magnetic ~~tape~~ *media* and the balance individually listed on Form 65-5300, designate the total for each group on the form and enter the grand total of both groups on the 65-5300 grand total all pages line. All corrections to ~~wages reported~~ *previous reports submitted* to the department must be listed and submitted ~~in~~ *on* Form 68-0061, Employer's Wage Adjustment Report. ~~Credit~~ *Negative* wage amounts must not be reported on ~~tape~~ *magnetic media*. All reporting forms and contributions must be packaged and submitted separately from the ~~tape~~ *magnetic media*.

This rule is intended to implement Iowa Code section 96.7 11.

ITEM 8. Amend rule 871—22.5(96) as follows:

871—22.5(96) Filing of quarterly report forms by newly subject or covered employers. Any employing unit which becomes an employer subject to this chapter within any calendar quarter other than by a voluntary election of the employing unit shall file reports for each calendar quarter on Form 65-5300, Employer's Contribution and Payroll Report. Reports shall include all wages paid during the current quarter as well as separate quarterly reports for wages paid in prior quarters of the same calendar year. The first quarterly reports of that employer shall be due on the last day of the calendar month following the close of the calendar quarter in which the employing unit becomes subject to the Code and shall be considered delinquent if not submitted and paid by that date. *Any employer filing a voluntary election for coverage must begin filing reports in the quarter the employer's election is effective.*

This rule is intended to implement Iowa Code sections 96.7(1)"b," 96.14(1), and 96.14(2) and 96.8(3).

ITEM 9. Amend rule 871—22.6(96) as follows:

871—22.6(96) Employer terminating business or changing trade status, address or name required to file report. Any employer who terminates business for any reason whatsoever, or transfers or sells all or a substantial part of the assets of the organization, trade or business to another, or changes the trade name of such business or address thereof shall, within ten days after such termination, transfer, or change of name or address, give notice in writing to the department of that fact. The employer shall set forth in such notice the former name, ~~and~~ address of the business, the new name, *telephone number* and address, the name of any new owner, and the employer's own name, *telephone number* and present address. Such notification shall be on Form 60-0111, Employer's Notice of Change, or on Form 65-5313, Employer's Delinquency Notice.

This rule is intended to implement Iowa Code sections 96.11 and 96.8(4).

ITEM 10. Amend subrule 22.7(1) as follows:

22.7(1) Any employing unit having workers performing services for it which it considers exempt from this Act shall

WORKFORCE DEVELOPMENT DEPARTMENT[871](cont'd)

file a Form 68-0192, ~~Job Service~~ Questionnaire for Determining Status of Workers, along with supporting exhibits and documents (i.e., contract, statements from employer and claimant) so that a decision can be made as to whether or not such service is in fact exempt from the provisions of this Act.

ITEM 11. Amend rule **871—22.7(96)** by adopting the following ~~new~~ implementation clause:

This rule is intended to implement Iowa Code section 96.19(18)"f."

ITEM 12. Amend subrule 22.8(1) as follows:

22.8(1) Requesting determination of status. Whenever an employing unit is in doubt as to whether or not an individual is an employee, or is engaged in employment subject to the Act, the employing unit shall submit a statement of all relevant facts to the department for a determination as to the status under the Act of such individual or employment on Form 68-0192, *Questionnaire for Determining Status of Workers*, information for use in obtaining a ruling from the department as to whether or not a worker is an employee for the purposes of the Act.

ITEM 13. Amend subrule 22.8(2) as follows:

22.8(2) Notification of status. The department shall maintain a separate account for each employer and shall notify the employer by mailing a Form 65-5308, Notice of Employer Status *and Liability*, to the last-known address. This notice will advise the employer of:

a. to h. No change.

ITEM 14. Amend rule **871—22.8(96)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 96.7(9)"a"(2) (4).

ITEM 15. Amend subrule 22.9(1) as follows:

22.9(1) Each employing unit engaged in doing business in the state of Iowa January 1, 1936, or after, shall file a report to determine liability with the department on a form supplied by the department, *Form 60-0126, Report to Determine Liability*, setting forth the names and addresses of the owners of the business, or if a corporation, association, or joint stock company or *limited liability company*, the names and addresses of its officers, or *members*. *Each employing unit must show its principal place of business, the nature of its business, the number of individuals whom it customarily hires to perform services for it, the place or places where such services are performed, the time when such business was begun, the number of weeks in the year for which it is customary to operate such business and such other information as may be required by such form.*

ITEM 16. Amend subrule 22.10(2) as follows:

22.10(2) Reporting requirement. If, after the change in partners, the partnership is required to obtain a new federal identification number by the Internal Revenue Service, or if there has been a change of ownership as described in Iowa Code section 96.19(18)"b" or a change of ownership as described in rule 871—23.28(96), then the *old partnership shall notify the department by filing Form 60-0111, Employer's Notice of Change, within ten days from the date the change occurred. The new partnership shall notify the department by filing Form 60-0126, Report to Determine Liability, within ten days from the date the change occurred.*

ITEM 17. Amend subrule 22.11(1) as follows:

22.11(1) Separate accounts. The department shall maintain one account for each employer (or single legal entity).

An employer who has more than one establishment or business shall be considered to be one employing unit entitled to one account and a single experience rate. However, the employer may request that the department assign a separate reporting number (account number) to each establishment or business in ~~accord~~ *accordance* with rule 22.12(96). If the department issues a separate reporting number to the various establishments or businesses, each establishment or business that has a reporting number must submit a quarterly contribution and payroll report showing all wages paid by the establishment or business during each quarter. The experience of all the establishments or businesses of the employer shall be combined on the rate computation date for the purpose of computing one experience rate which shall be applicable to all of the employer's establishments or businesses.

If an establishment or business owned by an employer is a separate legal entity in its own right (i.e., a subsidiary corporation), it will be considered to be a separate employer and must have an experience rate based on its own experience.

When an already covered employer acquires another establishment or business, the employer ~~may~~ *will* have a separate account number with a separate experience rate for the acquired business only if that business retains its character as a separate legal entity. If the acquired business is merged with that of the employer so that they become a single legal entity under the law, the successor is not entitled to separate rates although the employer may request a separate reporting number in ~~accord~~ *accordance* with rule 22.12(96).

ITEM 18. Amend rule 871—22.11(96) as follows:

Amend subrule 22.11(4) as follows:

22.11(4) Establishment defined. As used in this ~~section~~ *rule*, "establishment" means an economic unit, generally at a single physical location, where business is conducted, or where services or industrial operations are performed, or from which employees are dispatched.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code sections 96.7(2)"a"(1) and 96.19(~~6~~ 17).

ITEM 19. Amend rule 871—22.13(96) as follows:

Amend subrule 22.13(1) as follows:

22.13(1) Any employing unit reporting under an assigned account and having one or more separate and distinct employing locations in the state of Iowa may request in writing the assignment of a location code for *each of* the various separate and distinct establishments. The location code, which is limited to three digits, will be assigned for the specific purpose of mailing Form 65-5317, Notice of Claim Filing, to the location coded account so that responsible personnel at that location can make a timely protest on the Form 65-5317 if the employment separation was for a disqualifiable reason. Those accounts so wishing may request in writing that all unemployment insurance material other than Form 65-5317, Notice of Claim Filing, be sent to the home office or regional accounting office. All such requests must be from a responsible financial or operating officer of the firm and shall indicate:

a. Full trade name and address of each location to be coded.

b. The full trade name and address of the home office or financial office that all unemployment insurance material other than the Form 65-5317 is to be sent.

ITEM 20. Amend subrule 22.13(4) as follows:

22.13(4) Once the employer's account is properly location coded, the following information will be preprinted by the computer on ~~the~~ Form 65-5305.

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- a. The employer's account number.
- b. Location code(s).
- c. The firm name(s) and mailing address(es) for Form 65-5317.
- d. The industrial classification code(s).

ITEM 21. Amend subrule 22.13(6) as follows:

22.13(6) It will be the employing unit's responsibility to complete this information in the proper sequence in order for the location code procedure to be maintained in a workable manner. If any locations are deleted or added, the department shall be notified within ~~seven~~ *ten* working days from the date of change.

ITEM 22. Amend rule **871—22.13(96)** by adopting the following **new** implementation clause:

This rule is intended to implement Iowa Code section 96.6(2).

ITEM 23. Amend rule 871—22.14(96) as follows:

871—22.14(96) Notification by employer of employee's rights. Each employer shall post and maintain in places readily accessible to individuals in its employ printed notices or posters, Form 60-0160, informing employees of their potential rights to benefits under the employment security law and providing general instructions as to what the employees shall do and where the employees shall go to obtain these benefits. Copies of these printed notices or posters may be obtained from the department, upon request, without cost to the employer.

This rule is intended to implement Iowa Code section 96.11(2).

ITEM 24. Amend rule **871—22.15(96)** by adopting the following **new** implementation clause:

This rule is intended to implement Iowa Code section 96.11(1) and 96.11(6)“c”(2).

ITEM 25. Amend rule 871—22.16(96), catchwords, as follows:

871—22.16(96) Mailing Transmittal.

ITEM 26. Amend subrule 22.17(3) as follows:

22.17(3) The department has enforcement authority. An employer, when requested to produce records by an auditor, must make the records available within and at a reasonable

time to the auditor. If an employer does not comply with the auditor's request to produce records, a subpoena duces tecum may be served on the employer to appear before the auditor with the records in ~~accord~~ *accordance* with Iowa Code section 96.11, ~~subsection~~ *subsections 8 and 9*.

ITEM 27. Amend subrule **22.17(4)**, paragraph “f,” as follows:

f. To verify proper employer posting to department reports, a ~~detail~~ *detailed* audit of check stubs, weekly time cards, or other maintained source documents will be made and documented for at least one worker for at least one quarter. The ~~detail~~ *detailed* audit may be more comprehensive at the discretion of the auditor or if discrepancies are found.

ITEM 28. Amend subrule **22.17(4)**, paragraph “i,” as follows:

i. Generally the audit will cover a minimum of four calendar quarters; however, if the initial audit discloses material errors as defined by the department, the audit may be expanded to cover prior or subsequent periods subject to limitations of subrule 22.1(1), except that no period covered by a prior audit may be included in the expansion. *The auditor will review and correct similar errors in a minimum of a year prior to and after the audited year.*

ITEM 29. Amend subrule 22.17(5), introductory paragraph, as follows:

22.17(5) There are several other reasons department representatives may make employer contacts and demands under authority of this rule. Any of these activities may be expanded into a systematic compliance audit as described in subrule 22.17(4) upon approval of the ~~director or a~~ *duly authorized representative of the department.*

ITEM 30. Amend rule **871—22.17(96)** by adopting the following **new** implementation clause:

This rule is intended to implement Iowa Code sections 96.7(1), 96.7(3), 96.8(1), 96.11(1), 96.11(6)“a,” 96.11(7), 96.14, 96.16 and 96.20(3).

ITEM 31. Amend subrule **22.18(2)**, paragraph “b,” as follows:

b. The name, address and ~~account~~ *telephone* number of the agent or firm representing the employer.

ITEM 32. Rescind and reserve subrule **22.18(3)**.

ARC 2241B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 455B.103A, the Environmental Protection Commission hereby amends Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code.

This amendment corrects an error in an earlier rule making which implemented changes to the stormwater regulations. The rules were Adopted and Filed and published in the October 16, 2002, Iowa Administrative Bulletin as **ARC 2048B** and were intended to implement changes to meet the provisions of new federal requirements known as Phase II stormwater regulations. The intended changes would require more cities to obtain permit coverage for their separate storm sewer systems, but the error would require many more cities to obtain permit coverage than required by federal regulations. This amendment corrects the error and results in rule applicability identical to federal requirements.

The Commission finds, pursuant to Iowa Code section 17A.4(2), that notice and public participation are impracticable because of the immediate need to implement the amendment and the benefit conferred by the amendment.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator on December 17, 2002, as it confers a benefit to many municipalities that would otherwise be required to obtain permits not required by federal regulations.

This amendment is intended to implement Iowa Code chapter 455B, division I.

The following amendment is adopted.

Amend subrule **64.13(2)**, paragraph "**b**," as follows:

b. All MS4s located in urbanized areas as defined by the latest decennial census ~~or~~ *and all MS4s* which serve 10,000 people or more ~~and all MS4s~~ located outside urbanized areas and where the average population density is 1,000 people/square mile or more are regulated small MS4s unless waiver criteria established by the department are met and a waiver has been granted by the department.

[Filed Emergency 12/17/02, effective 12/17/02]

[Published 1/8/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/03.

ARC 2242B**ENVIRONMENTAL PROTECTION
COMMISSION[567]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 455B.200, the Environmental Protection Commission hereby amends Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

This amendment sets up a methodology for a county board of supervisors to notify the Department that the county board

of supervisors wishes to evaluate proposed confinement livestock operations using the master matrix.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 18, 2002, as **ARC 1989B**. A public hearing was held on October 8, 2002. Ten people attended the public hearing, and five written comments were submitted.

Public comment focused on two main issues concerning the adoption of a construction evaluation resolution by county boards of supervisors. In essence, a construction evaluation resolution allows counties to use the master matrix to evaluate proposed confinement feeding operation structures.

First, the amendment as published in the Notice provides that counties must notify the Department of the passage of such a resolution on an annual basis until 2005, at which time the resolution would remain in effect for two years. Counties may "opt in" to use the master matrix only during a set enrollment period. Concern has been expressed that the two-year period is too long, and a suggestion was made that the resolution enrollment period occur annually.

Secondly, comments were received regarding subparagraph 65.10(3)"a"(6) as published in the Notice. Under this provision, a county board of supervisors would not be required to evaluate proposed facilities with the master matrix once the board has passed the construction evaluation resolution. The comments questioned whether the selective application of the master matrix violates the Equal Protection provisions of the Constitution.

In response to these comments, the following changes have been made to the amendment as published in the Notice:

First, proposed subparagraph (3) of 65.10(3)"a" was not adopted, and subparagraphs (4) to (6) were renumbered as (3) to (5). Renumbered subparagraph (3) has been modified to allow annual resolution enrollment periods.

Secondly, renumbered subparagraph (5) of 65.10(3)"a" has been modified to provide that if a county board of supervisors fails to submit an adopted recommendation, the Department shall disregard any adopted recommendations from that board until the board timely submits a new construction evaluation resolution.

Thirdly, 65.10(3)"b" has been modified to require a county board of supervisors to evaluate all construction permits with the master matrix if the board has filed a construction evaluation resolution.

Finally, 65.10(3)"b"(2) has been modified to allow for a county board of supervisors' adopted recommendation to be based on comments received, although the board is still required to complete the master matrix and include it with the adopted recommendation.

In compliance with Iowa Code section 17A.5(2)"b"(2), the Commission finds that this amendment confers a benefit on a portion of the public and that the normal effective date of the amendment should be waived and this amendment should become effective February 1, 2003.

This amendment is intended to implement 2002 Iowa Acts, Senate File 2293, section 35.

This amendment shall become effective February 1, 2003. The following amendment is adopted.

Amend rule 567—65.10(455B) by adopting the following **new** subrule 65.10(3) and renumbering subrules **65.10(3)** through **65.10(8)** as **65.10(4)** through **65.10(9)**:

65.10(3) Master matrix. A county board of supervisors may adopt a construction evaluation resolution relating to the construction of a confinement feeding operation structure. The board must submit such resolution to the director of the

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department for filing. Adoption and filing of a construction evaluation resolution authorizes a county board of supervisors to conduct an evaluation of a construction permit application using the master matrix as follows:

a. Enrollment periods.

(1) For evaluation of construction permit applications filed during the period March 1, 2003, through January 31, 2004, the county board of supervisors must file an adopted construction evaluation resolution with the department between February 1, 2003, and February 28, 2003.

(2) For evaluation of construction permit applications filed during the period February 1, 2004, through January 31, 2005, the county board of supervisors must file an adopted construction evaluation resolution with the department between January 1, 2004, and January 31, 2004.

(3) For evaluation of construction permit applications filed during subsequent annual periods, each beginning on February 1 and ending on January 31 one calendar year later, the county board of supervisors must file an adopted construction evaluation resolution with the department between January 1 and January 31 immediately prior to the commencement of the applicable annual period.

(4) Filed construction evaluation resolutions shall remain in effect until the applicable enrollment period expires or until such time as the county board of supervisors files with the department a resolution rescinding the construction evaluation resolution, whichever is earlier.

(5) Filing of an adopted construction evaluation resolution requires a county board of supervisors to conduct an evaluation of a construction permit application using the master matrix. However, if the board fails to submit an adopted recommendation to the department, the department shall disregard any adopted recommendation from that board until the board timely submits a new construction evaluation resolution.

b. Use of the master matrix. If a county board of supervisors has adopted and filed with the department a construction evaluation resolution, as provided in paragraph 65.10(3)"a," the board shall evaluate all construction permit applications filed during the applicable period using the master matrix as follows:

(1) In completing the master matrix, the board shall not score criteria on a selective basis. The board must score all criteria which are part of the master matrix according to the terms and conditions relating to construction as specified in the application or commitments for manure management that are to be incorporated into a manure management plan as provided in Iowa Code section 455B.203.

(2) The board shall include with the adopted recommendation a copy of the master matrix analysis, calculations, and scoring for the application. The board's adopted recommendation submitted to the department may be based on the master matrix or on comments received by the board. The adopted recommendation shall include the specific reasons and any supporting documentation for the decision to recommend approval or disapproval of the application.

[Filed Emergency After Notice 12/17/02, effective 2/1/03]

[Published 1/8/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/03.

ARC 2240B**ENVIRONMENTAL PROTECTION COMMISSION[567]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 455C.9, the Environmental Protection Commission hereby amends Chapter 107, "Beverage Container Deposits," Iowa Administrative Code.

These amendments are intended to implement the provisions of Iowa Code chapter 455C, "Beverage Containers Control Act."

These amendments are in response to a session delay placed upon paragraph 107.4(3)"d," subrules 107.4(4), 107.9(2) and 107.9(3) and the second unnumbered paragraph of rule 107.14(455C) by the Administrative Rules Review Committee. The amendments establish categories for redemption centers and dealers and assign various rights and responsibilities to each category. In addition, subrule 107.3(5) is revised in response to comments received from the Distilled Spirits Council of the United States and the Alcoholic Beverages Division. The comments were received after the previous amendments were Adopted and Filed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 16, 2002, as **ARC 2049B**. In response to the comments the Department received during the public comment period and the public hearing, the following changes were made to the amendments published under Notice.

- Subrule 107.3(5) was reworded to clarify that refund language may be anywhere on the product label, and now reads as follows:

"**107.3(5)** The words "Iowa Refund 5¢" or "IA 5¢" shall be on the top of a metal beverage container. The words "Iowa Refund 5¢" or "IA 5¢" shall be on the conical portion of a glass or plastic beverage container so that the words are visible from above or shall be on the product label. The placement of refund information solely on the bottom of the beverage container is prohibited."

- Subrule 107.4(1), paragraph "b," was reworded to allow approved redemption centers to indicate that they will accept the same kind, size and brands sold by the dealer they are serving rather than supply the Department with a list of all the size types and brands the redemption centers accept. Subparagraph 107.4(1)"b"(3) now reads as follows:

"(3) Indication that the redemption center will accept all kinds, sizes, and brand names of beverage containers sold by the dealers served by the redemption center;"

- Subrule 107.4(1), paragraph "i," was reworded to allow redemption centers to be approved if they are open to the public four hours in the evening or on weekends. The paragraph now reads as follows:

"i. An approved redemption center shall be in operation and open to the public for redemption of beverage containers at least 20 hours per week, 4 hours of which shall be between the hours of 6 p.m. and 10 p.m. or on Saturday or Sunday, or a combination thereof."

Pursuant to Iowa Code section 17A.5(2)"b"(2), these amendments shall become effective upon filing. The Environmental Protection Commission has determined that the amendments confer the following benefits upon the public:

1. The amendments supersede previously adopted rules that have been determined by the Iowa Attorney General to be beyond the authority of the Commission. The determina-

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tion of the Attorney General supported the current delay in the effective date of the rules. The continuation of this delay causes uncertainty for the regulated public in regard to the relative rights and responsibilities of the parties subject to Iowa Code chapter 455C.

2. The amendments constitute a codification of an agreement that benefits existing redemption centers by allowing them to continue to receive pick-up service by distributors of empty beverage containers.

3. The amendments remove proposed restrictions on the labeling of beverage containers sold in Iowa, allow more flexibility in the hours which an approved redemption center must be open, and reduce the reporting requirements for redemption centers.

These amendments are intended to implement Iowa Code chapter 455C.

These amendments became effective December 17, 2002.

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 [107.2, 107.3(5), 107.4, 107.9, 107.14] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 2049B**, IAB 10/16/02.

[Filed Emergency After Notice 12/17/02, effective 12/17/02]
[Published 1/8/03]

[For replacement pages for IAC, see IAC Supplement 1/8/03.]

ARC 2235B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 239B.4(4), the Department of Human Services amends Chapter 41, "Granting Assistance," Iowa Administrative Code.

These amendments provide Family Investment Program (FIP) eligibility for aliens who have been determined by the U.S. Immigration and Naturalization Service to be "battered aliens" as described in 8 U.S.C. 1641(c). The battered person may be the alien or the child of the alien. This designation as a battered spouse or child allows the person to self-petition to obtain lawful permanent residency and obtain employment authorization.

Under federal Temporary Assistance for Needy Families (TANF) regulations, noncitizens who enter the U.S. on or after August 22, 1996, with certain alien statuses, including battered aliens, are barred from FIP eligibility for five years. However, states are allowed to provide assistance to these families under a separate state program, using state-only funds. These state funds can be used to meet TANF "maintenance of effort" requirements.

2002 Iowa Acts, House File 2623, directed the Department to provide FIP assistance to battered aliens without regard to the five-year bar. Persons applying for FIP assistance under these provisions will be required to meet all other FIP eligibility requirements, including participation in PROMISE JOBS and the Family Investment Agreement.

These amendments also:

- Clarify that the existing policy that active pursuit of verification of a disability through the Social Security Administration may not be sufficient to grant FIP hardship status, but may be used to support other evidence of a hardship.

- Update obsolete or confusing language, legal references, and a form name and number, identified through the rule assessment mandated by Executive Order Number 8.

These amendments do not provide for waivers in specified situations because these changes confer a benefit on FIP applicants and recipients.

Notice of Intended Action concerning these amendments was published on October 30, 2002, as **ARC 2070B**. The Department received two comments on this Notice. One expressed concern about the alien's receipt of employment authorization (a prerequisite for obtaining a social security number, required for FIP eligibility). FIP eligibility for battered aliens will not be delayed because of this requirement. The other requested FIP eligibility for victims of sexual assault who are not married to the perpetrators. The Department does not have statutory authority to make this change. These amendments are identical to those in the Notice of Intended Action.

The Department finds that these amendments confer a benefit on aliens who would qualify for the Family Investment Program. Therefore, the normal effective date of these amendments should be waived, pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted these amendments on December 11, 2002.

These amendments are intended to implement 2002 Iowa Acts, House File 2623, section 27.

These amendments became effective on January 1, 2003.

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 [41.22(13), 41.23, 41.24, 41.27(5), 41.30(3)] is being omitted. These amendments are identical to those published under Notice as **ARC 2070B**, IAB 10/30/02.

[Filed Emergency After Notice 12/12/02, effective 1/1/03]
[Published 1/8/03]

[For replacement pages for IAC, see IAC Supplement 1/8/03.]

ARC 2236B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 217.6 and 249A.4 and 2002 Iowa Acts, House File 2627, sections 118 and 137, the Department of Human Services hereby amends Chapter 51, "Eligibility," Chapter 52, "Payment," Chapter 75, "Conditions of Eligibility," and Chapter 177, "In-Home Health Related Care," Iowa Administrative Code.

These amendments make adjustments to the State Supplementary Assistance and Medicaid programs based on annual Supplemental Security Income cost-of-living adjustments by:

- Increasing the payment amount and income level for dependent person and family-life home benefits, as directed

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by 2002 Iowa Acts, House File 2627, section 118, to "pass along" the 2003 cost-of-living increase to recipients of State Supplementary Assistance and meet federal maintenance of effort requirements.

- Increasing the personal needs allowance for residents of a residential care facility by the same percentage as the federal benefits are increased (1.4 percent), as directed by 2002 Iowa Acts, House File 2627, section 118. (The portion allocated for the average Medicaid copayment remains the same, rounded to \$7.)
- Increasing the payment amount for residential care and in-home health-related care as directed by 2002 Iowa Acts, House File 2627, section 137.

Amounts used in determining the Medicaid eligibility of an institutionalized spouse are indexed annually by the consumer price index, as required by the Medicare Catastrophic Coverage Act. The Department has received notice of these increases from the U.S. Department of Health and Human Services. The maximum amount of resources to be attributed to a community spouse is increased from \$89,280 to \$90,660. The maintenance needs allowance for the community spouse is increased from \$2,232 per month to \$2,266.50 per month.

These amendments do not provide for waivers in specified situations because they increase benefits for recipients.

The Department of Human Services finds that notice and public participation are unnecessary and impracticable. The methods applied to calculate these amounts are set by statute. If the Department were to follow regular rule-making procedures to make cost-of-living increases, it would be several months before the public would realize the benefits of these amendments. Also, 2002 Iowa Acts, House File 2627, sections 118 and 137, authorize emergency rule making to make the State Supplementary Assistance changes. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit on the public by making cost-of-living adjustments. Emergency rule making is authorized by 2002 Iowa Acts, House File 2627, sections 118 and 137. Therefore, the Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived and these amendments be made effective January 1, 2003.

The Council on Human Services adopted these amendments December 11, 2002.

These amendments are intended to implement Iowa Code sections 249.3 and 249.4 and 2002 Iowa Acts, House File 2627, sections 118 and 137.

These amendments became effective January 1, 2003. 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 ~~\$275, effective January 1, 2002~~ \$279. When the dependent's income is from earnings, an exemption of \$65 shall be allowed to cover work expense.

ITEM 2. Amend rule 441—51.7(249), introductory paragraph, 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, ~~\$275~~ \$279 per month shall be deducted to cover the cost, and the remaining amount treated as earned income.

ITEM 3. Amend rule 441—52.1(249) as follows:
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, effective January 1, ~~2002~~ 2003.

\$630.00	\$635.00	care	Care allowance
\$77.00	\$79.00	personal	Personal allowance
\$707.00	\$714.00		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 ~~\$820~~ \$831
- b. Aged or disabled client, eligible spouse, and a dependent relative . . . ~~\$1092~~ \$1108
- c. Blind client and a dependent relative . . ~~\$842~~ \$853
- d. Blind client, aged or disabled spouse, and a dependent relative ~~\$1114~~ \$1130
- e. Blind client, blind spouse, and a dependent relative ~~\$1136~~ \$1152

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 ~~\$23.62 for the month of June 2001, \$17.96 for the month of July 2001, and \$18.52 for the month of August 2001 and ongoing \$18.72,~~ or on a cost-related reimbursement system with a maximum reimbursement per diem rate of ~~\$33.06 for the month of June 2001, \$25.14 for the month of July 2001, and \$25.92 for the month of August 2001 and ongoing \$26.20.~~ *The department shall establish a cost-related per diem rate shall be established* for each facility choosing this method of payment according to rule 441—54.3(249).

Amend subrule **52.1(3)**, paragraph "a," subparagraph (2), as follows:

(2) Effective January 1, ~~2002~~ 2003, a ~~\$77~~ \$79 allowance to meet personal expenses and Medicaid copayment expenses.

ITEM 4. Amend subrule **75.5(3)**, paragraph "d," introductory paragraph, as follows:

d. Method of attribution. The resources attributed to the institutionalized spouse shall be one-half of the documented resources of both the institutionalized and community spouse as of the first moment of the first day of the month of the spouse's first entry to a medical facility. However, if one-half of the resources is less than \$24,000, then \$24,000 shall be protected for the community spouse. Also, when one-half the resources attributed to the community spouse exceeds ~~\$89,280~~ \$90,660, the amount over ~~\$89,280~~ \$90,660 shall be attributed to the institutionalized spouse. (The maximum limit shall be indexed annually by the consumer price index.)

ITEM 5. Amend subrule **75.16(2)**, paragraph "d," subparagraph (3), introductory paragraph and first unnumbered paragraph, as follows:

(3) Needs of spouse. The maintenance needs of the spouse shall be determined by subtracting the spouse's gross income from ~~\$2,232~~ \$2,266.50. (This amount shall be indexed for inflation annually according to the consumer price index.)

However, if either spouse established through the appeal process that the community spouse needs income above ~~\$2,232~~ \$2,266.50, due to exceptional circumstances resulting in significant financial duress, an amount adequate to

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provide additional income as is necessary shall be substituted.

ITEM 6. Amend subrule 177.4(3) as follows:

177.4(3) Maximum costs. The maximum cost of service shall be ~~\$498.29~~ \$503.67. The provider shall accept the payment made and shall make no additional charges to the recipient or others.

[Filed Emergency 12/12/02, effective 1/1/03]

[Published 1/8/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/03.

ARC 2239B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 65, "Administration," Iowa Administrative Code.

These amendments make changes to food stamp work requirements, based on final federal regulations implementing provisions of the Balanced Budget Act of 1997 and the Personal Responsibility and Work Opportunity Reconciliation Act of 1996.

The amendments change the disqualification provisions for food stamp applicants to:

- Change the period when a voluntary quit affects eligibility to 30 days before application, instead of 60. Federal regulations now allow a choice between looking back 30 or 60 days. Iowa has chosen the 30-day period as easier to administer and less error-prone.
- Reduce the disqualification period for the first occurrence of a voluntary quit from 90 days to two months, consistent with penalties for disqualification related to other work requirements.
- Add the same penalty for voluntary reduction in work effort in the 30 days before application.
- Provide that applicants who are disqualified must both complete the minimum disqualification period and comply with the work requirement to attain eligibility. Under current rules, either action would end the disqualification. This change makes the penalties for quitting a job or reducing hours identical for both applicants and recipients, as required by federal regulations.

These amendments also change the food stamp eligibility requirements for able-bodied adults without dependents by:

- Ending the workfare program, due to state budget constraints and lack of cost-effectiveness. The state does not have the funds to pay 50 percent of the federally required transportation allowances for participants. Participation in the workfare program in its 18 months of operation has been very low (a monthly average of 47 people out of a potential 1000). The effect of eliminating the program will be that able-bodied adults without dependents who wish to receive food stamps for more than three months will have to find another way to meet the requirement to work at least 80 hours per month.
- Changing the way in which Iowa counts the three-year period used to determine whether work requirements apply. Federal regulations specify that able-bodied adults without

dependents can receive only three months of food stamp benefits in a three-year period without meeting work requirements. States may define how the three-year period is determined.

Under current rules, Iowa uses an individualized period beginning when each person first received benefits. This has proved to be difficult to administer, especially in relation to benefits received in other states where the three-year period is counted differently. Under these amendments, Iowa will use a fixed three-year period beginning December 1, 2002, to measure participation for all recipients. This matches the period used by the majority of states. The change essentially "restarts the clock" for current recipients.

- Specifying that able-bodied adults without dependents are exempt from work requirements for the month of December 2002, to prevent anyone from being adversely affected by elimination of workfare and the change in counting the three-year period.

These amendments do not provide for waivers in specified situations because the changes implement federal regulations which the Department does not have the authority to waive.

Notice of Intended Action concerning these amendments was published on October 30, 2002, as **ARC 2071B**. The Department received no comments on this Notice. These amendments are identical to those in the Notice of Intended Action.

The Department finds that these amendments confer a benefit on food stamp applicants and recipients by conforming state rules to federal regulations that became effective August 19, 2002, which is required as a condition of federal participation. Applicants benefit by shortening the look-back and initial penalty periods. Able-bodied adults without dependents benefit from reducing confusion in applying the "three months' benefits in three years" provision and "restarting the clock." Therefore, the normal effective date of these amendments should be waived, pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted these amendments on December 11, 2002.

These amendments are intended to implement Iowa Code section 234.12.

These amendments became effective on January 1, 2003. The following amendments are adopted.

ITEM 1. Amend rule 441—65.3(234), introductory paragraph, as follows:

441—65.3(234) Administration of program. The food stamp program shall be administered in accordance with the Food Stamp Act of 1977, 7 U.S.C. 2011 et seq., and in accordance with federal regulation, Title 7, Parts 270 through 283 as amended to June ~~1, 2004~~ 19, 2002.

ITEM 2. Amend subrule 65.27(1) as follows:

65.27(1) Applicant households. A member of an applicant household who without good cause voluntarily quits a job *or reduces hours of work to less than 30 hours weekly* within ~~60~~ 30 days ~~prior to~~ before the date the household applies for food stamp benefits shall be disqualified from participating in the food stamp program ~~for 90 days beginning with the date of the quit.~~ *according to the provisions of paragraphs 65.28(12)"a" and "b."* ~~Reduction in hours of work to less than 30 hours per week does not apply to applicant households.~~

ITEM 3. Amend subrule **65.28(14)** as follows:

Rescind paragraph "a" and adopt the following **new** paragraph "a" in lieu thereof:

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. An applicant disqualified under subrule 65.27(1) may be approved for benefits after serving the minimum disqualification period and complying with the work requirement, as follows:

(1) If the applicant voluntarily quit a job, the applicant must obtain a job comparable to the one that the applicant quit.

(2) If the applicant voluntarily reduced hours of employment to less than 30 hours per week, the applicant must start working 30 or more hours per week.

Amend paragraph "c" as follows:

c. An individual may reestablish eligibility during a disqualification period by becoming exempt from the work requirement as provided in subrule 65.28(2) ~~exclusive of paragraphs "c" and "e."~~

ITEM 4. Amend subrule 65.28(18) as follows:

65.28(18) Measuring the three-year period for able-bodied nonexempt adults without dependents. ~~The three-year period is a 36-month consecutive period of time. The 36-month period as provided for in federal regulations at 7 CFR 273.24(b) as amended to June 1, 2001 19, 2002, starts with the first month counted toward the 3-month limit. Periods during the 36 months in which the person may receive benefits because of being exempt from the requirement do not reset the 36-month period. on December 1, 1996 2002, is the first month for which a person's 36-month period can begin and ends November 30, 2005. When the person's first 36-month period expires, a new 36-month period begins starting with the first month counted toward the 3-month limit. Subsequent three-year periods start with the month of December following the end of the previous period.~~

ITEM 5. Rescind subrule 65.28(19) and adopt the following **new** subrule in lieu thereof:

65.28(19) Exemption from the work requirement for able-bodied adults without dependents (ABAWDs). All ABAWDs shall be exempt from the work requirement provisions of the federal regulations at 7 CFR 273.24, as amended to June 19, 2002, for the month of December 2002.

[Filed Emergency After Notice 12/12/02, effective 1/1/03]
[Published 1/8/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/03.

ARC 2237B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

This amendment extends limited Medicaid eligibility for "expanded specified low-income Medicare beneficiaries" for one month. Coverage under this group is limited to payment of Medicare Supplemental Medical Insurance (Part B) premiums only (\$58.70 per month effective January 1, 2003). Federal legislation established this 100 percent federally funded coverage group for a five-year period, which was scheduled to expire on December 31, 2002, but has been extended through March 31, 2003.

The Department adopted rules published on October 30, 2002, as **ARC 2073B**, to terminate coverage under this group effective with the expiration of federal funding. This amendment delays that action for one month to allow eligible persons to take advantage of the extension in federal funding authorized by Public Law 107-244.

This amendment does not provide for waivers in specified situations because it confers a benefit on persons eligible for benefits under this group.

The Department of Human Services finds that notice and public participation are impracticable because the rule must be changed in order to continue coverage that had been previously terminated. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

The Department finds that this amendment confers a benefit. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date is waived.

The Council on Human Services adopted this amendment on December 11, 2002.

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

This amendment became effective January 1, 2003.

The following amendment is adopted.

Amend rule 441—75.1(249A) by adding the following **new** subrule:

75.1(36) Expanded specified low-income Medicare beneficiaries. Through March 31, 2003, Medicaid benefits to cover the cost of the Medicare Part B premium shall be available to persons who are entitled to Medicare Part A provided the following conditions are met:

a. The person is not otherwise eligible for Medicaid.

b. The person's monthly income is at least 120 percent of the federal poverty level but is less than 135 percent of the federal poverty level (as defined by the United States Office of Management and Budget and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

c. The person's resources do not exceed twice the maximum amount of resources that a person may have and obtain benefits under the Supplemental Security Income (SSI) program.

d. The amount of the income and resources shall be determined the same as under the SSI program unless the person lives and is expected to live at least 30 consecutive days in a medical institution and has a spouse at home. Then the resource determination shall be made according to subrules 75.5(3) and 75.5(4). Income shall not include any amount of social security income attributable to the cost-of-living increase through the month following the month in which the annual revision of the official poverty level is published.

e. The effective date of eligibility shall be as set forth in rule 441—76.5(249A).

[Filed Emergency 12/12/02, effective 1/1/03]
[Published 1/8/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/03.

ARC 2233B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Chapter 80, "Procedure and Method of Payment," and Chapter 88, "Managed Health Care Providers," and adopts new Chapter 90, "Case Management for People with Mental Retardation, Chronic Mental Illness, or Developmental Disabilities," Iowa Administrative Code.

These rules:

- Create a new chapter to define and structure the provision of case management services under the Medicaid program targeted toward people with mental retardation (MR), chronic mental illness (CMI), or a developmental disability (DD).
- Provide for service assessment and authorization as a condition of Medicaid payment.
- Set criteria for reasonable and proper cost of operation to ensure appropriate use of state and federal Medicaid funds.
- Modify related rules to reference the requirements under new Chapter 90.

MR/CMI/DD case management is a service provided under the Medicaid program to manage multiple resources effectively for the benefit of targeted Medicaid clients. The service assists eligible recipients in gaining access to appropriate and necessary medical services and interrelated social and educational services. The rules support the appropriate and prudent expenditure of Medicaid funds and provide guidance to providers to ensure that services are consistent with Medicaid State Plan requirements, which have not previously been included in administrative rules.

The Department has determined that adopting rules on Medicaid requirements for targeted case management, implementing a process to assess the need for services, and requiring authorization based on that assessment would enhance the appropriateness of Medicaid expenditures and ensure that necessary services are available to clients. Establishment of a system of service authorization is consistent with federal authority for case management as a benefit under the Medicaid State Plan and under the Medicaid 1915(b) waiver for behavioral health care.

These rules do not provide for waivers in specified situations. Consumers or providers who want to request a waiver can do so under rule 441—1.8(17A,217).

Notice of Intended Action concerning these amendments was published in the Iowa Administrative Bulletin on October 16, 2002, as **ARC 2060B**. The Department held a public hearing on these amendments on November 6, 2002. Forty people attended the hearing. In addition, 25 people or agencies submitted written comments.

Commenters most frequently expressed concerns about:

- The effects of the caseload size limit to be used in determining reimbursement rates.
- The necessity of requiring prior authorization for services and the administrative burdens of obtaining authorizations.

- The desirability of having the Iowa Plan managed care contractor instead of the Department issue the service authorizations for the population with chronic mental illness.
- The appropriateness of criteria for determining need for case management services.
- The necessity for emergency implementation of these amendments.

The Department has made the following changes from the Notice in response to these concerns:

- In Item 2, proposed subparagraph 79.1(1)"d"(1), which contained the caseload limit, was not adopted. The remaining subparagraphs have been renumbered.
- In Item 7, a new paragraph 90.3(1)"d," which establishes that a service authorization can be suspended for up to two months when a person loses eligibility (for example, by entering a medical institution), has been added. A person who regains eligibility within the two months can resume services under the original authorization if there is time remaining in the authorized period.
- In Item 7, a sentence was added to subrule 90.3(3) to emphasize that the managed health care contractor shall use the same criteria and procedures for prior authorization as the Department.

Since targeted case management services for people who are chronically mentally ill are covered by the Iowa Plan contract, the Department believes that the Iowa Plan contractor is the appropriate agent for issuing service authorizations to this population. Removing these services from the Iowa Plan would have a negative fiscal impact on county governments. The Department will ensure that authorizations are issued for all covered populations using the same criteria.

The Department finds that adoption of these amendments confers a benefit on providers and consumers of case management services by ensuring that services will meet Medicaid state plan criteria and by setting uniform eligibility standards and grounds for terminating services and resolution of appeals. The Department has been informed that the U.S. Department of Health and Human Services is planning to audit Medicaid case management services in every state, and the Department believes that federal Medicaid funding for these services is at risk without adequate administrative rules establishing eligibility criteria. Therefore, the Department finds that the normal effective date of these amendments should be waived, pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted these amendments on December 11, 2002.

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

These amendments became effective on January 1, 2003. The following amendments are adopted.

ITEM 1. Amend rule 441—78.33(249A) as follows:

Amend the introductory paragraph as follows:

441—78.33(249A) Case management services. Payment on a monthly payment per enrollee basis will be approved for the case management functions required in 441—Chapter 24 90 or 441—Chapter 186.

Amend subrule 78.33(1) as follows:

Amend the introductory paragraph as follows:

78.33(1) Payment will be approved for MR/CMI/DD case management services pursuant to 441—Chapter 24 90 to:

Amend paragraph "a" as follows:

a. Recipients 18 years of age or over with a primary diagnosis of mental retardation, developmental disabilities, or chronic mental illness as defined in rule 441—22.1(225C) 90.1(249A). ~~Persons with mental disorders resulting from~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~Alzheimer's disease or substance abuse shall not be considered chronically mentally ill.~~

Rescind and reserve paragraph "b."

Amend paragraph "c" as follows:

c. Recipients under 18 years of age receiving HCBS MR waiver services.

Amend subrule 78.33(2), introductory paragraph, as follows:

78.33(2) Payment for services pursuant to 441—Chapter 24 90 to recipients under age 18 *who have a primary diagnosis of mental retardation or developmental disabilities as defined in rule 441—90.1(249A) and are* residing in a child welfare decategorization county shall be made when the following conditions are met:

ITEM 2. Amend subrule **79.1(1)**, paragraph "d," as follows:

d. Monthly fee for service with cost settlement. Providers of MR/CMI/DD case management services are reimbursed on the basis of a payment for a month's provision of service for each client enrolled in a an MR/CMI/DD case management program for any portion of the month based on reasonable and proper costs for service provision. The fee will be determined by the department with advice and consultation from the appropriate professional group and will reflect the amount of resources involved in ~~services~~ service provision.

Providers are reimbursed throughout each fiscal year on the basis of a projected monthly rate for each participating provider, based on reasonable and proper costs of operation, pursuant to federally accepted reimbursement principles (generally Medicare or OMB A-87 principles) with annual retrospective cost settlement based on submission of actual costs of operation and service utilization data by the provider on financial and statistical reports. The cost settlement represents the difference between the amount received by the provider during the year for covered services and the amount supported by the actual costs of doing business, determined in accordance with an accepted method of cost appointment.

The methodology for determining the reasonable and proper cost for service provision assumes the following:

(1) *The indirect administrative costs shall be limited to 20 percent of other costs.*

(2) *Mileage shall be reimbursed at a rate no greater than the state employee rate.*

(3) *The rates a provider may charge are subject to limits established at 79.1(2).*

(4) *Costs of operation shall include only those costs which pertain to the provision of services which are authorized under rule 441—90.3(249A).*

ITEM 3. Amend subrule **79.1(2)**, provider category "case management providers," as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Case MR/CMI/DD case management providers	Monthly fee for service with cost settlement. See 79.1(1) "d"	Retrospective cost-settled rate

ITEM 4. Amend subrule **80.2(2)**, paragraph "g," as follows:

g. Case management providers shall submit claims on Form 470-2486, Claim for Targeted Medical Care, for services provided pursuant to 441—Chapter 24 90 and on FACS-generated claims for services provided pursuant to 441—Chapter 186.

ITEM 5. Amend rule **441—88.61(249A)**, definition of "targeted case management services," as follows:

"Targeted case management services" shall mean ~~individual MR/CMI/DD case management services targeted to persons~~ *adults with a primary diagnosis of chronic mental illness as defined at Iowa Code section 225C.20 rule 441—90.1(249A), with standards set forth in 441—Chapter 24 and Medicaid requirements set forth in 441—Chapter 90.*

ITEM 6. Amend subrule 88.73(2) as follows:

88.73(2) Limits on payment responsibility for services ~~other than emergency room services.~~

a. The contractor is not required to reimburse providers for the provision of mental health services that do not meet the criteria of psychosocial necessity.

b. The contractor is not required to reimburse providers for the provision of substance abuse services that do not meet the criteria of service necessity.

c. *The contractor is not required to reimburse providers for the provision of MR/CMI/DD case management services that do not meet the criteria and requirements set forth in 441—Chapter 90.*

d. The contractor has the right to require prior authorization of covered, required and optional services and to deny reimbursement to providers who do not comply with such requirements.

e. Payment responsibilities for emergency room services are as provided at subrule 88.66(2).

f. Payment responsibility for services provided under the "keep kids safe" policy is set forth at subrule 88.67(8).

ITEM 7. Adopt the following new 441—Chapter 90 under Title VIII, "Medical Assistance":

CHAPTER 90

CASE MANAGEMENT FOR PEOPLE WITH MENTAL RETARDATION, CHRONIC MENTAL ILLNESS, OR DEVELOPMENTAL DISABILITIES

PREAMBLE

These rules define and structure medical assistance case management services provided in accordance with Iowa Code section 225C.20 for consumers with mental retardation (MR), chronic mental illness (CMI), or a developmental disability (DD). Provider accreditation standards are set forth in 441—Chapter 24.

MR/CMI/DD case management is a method to manage multiple resources effectively for the benefit of Medicaid consumers. The service is designed to help consumers with MR, CMI or DD gain access to appropriate and necessary medical services and interrelated social and educational services. MR/CMI/DD case management ensures that necessary evaluations are conducted; individual service and treatment plans are developed, implemented, and monitored; and reassessment of consumer needs and services occurs on an ongoing and regular basis.

441—90.1(249A) Definitions.

"Adult" means a person 18 years of age or older.

"Child" means a person under 18 years of age.

"Chronic mental illness" means the condition present in adults who have a persistent mental or emotional disorder that seriously impairs their functioning relative to such primary aspects of daily living as personal relations, living arrangements, or employment.

People with chronic mental illness typically meet at least one of the following criteria:

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1. They have undergone psychiatric treatment more intensive than outpatient care more than once in a lifetime (e.g., emergency services, alternative home care, partial hospitalization, or inpatient hospitalization).

2. They have experienced at least one episode of continuous, structured supportive residential care other than hospitalization.

In addition, people with chronic mental illness typically meet at least two of the following criteria on a continuing or intermittent basis for at least two years:

1. They are unemployed, or employed in a sheltered setting, or have markedly limited skills and a poor work history.

2. They require financial assistance for out-of-hospital maintenance and may be unable to procure this assistance without help.

3. They show severe inability to establish or maintain a personal social support system.

4. They require help in basic living skills.

5. They exhibit inappropriate social behavior that results in demand for intervention by the mental health or judicial system.

In atypical instances, a person who varies from these criteria could still be considered to be a person with chronic mental illness.

For purposes of this chapter, people with mental disorders resulting from Alzheimer's disease or substance abuse shall not be considered chronically mentally ill.

"Department" means the department of human services.

"Developmental disability" means a severe, chronic disability that:

1. Is attributable to a mental or physical impairment or combination of mental and physical impairments;

2. Is manifested before the age of 22;

3. Is likely to continue indefinitely;

4. Results in substantial functional limitations in three or more of the following areas of major life activity: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, and economic self-sufficiency; and

5. Reflects the person's need for a combination and sequence of special, interdisciplinary, or generic services, individualized supports, or other forms of assistance that are of lifelong or extended duration and are individually planned and coordinated.

"Medical institution" means an institution that is organized, staffed, and authorized to provide medical care as set forth in 42 Code of Federal Regulations 435.1009, as amended to October 1, 2001. A residential care facility is not a medical institution.

"Mental retardation" means a diagnosis of mental retardation which:

1. Is made only when the onset of the person's condition was before the age of 18 years;

2. Is based on an assessment of the person's intellectual functioning and level of adaptive skills;

3. Is made by a psychologist or psychiatrist who is professionally trained to administer the tests required to assess intellectual functioning and to evaluate a person's adaptive skills; and

4. Is made in accordance with the criteria provided in the Diagnostic and Statistical Manual of Mental Disorders, Fourth Edition, published by the American Psychiatric Association.

"MR/CMI/DD case management" means a service provided under the medical assistance program designed to assist eligible individuals with mental retardation, chronic

mental illness or developmental disabilities in gaining access to appropriate and necessary medical services and interrelated social and educational services. MR/CMI/DD case management is intended to manage multiple resources and to ensure that necessary evaluations are conducted; that individual service and treatment plans are developed, implemented, and monitored; and that reassessment of consumer needs and services occurs on an ongoing and regularly scheduled basis. MR/CMI/DD case management does not include direct services.

"Targeted population" means people who meet one of the following criteria:

1. An adult identified with a primary diagnosis of mental retardation, chronic mental illness or developmental disability; or

2. A child who is eligible to receive HCBS mental retardation waiver services; or

3. A child who has a primary diagnosis of mental retardation or developmental disability, resides in a child welfare decategorization county, and is likely to become eligible to receive HCBS mental retardation waiver services.

441—90.2(249A) Eligibility. A person who meets all of the following criteria shall be eligible for MR/CMI/DD case management:

90.2(1) The person is eligible for Medicaid or is conditionally eligible under 441—subrule 75.1(35).

90.2(2) The person is a member of the targeted population.

90.2(3) The person does not reside in a medical institution or is within 30 days of discharge from a medical institution.

90.2(4) The person has applied for MR/CMI/DD case management in accordance with the policies of the provider.

90.2(5) The person has been authorized for MR/CMI/DD case management in accordance with rule 441—90.3(249A).

441—90.3(249A) Authorization and need for service.

90.3(1) Authorization required. Assessment of the need for MR/CMI/DD case management is required at least annually as a condition of payment under the medical assistance program. The department will authorize up to 12 months of service when it has determined that the consumer has a need for service.

a. For applicants who have not received MR/CMI/DD case management within the 12 months before application, the department may include up to 4 prior months in the authorized period for the provider to complete the assessment, intake, and enrollment of the consumer.

b. For applicants who have received MR/CMI/DD case management within the previous 12 months, the provider shall obtain authorization before providing services.

c. For ongoing services, the provider shall obtain authorization before the previous authorization expires.

d. A service authorization may be suspended when a consumer loses eligibility for no more than two consecutive months but is expected to regain eligibility during the two-month period. A consumer who regains eligibility within those two months may resume services for the time remaining under the previous authorization. If the previous authorization expires during the two-month period, the provider shall obtain a new authorization before resuming services.

Payment will not be made for MR/CMI/DD case management provided when the authorization is suspended. MR/CMI/DD case management services will be canceled for consumers who do not regain eligibility by the end of the two-month period.

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90.3(2) Need for service. The department shall determine the initial and ongoing need for service based on evidence presented by the MR/CMI/DD case management provider, including diagnostic reports, documentation of provision of services, and information supplied by the consumer and other appropriate sources. The evidence shall demonstrate that all of the following criteria are met:

a. The consumer has a need for MR/CMI/DD case management to manage multiple resources pertaining to medical and interrelated social and educational services for the benefit of the consumer.

b. The consumer has functional limitations and lacks the ability to independently access and sustain involvement in necessary services.

c. The consumer is not receiving other paid benefits under the medical assistance program or under a Medicaid managed health care plan that serve the same purpose as MR/CMI/DD case management.

90.3(3) Managed health care. For consumers receiving MR/CMI/DD case management under a Medicaid managed health care plan as described in 441—Chapter 88, Division IV, the department delegates authorization and determination of need for service to the managed health care contractor. The managed health care contractor shall authorize services according to the criteria and procedures set forth in this chapter.

90.3(4) Transition authorization. In order to ensure that consumers with a need for MR/CMI/DD case management continue to receive service, consumers receiving MR/CMI/DD case management on January 1, 2003, shall be considered authorized for MR/CMI/DD case management for up to 12 consecutive months, beginning with January 2003.

a. During the period of time covered by the transition authorization, the department or, for services under a managed health care plan, the managed health care contractor may implement a determination of the need for service in accordance with subrule 90.3(2).

b. Based on the determination of need, the department or the managed health care contractor may authorize additional months of service or terminate payment.

c. If the outcome of the determination of need results in notice of termination of payment, and the consumer appeals that decision in accordance with rule 441—90.6(249A), then the consumer is entitled to continuation of services in accordance with rule 441—7.9(17A) for the duration of the transition authorization or until the appeal decision becomes final, whichever comes first.

441—90.4(249A) Application. The provider shall process an application for MR/CMI/DD case management no later than 30 days after receipt of the application. The provider shall refer the applicant to the department's service unit if other services are needed or requested.

90.4(1) Application record. The application shall include the consumer's name, the nature of the request for services, and a summary of any evaluation activities completed. The provider shall maintain this documentation for at least five years.

90.4(2) Application decision. The provider shall inform the applicant or the applicant's legally authorized representative of any decision to approve, deny, or delay the service in accordance with notification requirements at 441—subrule 7.7(1).

90.4(3) Delayed services. The application shall be approved and the consumer put on the referral list for assignment to a case manager when MR/CMI/DD case manage-

ment cannot begin immediately because there is no opening on a caseload. The provider shall notify the applicant or the applicant's legally authorized representative in writing of approval and placement on the referral list. If an applicant is on a referral list for more than 90 days from the date of application, this shall be considered a denial of service.

90.4(4) Denying applications. The provider shall deny applications for service when:

a. The applicant is not currently eligible for Medicaid; or

b. The applicant does not meet the eligibility criteria in rule 441—90.2(249A); or

c. The applicant or the applicant's legally authorized representative withdraws the application; or

d. The applicant does not provide information required to process the application; or

e. The applicant is receiving MR/CMI/DD case management from another Medicaid provider; or

f. The applicant does not have a need for MR/CMI/DD case management.

441—90.5(249A) Services.

90.5(1) Covered services. MR/CMI/DD case management shall include the following:

a. Assessment of need for case management, intake, and enrollment into case management and coordination of needed interdisciplinary diagnostic and evaluation services.

b. Development, implementation, and maintenance of a current and appropriate treatment plan that directly involves those concerned with the consumer, including the consumer, the consumer's legal representative, and the consumer's family. Other participants may include the case manager, service providers, and others whose appropriateness is identified through the evaluation, diagnostic, or reevaluation process.

c. Linkage of the consumer's needs to required treatments and services without restricting the consumer's choice of service providers in violation of Section 1902(a)(23) of the Social Security Act.

d. Coordination and facilitation of decision making according to the consumer's needs and abilities.

e. Monitoring of overall service delivery.

f. Crisis assistance planning and intervention.

90.5(2) Excluded services.

a. MR/CMI/DD case management is not a direct service. No direct treatment services are covered.

b. Medicaid payment for services to consumers who are conditionally eligible under 441—subrule 75.1(35) shall be made only when the consumer has met the spenddown requirements for the certification period.

The consumer is responsible for paying for services used to meet spenddown. The consumer shall be notified of this responsibility and shall acknowledge that the provider must be paid within 30 days of the date on the second invoice or MR/CMI/DD case management will be terminated.

90.5(3) Service contacts. Providers of MR/CMI/DD case management shall:

a. Make at least one contact per month with the consumer, the consumer's legal representative, the consumer's family, service providers, or another person, as necessary to develop or monitor the treatment plan; and

b. Make a face-to-face contact with the consumer at least once every three months.

90.5(4) Service requirements. MR/CMI/DD case management shall be implemented and provided in consultation with the consumer, the parents (if the consumer is a child), the consumer's legal representative, the consumer's family

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members, and others requested by the consumer and shall include the following:

a. Report of diagnostic category and consumer's county of legal settlement using Form 471-2464, Report for Enhanced Services.

b. A social history which contains current and historical information and is updated annually, in accordance with 441—subrule 24.4(1).

c. Assessment, in accordance with 441—subrule 24.4(2).

d. Individual service plan, in accordance with 441—subrule 24.4(3). The plan shall be based on the consumer's assessed needs, abilities, situation and desires and shall include the following:

(1) Reference to all provided services, including identification of providers and time frames for services.

(2) Documentation of the need for MR/CMI/DD case management as it corresponds with the goals and objectives.

(3) Crisis plan for emergencies.

(4) Discharge plan.

(5) Documentation of the parties involved with the development of the plan.

(6) Schedules for case monitoring and client reassessment.

(7) Plan for communication by the case manager to all providers to ensure coordination and planning.

e. Documentation of service provision in accordance with 441—subrule 24.4(4), including documentation of service contacts as described in subrule 90.5(3).

f. Incident reports in accordance with 441—subrule 24.4(5).

g. An annual report documenting the need for MR/CMI/DD case management, the appropriateness of service interventions, the goals and objectives, and the consumer's progress.

h. Documentation that the case manager has developed and, no less than quarterly, has carried out a process for determining the client's progress toward achieving the goals and objectives identified in the individual service plan.

90.5(5) Consumer rights. Consumer rights may be limited or restricted only with the consent of the consumer or the consumer's legally authorized representative, and only if:

a. The limited right is explained; and

b. A service activity to address the limitation is developed and documented in the service plan with an explanation that describes how the consumer will work toward having the restriction removed; and

c. Periodic evaluations of the limit are conducted to determine continued need.

441—90.6(249A) Terminating services.

90.6(1) MR/CMI/DD case management shall be terminated when:

a. The consumer does not meet eligibility criteria under rule 441—90.2(249A); or

b. The consumer has achieved all goals and objectives of the service; or

c. The consumer has no current need for MR/CMI/DD case management; or

d. The consumer receiving MR/CMI/DD case management based on eligibility under an HCBS waiver is no longer eligible for the waiver; or

e. The consumer or the consumer's legally authorized representative requests termination; or

f. The consumer is unwilling or unable to accept further services; or

g. The consumer or the consumer's legally authorized representative fails to provide access to information necessary for the development of the service plan or implementation of MR/CMI/DD case management.

90.6(2) The provider shall notify the consumer or the consumer's legally authorized representative in writing of the termination of MR/CMI/DD case management, in accordance with 441—subrule 7.7(1).

441—90.7(249A) Appeal rights.

90.7(1) Appeal to the provider. After notice of an adverse decision by the provider of MR/CMI/DD case management, the consumer or the consumer's representative may request an appeal as provided in the appeal process established by the provider agency.

90.7(2) Appeal to the department. After notice of an adverse decision by the department pertaining to authorization and need for service, the consumer or the consumer's representative may request reconsideration by the department by sending a letter to the department not more than 30 days after the date of the notice of adverse decision. The consumer or the consumer's representative may appeal an adverse reconsideration decision by the department as provided in 441—Chapter 7.

90.7(3) Appeal to the managed health care contractor. After notice of an adverse decision by a managed health care plan, the consumer or the consumer's representative may request a review as provided in rule 441—88.68(249A).

These rules are intended to implement Iowa Code sections 249A.4, 249A.26, and 249A.27.

[Filed Emergency After Notice 12/12/02, effective 1/1/03]

[Published 1/8/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/03.

ARC 2234B

**HUMAN SERVICES
DEPARTMENT[441]**

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 88, "Managed Health Care Providers," Iowa Administrative Code.

These amendments change definitions used to determine Medicaid coverage of substance abuse services under the Iowa Plan for Behavioral Health.

The American Society of Addiction Medicine has revised its patient placement criteria for the treatment of substance-abuse-related disorders, previously published in 1996. In amendments published in the Iowa Administrative Bulletin on September 18, 2002, as **ARC 1978B**, the Iowa Substance Abuse Commission referenced the revised criteria in 643 IAC Chapter 3 for use in licensing substance abuse facilities in Iowa. The revised criteria take the place of the criteria from the previous edition and the "Iowa Juvenile Placement Criteria for the Treatment of Psycho-Active Substance Use Disorder."

These amendments make corresponding changes to the Medicaid managed care rules, for consistency.

These amendments do not provide for waivers in specified situations because these changes will benefit facilities by

HUMAN SERVICES DEPARTMENT[441](cont'd)

making criteria under both licensure and Medicaid payment standards uniform.

Notice of Intended Action concerning these amendments was published in the Iowa Administrative Bulletin on October 16, 2002, as **ARC 2059B**. The Department received no comments on this Notice. These amendments are identical to those in the Notice of Intended Action.

The Department finds that these amendments confer a benefit on providers by setting consistent standards for licensing and service provision. Therefore, the normal effective date of these amendments should be waived, pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted these amendments on December 11, 2002.

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

These amendments became effective on January 1, 2003. The following amendments are adopted.

ITEM 1. Amend rule **441—88.61(249A)** as follows:

Rescind the definitions of "ASAM PPC2" and "IJC."

Amend the definition of "service necessity," introductory paragraph, as follows:

"Service necessity" shall mean that substance abuse services for the treatment of conditions related to substance abuse meet the following requirements according to the criteria of the ~~ASAM PPC2 or the IJC, whichever is applicable~~ **ASAM-PPC-2R**. The services shall be:

Adopt the following **new** definition of "ASAM-PPC-2R":

"ASAM-PPC-2R" shall mean the American Society of Addiction Medicine Patient Placement Criteria for the Treatment of Substance Related Disorders, Second Edition Revised, published by the American Society of Addiction Medicine in 2001.

ITEM 2. Amend subrule **88.65(4)**, paragraphs "**a**" through "**d**," as follows:

a. Outpatient services (all Level I as per ~~ASAM PPC2 and IJC services according to the ASAM-PPC-2R~~).

b. Intensive outpatient and partial hospitalization services (all Level II as per ~~ASAM PPC2 and IJC services according to the ASAM-PPC-2R~~).

c. Residential/ or inpatient services (all Level III as per ~~ASAM PPC2 and IJC services according to the ASAM-PPC-2R~~).

d. Medically managed intensive inpatient services (all Level IV as per ~~ASAM PPC2 and IJC services according to the ASAM-PPC-2R~~).

[Filed Emergency After Notice 12/12/02, effective 1/1/03]

[Published 1/8/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/03.

ARC 2238B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 153, "Social Services Block Grant and Funding for Local Services," Iowa Administrative Code.

This amendment rescinds the 4.3 percent cut in reimbursement rates for services under the State Payment Program. The amendment implementing that cut was Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on December 12, 2001, as **ARC 1165B**, effective December 1, 2001. This amendment returns rates to the rate in effect on November 1, 2001, for the last half of state fiscal year 2003. Providers enrolling during this period will be subject to the same limits. For fiscal year 2004, rates will be set by the county in which the provider is located or by the Iowa Plan contractor. References to purchase of service contracts are removed because those contracts are no longer used for adult services.

This amendment does not provide for waivers in specified situations because it confers a benefit.

Notice of Intended Action concerning this amendment was published on October 30, 2002, as **ARC 2069B**. The Department received no comments on this Notice. This amendment is identical to that in the Notice of Intended Action.

The Department finds that this amendment confers a benefit on providers of services reimbursed under this program. Therefore, the normal effective date of this amendment should be waived, pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted this amendment on December 11, 2002.

This amendment is intended to implement Iowa Code section 234.6(6).

This amendment became effective on January 1, 2003.

The following amendment is adopted.

Amend subrule **153.57(3)**, paragraph "**b**," as follows:

b. Payment to a provider with a special mental health, mental retardation county contract agreement for services provided to a member shall be ~~the purchase of service rate less 4.3 percent, or, if there is no purchase of service contract,~~ the unit rate paid on November 1, 2001, by the county in which the provider is located, ~~less 4.3 percent for the remainder of state fiscal year 2003, and the unit rate paid by the county in which the provider is located effective July 1, 2003.~~

(1) Payment to a provider for services to a member whose case is being overseen by the department's service worker and the Iowa Plan shall be at the rate established by the Iowa Plan contractor as of November 1, 2001, ~~less 4.3 percent for the remainder of state fiscal year 2003, and at the rate established by the Iowa Plan contractor effective July 1, 2003.~~

(2) Payment to a provider requesting enrollment in a special mental health, mental retardation county contract agreement ~~subsequent to December 1, 2001~~ **between January 1, 2003, and June 30, 2003**, shall be at the rate paid on November 1, 2001, by the county in which the provider is located, ~~less 4.3 percent.~~

(3) Payment to a provider requesting enrollment in the Iowa Plan ~~subsequent to December 1, 2001~~ **between January 1, 2003, and June 30, 2003**, shall be at the rate in effect on November 1, 2001, ~~less 4.3 percent.~~

[Filed Emergency After Notice 12/12/02, effective 1/1/03]

[Published 1/8/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/03.

ARC 2231B
PHARMACY EXAMINERS
BOARD[657]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 124.201, the Board of Pharmacy Examiners hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendment was approved during the December 4, 2002, meeting of the Board of Pharmacy Examiners.

The amendment removes the substance buprenorphine from control under Schedule V of the Iowa Controlled Substances Act and makes buprenorphine subject to control as a Schedule III substance under the Act.

This amendment does not provide for waiver or variance. Buprenorphine is subject to Schedule III control under the federal Controlled Substances Act.

In compliance with Iowa Code subsection 17A.4(2), the Board finds that notice and public participation are unnecessary in that the amendment is within narrowly tailored categories of rules exempt, pursuant to 657—subrule 28.10(2), from the usual public notice and participation requirements.

The Board also finds, pursuant to Iowa Code subsection 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator. This change confers a benefit to pharmacists, pharmacies, prescribers, and controlled substances distributors and manufacturers by placing the same controls on buprenorphine as those imposed by federal law.

This amendment became effective December 13, 2002.

This amendment is intended to implement Iowa Code sections 124.201 and 124.301.

The following amendment is adopted.

Amend rule 657—10.38(124) by adding the following new subrules 10.38(1) and 10.38(2):

10.38(1) Section 124.208, subsection 5, Code 2001, is amended to read as follows:

5. Narcotic drugs. Unless specifically excepted or unless listed in another schedule, ~~any~~:

a. *Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:*

~~a.~~ (1) Not more than one point eight grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium.

~~b.~~ (2) Not more than one point eight grams of codeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

~~c.~~ (3) Not more than three hundred milligrams of dihydrocodeinone (*hydrocodone*) per one hundred milliliters or not more than fifteen milligrams per dosage unit, with a four-fold or greater quantity of an isoquinoline alkaloid of opium.

~~d.~~ (4) Not more than three hundred milligrams of dihydrocodeinone (~~another name:~~ hydrocodone) per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

~~e.~~ (5) Not more than one point eight grams of dihydrocodeine per one hundred milliliters or not more than ninety milligrams per dosage unit, with one or more active nonnarcotic ingredients in recognized therapeutic amounts.

~~f.~~ (6) Not more than three hundred milligrams of ethylmorphine per one hundred milliliters or not more than fifteen milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

~~g.~~ (7) Not more than five hundred milligrams of opium per one hundred milliliters or per one hundred grams or not more than twenty-five milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

~~h.~~ (8) Not more than fifty milligrams of morphine per one hundred milliliters or per one hundred grams, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

b. *Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:*

(1) *Buprenorphine.*

(2) *Reserved.*

10.38(2) Section 124.212, subsection 3, paragraph "a," Code 2001, is rescinded and reserved.

[Filed Emergency 12/13/02, effective 12/13/02]

[Published 1/8/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/03.

ARC 2232B

WORKERS' COMPENSATION
DIVISION[876]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby amends Chapter 4, "Contested Cases," Iowa Administrative Code.

This amendment modifies the existing rule on the requirements for filing petitions with the agency to initiate contested case proceedings seeking workers' compensation benefits and describes when a single petition may be filed when there are multiple possible injury dates or employers.

In compliance with Iowa Code section 17A.4(2), the Interim Workers' Compensation Commissioner finds that notice and public participation are unnecessary. Rule 4.6(86) is noncontroversial. In order for the change to 876—4.6(86) to be effective January 1, 2003, it must be Adopted and Filed Emergency.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment be made effective January 1, 2003, as it confers a benefit upon the public to ensure speedy and uniform compliance with the Division's filing requirements.

This amendment is also published herein under Notice of Intended Action as **ARC 2223B** to allow for public comment.

The Division has determined that the amendment will have no impact on small business within the meaning of Iowa Code section 17A.4A.

WORKERS' COMPENSATION DIVISION[876](cont'd)

This amendment does not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

This amendment is intended to implement Iowa Code sections 17A.12, 85.27, 85.45 and 85.48.

This amendment became effective January 1, 2003.

The following amendment is adopted.

Amend rule **876—4.6(86)**, third unnumbered paragraph, as follows:

For all *original notices and petitions* filed on or after January 1, 2003, the date (day, month and year) of occurrence of injury, disablement or occupational hearing loss shall be alleged in each *original notice and petition* that claims benefits for injury, occupational disease or occupational hearing loss. All alternative or additional dates of occurrence of injury, disablement or occupational hearing loss shall be alleged in the same petition if the claim or claims are alleged to have arisen from the same occurrence or series of occurrences and *if (1) the correct date of occurrence is uncertain, (2) the dates are alleged to be part of a series of cumulative trauma occurrences, or (3) multiple dates of occurrence affecting the same member or part of the body are alleged. Leave to amend a petition to allege an additional or different date of occurrence, including leave to amend to conform to proof, shall be freely given when justice so requires.*

An employee may join in the same *original notice and petition* as many related claims as the employee has against a single employer.

Any number of employers may be joined in the same *original notice and petition* if the employee's claim is asserted against them jointly, severally or in the alternative and if the claim is alleged to have arisen out of the same occurrence or series of occurrences.

Joinder of related claims in a single proceeding and joinder of multiple employers in a single proceeding is not required. Failure to join all related claims or to join multiple employers in a single proceeding shall not be grounds for barring or dismissing any claim.

Claims are related if they involve common issues of law or fact and the outcome of one claim is material to the outcome of the other claim. In addition to the provisions of Iowa Rule of Civil Procedure 1.236, the workers' compensation commissioner may, for administrative convenience or any good cause, order that a claim be severed and proceeded with separately or that multiple separate *related* claims be joined or consolidated.

[Filed Emergency 12/16/02, effective 1/1/03]

[Published 1/8/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/03.

ARC 2221B**HUMAN SERVICES
DEPARTMENT[441]****Adopted and Filed**

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

These amendments make the following changes to the scope of Medicaid coverage for durable medical equipment and supplies:

- Allow coverage for blood pressure cuffs, oximeters, resuscitator bags and pressure gauges for adults. These items are medically necessary and cost-effective for adults as well as children.
- Allow coverage for enuresis alarm devices, at the request of the Drug Utilization Review Commission. These items are more effective and less costly than medications for treating bed-wetting.
- Allow coverage for enclosed beds, insulin infusion pumps, and vest airway clearance systems, in recognition that requests for exceptions to policy regarding these items are routinely granted as medically necessary and cost-effective under established criteria. The prior authorization process is a more efficient way to determine coverage for these items.
 - Clarify provider responsibility to monitor rental payments up to 150 percent of the purchase price and clarify the application of rental payments. This should result in fewer overpayments and recoupments by the Medicaid fiscal agent.
 - Clarify that oxygen prescribed "PRN" or "as necessary" is not allowed. For oxygen to be covered by Medicaid, the prescribing practitioner must present a specific estimate of the frequency and duration of use. Rules describing the limitations on coverage of oxygen in medical institutions and for home use have been reorganized for clarity.
 - Clarify coverage criteria for enteral feeding pumps and supplies and oral nutritional supplementation, as requested by the Durable Medical Equipment and Supply Dealer Medicaid Advisory Group. The guideline allowing for oral supplementation is now quantified to require medical necessity of supplementation to provide 51 percent or more of the recipient's daily calorie intake. Coverage limitations and prior authorization requirements for these products have been separated for clarity and moved to the prior authorization section.
 - Move some items from the list of "sickroom supplies" to the list of "durable medical equipment" for clarity.
 - Remove separate coverage for ambu bags, which are considered as part of the cost for ventilators.
 - Remove obsolete references to recipient-owned oxygen canisters and unnecessary references to the Medicaid provider manual.

Notice of Intended Action concerning these amendments was published on October 30, 2002, as **ARC 2072B**. The Department received no comments on this Notice. The Department did make changes to subparagraph 78.10(3)"c"(3) and paragraph 78.28(1)"i" as a result of internal review. The final wording shown below clarifies that the conditions that may justify oral nutrition supplementation include metabolic, digestive, or psychological disorders or pathologies.

The introductory paragraph of 78.10(3)"c"(3) now reads as follows:

"(3) Oral supplementation of a regular diet shall be approved as medically necessary only when the recipient is not able to ingest or absorb sufficient nutrients from regular food due to a metabolic, digestive, or psychological disorder or pathology, to the extent that supplementation is necessary to provide 51 percent or more of the daily caloric intake."

Numbered paragraph "1" of 78.10(3)"c"(3) now reads:

"1. A statement of the recipient's total medical condition that includes a description of the recipient's metabolic, digestive, or psychological disorder or pathology."

The introductory paragraph of 78.28(1)"i" now reads:

"1. Prior authorization is required for oral nutritional supplementation of a regular diet. (Cross-reference 78.10(2)"c"). The department shall approve payment when the recipient is not able to ingest or absorb sufficient nutrients from regular food due to a metabolic, digestive, or psychological disorder or pathology, to the extent that supplementation is necessary to provide 51 percent or more of the daily caloric intake."

Numbered paragraph "1" of subparagraph (1) of 78.28(1)"i" now reads:

"1. A statement of the recipient's total medical condition that includes a description of the recipient's metabolic, digestive, or psychological disorder or pathology."

These amendments do not provide for waivers in specified situations because addition of covered items, simplification of authorization procedures, and clarification of existing policies benefit Medicaid recipients. Recipients who believe they need a waiver of these rules may request one under rule 441—1.8(17A,217).

The Council on Human Services adopted these amendments on December 11, 2002.

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

These amendments shall become effective on March 1, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 78] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 2072B**, IAB 10/30/02.

[Filed 12/12/02, effective 3/1/03]

[Published 1/8/03]

[For replacement pages for IAC, see IAC Supplement 1/8/03.]

ARC 2226B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 22, "Wildlife Habitat on Private Lands Promotion Program," Iowa Administrative Code.

These rules designate the procedures that will be used to establish wildlife habitat on private lands. These amend-

NATURAL RESOURCE COMMISSION[571](cont'd)

ments change the funding source, incorporate the pheasant and quail restoration program, and provide for the collection and distribution of seed from the Wildlife Bureau's Seed Harvest Program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 2, 2002, as **ARC 2046B**.

The following changes were made from the Notice of Intended Action:

1. The predetermined fees formerly set forth in subrule 22.5(6) have been replaced by language authorizing the Department to negotiate with landowners to determine the appropriate amounts to be paid for various habitat practices.

2. Additional language has been added to subrule 22.9(1) requiring landowners to enter into cooperative habitat development agreements with the Department. In addition to establishing payment rates and required practices, these agreements will place restrictions on the reuse of seed from habitat plantings.

3. Additional language has been added to subrule 22.9(2) to prohibit educational or conservation groups from using free native plant materials received pursuant to this subrule as a seed source.

These amendments are intended to implement Iowa Code chapters 456A and 483A.

These amendments shall become effective February 12, 2003.

The following amendments are adopted.

ITEM 1. Amend rule 571—22.1(456A,483A) as follows:

571—22.1(456A,483A) Purpose. The purpose of these rules is to designate procedures by which revenues from the ~~sale of wildlife habitat stamps and income tax checkoff funds~~ *state fish and game protection fund* will be used to assist landowners in establishing wildlife habitat on private lands. *These rules authorize department staff to work with conservation organizations, educational groups, and private landowners to improve wildlife habitat on private land.*

ITEM 2. Amend rule 571—22.2(456A,483A) as follows:

571—22.2(456A,483A) Authority. Iowa Code section 483A.3 authorizes the expenditure of wildlife habitat stamp funds for "the development and enhancement of wildlife lands and habitat areas." Iowa Code section 456A.16 authorizes an income tax checkoff for habitat development for game and nongame wildlife 456A.19 authorizes that the state fish and game protection fund shall be expended solely in carrying on the activities embraced in the fish and wildlife division. Iowa Code section 483A.25 directs the department to spend 60 percent of the revenue derived from an increase in the hunting license fee to fund a pheasant and quail restoration program. The natural resource commission, hereinafter referred to as the commission, acting through its director, will enter into agreements with landowners and conservation groups to fulfill the requirements of the law.

ITEM 3. Amend rule 571—22.3(456A,483A) as follows:

571—22.3(456A,483A) Project scope. This program will provide cost-sharing assistance to landowners ~~from habitat stamp and tax checkoff revenues. Tax checkoff funds will be used to establish farmstead and feedlot shelterbelts, and habitat stamp funds will be used to provide temporary winter habitat plots, and habitat practices designed to implement the pheasant and quail restoration program throughout the state. Declines in wildlife populations in northern Iowa have been caused in part by the loss of secure food and shelter against winter storms. Shelterbelts will also provide significant ener-~~

~~gy savings to rural homes. Shelterbelts and habitat plots will demonstrate the value of winter habitat to wildlife in intensively farmed regions of the state. The purpose of these practices is to assist Iowa's landowners with developing and enhancing wildlife habitat on private lands in cooperation with other state, federal, and county agencies as well as conservation organizations.~~

ITEM 4. Amend rule 571—22.4(456A,483A) as follows:

571—22.4(456A,483A) Availability of funds. ~~Habitat stamp funds are dependent on stamp sales. Tax checkoff funds depend on voluntary contributions from Iowa taxpayers.~~ The amount of moneys available at any time will be determined by revenues received by the department and by matching contributions from conservation groups. ~~Final stamp sales for each calendar year will be determined by July 1 of the following year. Tax checkoff funds will be available by January 31 of the following calendar year.~~

22.4(1) Allotments for this program. Funds available for assisting landowners shall be in the department's budget in accordance with legislative appropriations. Funds will be made available during a fiscal year of July 1 to June 30.

22.4(2) Matching funds. To maximize the amount of wildlife habitat actually established, the department may accept contributions from any governmental or private conservation group to help establish shelterbelts or winter habitat demonstration areas *or habitat practices designed to implement the pheasant and quail restoration program.* Department funds may also be used to match other funding sources or incentive programs.

ITEM 5. Amend subrule 22.5(6), paragraphs "a," "b," "c" and "d," as follows:

~~a. Up to \$55 per acre for standing corn planted on annual set-aside acres. The department will enter into Cooperative Wildlife Habitat Agreements with landowners, which stipulate the rates that will be paid for various habitat practices. These "flat rates" will be developed using information collected from the ISU Extension Service custom rate guidelines, flat rates used by USDA for similar practices, and input from local conservation professionals.~~

~~b. Up to \$70 per acre for standing corn left on agricultural ground.~~

~~c. Up to \$30 per acre for planting forage sorghum and grain sorghum.~~

~~d. Up to \$50 per acre for planting forage sorghum and corn.~~

ITEM 6. Renumber rule **571—22.7(456A,483A)** as **571—22.8(456A,483A)** and adopt new rule 571—22.7(456A,483A) as follows:

571—22.7(456A,483A) Pheasant and quail restoration practices. This rule delineates eligibility and procedures for establishing pheasant and quail restoration practices.

22.7(1) Eligibility. The program is available statewide. To be eligible for cost assistance, landowners must enter into a written agreement with the department specifying the obligations of both parties.

22.7(2) Applications for assistance. Applications will be accepted only from those who are eligible as noted above.

a. Applications must be submitted on forms furnished by the department.

b. Applications and contracts must be received by June 1 to provide adequate time for site inspection and practice design. The application period may be extended indefinitely, or until all available funds have been committed. Landowners

NATURAL RESOURCE COMMISSION[571](cont'd)

will be notified within 30 days of their acceptance or rejection.

22.7(3) Project review and selection.

a. Projects will be reviewed by the department wildlife biologist, who will then recommend that the commission enter into agreements with the successful applicants.

b. Projects will be selected on the basis of habitat potential, site suitability, priority locations, and other habitat factors, to determine those projects with the greatest chance of benefiting wildlife populations.

22.7(4) Contract agreements. The director is authorized to enter into agreements with landowners to carry out the purposes of this program.

a. Agreement forms will be provided by the department, and they shall explicitly state the terms of the agreement including restoration practices.

b. Cost-sharing assistance will not be provided unless an agreement has been signed by both parties.

c. Contracts may be amended by mutual agreement of both parties.

22.7(5) Restoration practices. Pheasant and quail restoration practices will be guided by the Natural Resources Conservation Service (NRCS) field office technical guide (FOTG).

a. Approved practices include: brush management (314), conservation cover (327), critical area planting (342), early successional development/management (647), forage harvest management (511), pasture and hay planting (312), prescribed burning (338), prescribed grazing (528A), tree/shrub establishment (612), upland wildlife habitat management (645), wetland enhancement (659), wetland restoration (657), wetland wildlife habitat management (644).

b. Deviation from these practices or new practices must be approved by a department wildlife biologist.

ITEM 7. Adopt **new** rule 571—22.9(456A,483A) as follows:

571—22.9(456A,483A) Wildlife habitat enhancement on public and private lands. The department's primary goal for the wildlife bureau's seed harvest program is to provide an adequate supply of native plant materials to meet the diverse seeding requirements of state and federal land that is owned or managed by the department.

22.9(1) Private land. The department may enter into agreements to meet the challenge of providing native plant materials to conservation groups, educational groups, and private landowners for use in promoting and establishing wildlife habitat and conservation plantings in Iowa. These materials include, but are not limited to, seed and seedlings of prairie plants, grains, and agricultural crop seeds. All native prairie plant materials provided to Iowa landowners will be purchased through these agreements. Landowners who receive this seed will be required to enter into a cooperative habitat development agreement with the department. This agreement shall limit the landowner to utilizing the seed for development of wildlife habitat only and explicitly prohibit the landowner from harvesting or producing seed for any purpose other than providing wildlife habitat.

22.9(2) Public land. The department's seed harvest program will harvest, process, and distribute native plant materials for the purpose of improving wildlife habitat on department-managed land in Iowa. Native plant materials include prairie grasses and forbs and mast crops from trees. In addition, native plant materials may be provided to educational groups (schools) or conservation groups who want to carry out educational, environmental or demonstration plantings that will promote prairies and wildlife habitat. These

materials will be limited to \$300 or less in value and must be used for providing wildlife habitat or demonstrating the use of native plant materials. These materials provided to groups will include a marketing disclaimer which prohibits the materials from being used for seed source by the receiving group. The department may enter into agreements with conservation partners or governmental agencies to utilize prairie seed and seedlings as a matching source of in-kind value to secure additional funding or land acquisition, providing all seed materials remain on lands owned, managed or to be acquired by the department.

[Filed 12/17/02, effective 2/12/03]

[Published 1/8/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/8/03.

ARC 2220B**TRANSPORTATION
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on December 10, 2002, adopted amendments to Chapter 4, "Public Records and Fair Information Practices," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the October 16, 2002, Iowa Administrative Bulletin as **ARC 2050B**.

Iowa Code section 22.11 requires each state agency to adopt rules fulfilling various "fair information practices" requirements. Chapter 4, which was adopted in 1988, implements these requirements for the Department. This chapter consists of rules tailored to the Department and uniform rules adopted by reference. A person seeking to read and understand Chapter 4 must locate the uniform rules and read them in conjunction with Chapter 4. Based on reviews conducted in accordance with Executive Order Number 8, the Department has determined that this situation is confusing, needlessly complex, and occasionally redundant.

Chapter 4 is amended to merge the text of the uniform rules into Chapter 4 and simplify the content. In addition, rule 761—4.9(22), which lists confidential records, is being amended to bring it up to date.

These amendments do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 22.

These amendments will become effective February 12, 2003.

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 [4.1 to 4.10] is being omitted. These

TRANSPORTATION DEPARTMENT[761](cont'd)

amendments are identical to those published under Notice as **ARC 2050B**, IAB 10/16/02.

[Filed 12/12/02, effective 2/12/03]
[Published 1/8/03]

[For replacement pages for IAC, see IAC Supplement 1/8/03.]

ARC 2222B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 315.10, the Department of Transportation, on December 10, 2002, adopted amendments to Chapter 163, "RISE Program," Iowa Administrative Code.

The amendments to this chapter make corrections that were identified as a result of reviews conducted in accordance with Executive Order Number 8. The following summarizes these changes:

Item 1 revises five definitions.

Item 2 rescinds the definition for "regional development project." Item 4 strikes references to regional development projects. In Item 11, the regional development category is rescinded. Candidates for regional development RISE funding are usually on the primary road system, using state RISE funds. Beginning in 1991, Iowa Code section 315.4 specified that state RISE funds be spent exclusively on the Commercial and Industrial Network (CIN). Since that time, the Transportation Commission has programmed all state RISE fund projects on the CIN. Additionally, many projects meeting the objectives of the regional development category have been funded as local development projects using city and county RISE funds.

Items 3, 7 and 10 reflect current DOT organization and refer applicants to the Department's Internet Web site for RISE applications, instructions and forms.

Item 5 clarifies the process for applicants to seek written approval to acquire right-of-way prior to receiving RISE funding if there is an extreme urgency involving advance right-of-way acquisition.

Items 6 and 9 make changes to comply with the amended "transportation justification" definition to allow for planning considerations that could impact the RISE project.

Item 8 clarifies the provision under which the Transportation Commission may approve a participation amount that is less than 20 percent if it determines that the applicant city or county is economically distressed.

Item 12 updates the implementation clause for the chapter.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

Notice of Intended Action for these amendments was published in the October 16, 2002, Iowa Administrative Bulletin as **ARC 2051B**.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 315.

These amendments will become effective February 12, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 163] is being omitted. These amendments are identical to those published under Notice as **ARC 2051B**, IAB 10/16/02.

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