



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 and rules adopted by state agencies.

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

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)“a”]; agricultural credit corporation maximum loan rates [535.12]; and regional banking—notice of application and hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike-through letters~~ indicate deleted material.

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CITATION of Administrative Rules

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

- 441 IAC 79 (Chapter)
- 441 IAC 79.1(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).

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

Schedule for Rule Making 2008

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 26 '07	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08
Jan. 11 '08	Jan. 30	Feb. 19	Mar. 5	Mar. 7	Mar. 26	Apr. 30	July 28
Jan. 25	Feb. 13	Mar. 4	Mar. 19	Mar. 21	Apr. 9	May 14	Aug. 11
Feb. 8	Feb. 27	Mar. 18	Apr. 2	Apr. 4	Apr. 23	May 28	Aug. 25
Feb. 22	Mar. 12	Apr. 1	Apr. 16	Apr. 18	May 7	June 11	Sept. 8
Mar. 7	Mar. 26	Apr. 15	Apr. 30	May 2	May 21	June 25	Sept. 22
Mar. 21	Apr. 9	Apr. 29	May 14	***May 14***	June 4	July 9	Oct. 6
Apr. 4	Apr. 23	May 13	May 28	May 30	June 18	July 23	Oct. 20
Apr. 18	May 7	May 27	June 11	June 13	July 2	Aug. 6	Nov. 3
May 2	May 21	June 10	June 25	***June 25***	July 16	Aug. 20	Nov. 17
May 14	June 4	June 24	July 9	July 11	July 30	Sept. 3	Dec. 1
May 30	June 18	July 8	July 23	July 25	Aug. 13	Sept. 17	Dec. 15
June 13	July 2	July 22	Aug. 6	Aug. 8	Aug. 27	Oct. 1	Dec. 29
June 25	July 16	Aug. 5	Aug. 20	***Aug. 20***	Sept. 10	Oct. 15	Jan. 12 '09
July 11	July 30	Aug. 19	Sept. 3	Sept. 5	Sept. 24	Oct. 29	Jan. 26 '09
July 25	Aug. 13	Sept. 2	Sept. 17	Sept. 19	Oct. 8	Nov. 12	Feb. 9 '09
Aug. 8	Aug. 27	Sept. 16	Oct. 1	Oct. 3	Oct. 22	Nov. 26	Feb. 23 '09
Aug. 20	Sept. 10	Sept. 30	Oct. 15	Oct. 17	Nov. 5	Dec. 10	Mar. 9 '09
Sept. 5	Sept. 24	Oct. 14	Oct. 29	Oct. 31	Nov. 19	Dec. 24	Mar. 23 '09
Sept. 19	Oct. 8	Oct. 28	Nov. 12	***Nov. 12***	Dec. 3	Jan. 7 '09	Apr. 6 '09
Oct. 3	Oct. 22	Nov. 11	Nov. 26	***Nov. 26***	Dec. 17	Jan. 21 '09	Apr. 20 '09
Oct. 17	Nov. 5	Nov. 25	Dec. 10	***Dec. 10***	Dec. 31	Feb. 4 '09	May 4 '09
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Nov. 26	Dec. 17	Jan. 6 '09	Jan. 21 '09	Jan. 23 '09	Feb. 11 '09	Mar. 18 '09	June 15 '09
Dec. 10	Dec. 31	Jan. 20 '09	Feb. 4 '09	Feb. 6 '09	Feb. 25 '09	Apr. 1 '09	June 29 '09
Dec. 24	Jan. 14 '09	Feb. 3 '09	Feb. 18 '09	Feb. 20 '09	Mar. 11 '09	Apr. 15 '09	July 13 '09

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
1	Friday, June 13, 2008	July 2, 2008
2	Wednesday, June 25, 2008	July 16, 2008
3	Friday, July 11, 2008	July 30, 2008

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*****

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ADMINISTRATIVE SERVICES DEPARTMENT[11]		
Contractual limitation of vendor liability, ch 108 IAB 6/4/08 ARC 6809B	Conference Rm. 7, Level A Hoover State Office Bldg. Des Moines, Iowa	June 24, 2008 9 to 10 a.m.
DENTAL BOARD[650]		
Iowa practitioner review committee, 35.1(3) IAB 5/21/08 ARC 6803B	Board Conference Room, Suite D 400 SW 8th St. Des Moines, Iowa	June 10, 2008 10 a.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Administrative experience for the superintendent endorsement, 14.142(4) IAB 6/4/08 ARC 6812B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	June 25, 2008 1 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Air quality, amendments to chs 20, 22, 23, 25, 33 IAB 6/4/08 ARC 6826B	Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	July 7, 2008 1 p.m.
Closure of existing MSWLF units, 113.2(8) IAB 6/4/08 ARC 6828B	Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	July 10, 2008 12 noon
IOWA FINANCE AUTHORITY[265]		
2009 qualified allocation plan for low-income housing tax credit, 12.1, 12.2 IAB 6/4/08 ARC 6815B	2015 Grand Ave. Des Moines, Iowa	June 24, 2008 9 to 11 a.m.
NATURAL RESOURCE COMMISSION[571]		
Zoning of Lake Cornelia in Wright County, 40.58 IAB 6/4/08 ARC 6827B	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	June 25, 2008 9 a.m.
PUBLIC HEALTH DEPARTMENT[641]		
Oral health, ch 50 IAB 5/21/08 ARC 6795B (ICN Network)	ICN Conference Room, Sixth Floor Lucas State office Bldg. 321 E. 12th St. Des Moines, Iowa	June 10, 2008 3 to 4 p.m.
	Room 16 Iowa Central Community College 916 N. Russell Storm Lake, Iowa	June 10, 2008 3 to 4 p.m.

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)

	Conference Room A Ottumwa Regional Health Center 1001 E. Pennsylvania Ottumwa, Iowa	June 10, 2008 3 to 4 p.m.
	Room 304, Red Oak High School 2001 N. 8th St. Red Oak, Iowa	June 10, 2008 3 to 4 p.m.
	Public Library 524 Parkade Cedar Falls, Iowa	June 10, 2008 3 to 4 p.m.
Dental screening, ch 51 IAB 5/21/08 ARC 6798B (ICN Network)	ICN Conference Room, Sixth Floor 321 E. 12th St. Lucas State office Bldg. Des Moines, Iowa	June 10, 2008 3 to 4 p.m.
	Room 16 Iowa Central Community College 916 N. Russell Storm Lake, Iowa	June 10, 2008 3 to 4 p.m.
	Conference Room A Ottumwa Regional Health Center 1001 E. Pennsylvania Ottumwa, Iowa	June 10, 2008 3 to 4 p.m.
	Room 304, Red Oak High School 2001 N. 8th St. Red Oak, Iowa	June 10, 2008 3 to 4 p.m.
	Public Library 524 Parkade Cedar Falls, Iowa	June 10, 2008 3 to 4 p.m.
Blood lead testing, ch 67 IAB 5/21/08 ARC 6801B (ICN Network)	ICN Conference Room, Sixth Floor Lucas State Office Bldg. 321 E. 12 St. Des Moines, Iowa	June 10, 2008 10 a.m.
	Room A169 Carroll High School 2809 N. Grant Rd. Carroll, Iowa	June 10, 2008 10 a.m.
	Room 550, 5th Floor, DHS 411 3rd St. SE Cedar Rapids, Iowa	June 10, 2008 10 a.m.
	Loess Hills AEA 13 24997 Hwy. 92 Council Bluffs, Iowa	June 10, 2008 10 a.m.
	Matilda J. Gibson Memorial Library 200 W. Howard St. Creston, Iowa	June 10, 2008 10 a.m.
	Rm. 300, Kahl Educational Center Eastern Iowa Comm. College Dist. – 1 326 W. 3rd St. Davenport, Iowa	June 10, 2008 10 a.m.

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)

Carnegie-Stout Public Library 360 W. 11th St. Dubuque, Iowa	June 10, 2008 10 a.m.
Room 206, Library Bldg. Iowa Central Comm. College 330 Avenue M Fort Dodge, Iowa	June 10, 2008 10 a.m.
Rm. 115, Gardener Hall Southeastern Iowa Comm. College 335 Messenger Rd., South Campus Keokuk, Iowa	June 10, 2008 10 a.m.
Room 106, Activity Center North Iowa Area Comm. College – 1 500 College Dr. Mason City, Iowa	June 10, 2008 10 a.m.
Southern Prairie AEA 15 – 1 2814 N. Court St. Ottumwa, Iowa	June 10, 2008 10 a.m.
Roadman Hall Morningside College 1501 Morningside Ave. Sioux City, Iowa	June 10, 2008 10 a.m.
Public Library 21 E. 3rd St. Spencer, Iowa	June 10, 2008 10 a.m.

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

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

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

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

The following list will be updated as changes occur:

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 Workforce Development Center Administration Division[877]

ARC 6809B**ADMINISTRATIVE SERVICES
DEPARTMENT[11]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code Supplement section 8A.311(21)“a,” the Department of Administrative Services hereby gives Notice of Intended Action to adopt new Chapter 108, “Contractual Limitation of Vendor Liability Provisions,” Iowa Administrative Code.

The proposed rules allow the Director to authorize the procurement of certain goods and services when a contractual limitation of vendor liability is provided for and set forth in the documents initiating the procurement. The Iowa Department of Management[541] was also consulted, as required by the statute.

These rules implement provisions of 2007 Iowa Acts, House File 849, section 6 (Iowa Code Supplement section 8A.311(21)), which sets out instances where limitation of vendor liability may be acceptable, including the criteria for determining whether to permit a contractual limitation of vendor liability. The legislation also requires that factors such as whether authorizing the limitation is necessary to prevent harm to the state from a failure to obtain the goods or services sought or from obtaining the goods or services at a higher price if the state refuses to allow a contractual limitation of vendor liability be considered.

Any interested party may make written comments on the proposed chapter on or before June 24, 2008. Such written comments should be directed to Debbie O’Leary or Patricia Lantz, Department of Administrative Services, Hoover State Office Building, 1305 E. Walnut Street, Des Moines, Iowa 50319 or may be sent by fax to (515)281- 6401 or by E-mail to Debbie.Oleary@iowa.gov or Patricia.Lantz@iowa.gov.

A public hearing will be held on June 24, 2008, in the Hoover State Office Building, Level A, Conference Room 7, from 9 to 10 a.m., at which time persons may present their views either orally or in writing.

These rules are intended to implement Iowa Code Supplement section 8A.311.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Adopt **new** 11—Chapter 108 as follows:

CHAPTER 108
CONTRACTUAL LIMITATION OF
VENDOR LIABILITY PROVISIONS

PREAMBLE

These rules define the process for the department to follow when contracting for information technology goods and services. The rules allow the department to enter into contrac-

tual agreements that, in certain instances, will limit the liability of the vendor.

11—108.1(8A) Authority and scope. Pursuant to Iowa Code Supplement section 8A.311(21), these rules provide for authorizing information technology procurements containing a contractual limitation of vendor liability as provided for and set forth in the documents initiating the procurement. The department of administrative services adopted these rules in cooperation with the department of management.

11—108.2(8A) Definitions.

“Agency” or “state agency” means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code section 7E.5. However, “agency” or “state agency” does not include any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.
2. The general assembly, or any office or unit under its administrative authority.
3. The judicial branch, as provided in Iowa Code section 602.1102.
4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

“Agency head” means the director, commissioner, or other official in charge of a state agency.

“Competitive selection” means a formal or informal process engaged in by a state agency to compare provider qualifications, terms, conditions, and prices of equal or similar goods or services in order to meet the objective of purchasing goods or services based on quality, performance, price, or any combination thereof.

“Competitive selection documents” means documents prepared for a competitive selection by the department or an agency to purchase goods and services. Competitive selection documents may include requests for proposal, invitations to bid, or any other type of document the department or an agency is authorized to use that is designed to procure a good or service for state government. A competitive selection document may be an electronic document.

“Department” means the department of administrative services.

“Director” means the director of the department of administrative services.

“Information technology device” means equipment or associated software, including programs, languages, procedures, or associated documentation designed for the utilization and processing of information stored in an electronic format. “Information technology device” includes but is not limited to computer systems, computer networks, and equipment used for input, output, processing, storage, display, scanning, and printing.

“Information technology procurement” means a procurement for goods or services in which the predominant factor, thrust, and purpose of the procurement as reasonably stated is for the purchase of information technology devices or information technology services. Information technology procurements do not include procurements for goods or services in which the purchase of information technology devices or information technology services is an incidental, minor or limited part of the contract.

“Information technology services” means services designed to do any of the following:

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

1. Provide functions, maintenance, and support of information technology devices.
2. Provide services for any of the following:
 - Computer systems application development and maintenance.
 - Systems integration and interoperability.
 - Operating systems maintenance and design.
 - Computer systems programming.
 - Computer systems software support.
 - Planning and security related to information technology devices.
 - Data management consultation.
 - Information technology education and consulting.
 - Information technology planning and standards.
 - Establishment of local area network and workstation management standards.

11—108.3(8A) Applicability. This chapter applies to information technology procurements conducted by the department, including information technology procurements the department conducts on behalf of another state agency. When the department is conducting an information technology procurement on behalf of another state agency and the procurement exposes the state to risks for which the contractual limitation of vendor liability outlined in rule 108.5(8A) is not appropriate, the agency head of the other state agency shall make the decisions regarding contractual limitation of vendor liability outlined in subrule 108.4(2). This chapter does not apply to procurements conducted by another state agency on its own behalf.

11—108.4(8A) Authorization of limitation of vendor liability and criteria.

108.4(1) General approach. The director, in consultation with the department of management, may authorize the procurement of information technology devices and services in which a contractual limitation of vendor liability is provided for. Criteria for determining whether to permit a contractual limitation of vendor liability include all of the following:

- a. Whether authorizing a contractual limitation of vendor liability is necessary to prevent harm to the state from a failure to obtain the goods or services sought, or from obtaining the goods or services at a higher price if the state refuses to allow a contractual limitation of vendor liability.
- b. Whether the contractual limitation of vendor liability is commercially reasonable when taking into account any risk to the state created by the goods or services to be procured and the purpose for which they will be used.

108.4(2) Special circumstances. Certain information technology procurements of information technology devices and services expose the state to risks for which the contractual limitation of vendor liability outlined in rule 108.5(8A) is not appropriate. The department or applicable agency for which the department is conducting the procurement shall review the risks presented by the particular information technology procurement before initiating the procurement. When either the department or the applicable agency believes a particular information technology procurement may expose the state to risks for which the contractual limitation of vendor liability outlined in rule 108.5(8A) is not appropriate, the department or applicable agency shall identify the risks and identify the steps the department or applicable agency believes may help to mitigate the risks. The director or the applicable agency head shall consult with the department of management to determine whether a higher limit of the vendor's contractual liability is appropriate. This determination shall occur before the department issues the competitive selection documents, and the competitive selection

documents issued in the procurement shall include the higher limitation on the vendor's contractual liability that the director or the applicable agency head and the department of management have determined to be appropriate for the procurement under consideration.

108.4(3) Applicability. These rules do not apply to procurements for devices or services procured under a federal tariff or using federal funds, if the federal agency providing the funds imposes any requirements regarding limitation of liability provisions in the resulting contract.

11—108.5(8A) Prohibited limitation of vendor liability provisions.

108.5(1) For information technology procurements, the director authorizes the competitive selection documents and the resulting contract to include a contractual limitation of vendor liability clause that limits the vendor's liability to two times the contract value, as defined in subrule 108.5(3), provided that the foregoing limitation shall not apply to:

- a. Intentional torts, criminal acts, fraudulent conduct, intentional or willful misconduct, bad faith, or unlawful acts.
- b. Claims related to death, personal injury, or damage to real or personal property.
- c. Any contractual obligations of the vendor pertaining to indemnification, intellectual property, insurance, bonds, liquidated damages, compliance with applicable laws, confidential information, or express representations and warranties.
- d. Claims arising under provisions of the contract calling for indemnification of the state for third-party claims against the state for bodily injury to persons or for damage to real or tangible personal property caused by the vendor's negligence or willful conduct.

108.5(2) For information technology procurements, the director authorizes the competitive selection documents and the resulting contract to include a contractual limitation of vendor liability clause that limits the vendor's liability for consequential, incidental, indirect, special, or punitive damages, except for the following:

- a. To the extent the vendor's liability for such damages is specifically set forth in the statement of work, scope of services, or technical requirements; or
- b. To the extent the vendor's liability for such damages arises out of the items identified in paragraphs 108.5(1)“a” to “d.”

108.5(3) For the purpose of this rule, “contract value” means the aggregate total compensation paid by the state to the vendor under the entire term of the contract including all renewals and extensions.

11—108.6(8A) Negotiation of limitation of vendor liability provisions.

108.6(1) After completion of competitive selection process. In a competitive selection process, the department or the state agency upon whose behalf the department conducts the information technology procurement may either award the contract to the apparent successful vendor without further negotiation or negotiate contract terms, including limitation of vendor liability provisions, if the department or state agency, in its sole discretion, determines that the best interest of the state would be served by entering into negotiations. Any negotiations of vendor limitation of liability contractual provisions shall be done in accordance with the provisions of rules 108.4(8A) and 108.5(8A).

108.6(2) Sole source or emergency procurement. In a justifiable sole source or emergency procurement, the department or state agency may negotiate a contractual limitation

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of vendor liability provision in accordance with the provisions of rules 108.4(8A) and 108.5(8A).

11—108.7(8A) Additional requirement. Any contract containing a provision limiting the vendor's liability shall also contain provisions limiting the state's liability and preserving the state's sovereign immunity.

These rules are intended to implement Iowa Code Supplement section 8A.311(21).

ARC 6812B

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 14, “Issuance of Practitioner’s Licenses and Endorsements,” Iowa Administrative Code.

This amendment more clearly defines administrative experience for the superintendent endorsement.

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

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, June 25, 2008, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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

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

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, June 27, 2008. Written comments and suggestions should be addressed to Marcia J. Henderson, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to marcia.henderson@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendment is proposed.

Amend paragraph 14.142(4)“c” as follows:

c. *Other Administrative experience.*

(1) The applicant must have had three years of experience as a building principal or other PK-12 districtwide or area education agency administrative experience.

(2) *Other administrative experience: PK-12 or area education agency administrative experience is acceptable if the applicant acquires the three years’ experience while holding a valid administrator license.*

ARC 6826B

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 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 20, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 21, “Compliance,” Chapter 22, “Controlling Pollution,” Chapter 23, “Emission Standards for Contaminants,” Chapter 25, “Measurement of Emissions,” and Chapter 33, “Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality,” Iowa Administrative Code.

The purpose of the proposed amendments is to make corrections, clarifications and improvements to existing air quality rules for: air quality definitions, electronic submittal of applications and inventories, temporary operation of small generators during disaster periods, construction permitting provisions, portable plant relocation notifications, Title V definitions and permitting provisions, Acid Rain program provisions, emission standards for hazardous air pollutants, test methods and procedures, and PSD permitting provisions.

Item 1 amends rule 567—20.2(455B), the definition of “EPA reference method,” to make this definition consistent with the definition in rule 567—22.100(455B), to reflect federal amendments to EPA reference methods that were adopted by reference into 567—Chapter 25 in previous rule makings, and to adopt updates to test methods that EPA recently finalized.

Items 2 and 3 amend subrules 21.1(3) and 21.1(4) to allow for electronic submittal of emissions inventories. Electronic submittal is provided for under Iowa Code chapter 554D. For the past several years, the Department has given stakeholders the option of submitting emissions inventories electronically using the State Permitting and Air Reporting System (SPARS). Items 1 and 2 codify the option for electronic submittal.

Item 4 amends 567—Chapter 21 to add new rule 567—21.6(455B) to allow utilities to temporarily operate small generators for electricity generation during periods of natural and man-made disasters. During the winter ice storms that occurred in 2006-2007, when electricity generation was disrupted throughout much of the state, some utilities installed and temporarily operated small generators. Current rules do not allow for operation of a generator without an owner or operator first obtaining an air construction permit or a vari-

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ance from the Department. In the fall of 2007, the Department began working with stakeholders to devise the best way for expediting use of these generators in the future while still ensuring that air quality standards are met. The new rule is the result of these discussions with stakeholders and specifies the conditions for installing and operating these generators. This rule applies the definition of “disaster,” specified in Iowa Code section 29C.2(1), which reads as follows: “‘Disaster’ means man-made and natural occurrences, such as fire, flood, drought, earthquake, tornado, windstorm, hazardous substance or nuclear power plant accident or incident, which threaten the public peace, health, and safety of the people or which damage and destroy public or private property. The term includes attack, sabotage, or other hostile action from within or without the state.” Additionally, an owner or operator may install and operate a generator under this rule even if the Governor or President does not make an official disaster declaration.

Item 5 amends subrule 22.1(3) to allow for electronic submittal of air construction permit applications. As stated in the explanation for Items 2 and 3 above, electronic submittal is authorized under Iowa Code chapter 554D. The Department has been accepting electronic submittals through SPARS for several years now. This amendment codifies the electronic submittal option.

Item 6 amends paragraph 22.3(3)“f,” which contains the provisions for portable plant relocations. The amendment reduces the notification requirement for portable plant relocations from 30 days prior to relocation to 14 days prior to relocation. This change will allow more flexibility for owners and operators of equipment at portable plants, while still allowing sufficient time for Department field office staff to conduct air quality inspections at these portable plants. Facilities relocating to areas that are classified as nonattainment or areas that are maintenance areas for the ambient air quality standards must still submit their relocation notices 30 days in advance of relocating. This amendment will still provide the Department with sufficient time to conduct the required air quality analysis for facilities relocating to these areas. A list of current nonattainment and maintenance areas is available from the Department, upon request, and also will be available on the Department’s Internet Web site.

Item 7 amends rule 567—22.100(455B), the definition of “EPA reference method,” to reflect federal amendments to EPA reference methods that were adopted by reference into 567—Chapter 25 in previous rule makings and to adopt updates to test methods that EPA recently finalized.

Item 8 amends subrule 22.105(1), which includes the “duty to apply” provisions for the Title V Operating Permit program. This amendment accomplishes several objectives.

First, the amendment includes provisions for electronic submittal of the Title V application forms. The Department has provided for electronic submittal of Title V permit applications through SPARS for several years. Electronic submittal is authorized under Iowa Code chapter 554D.

Second, the amendment clarifies the requirements for submitting different types of Title V applications for both existing and new major stationary sources. The amendment does not add any new requirements, but simply provides a better description for Title V facility owners or operators who must submit timely applications, revisions and notifications.

Third, the amendment adds the requirements for permit application under the Clean Air Interstate Rule (CAIR). Although CAIR is distinct from the Title V program, the permitting requirements, like the Acid Rain program, are related

to the Title V permitting requirements. These amendments clarify the CAIR permit application requirements.

Item 9 amends rule 567—22.105(455B) to add new subrule 22.105(5). The new subrule adds provisions for the Department to allow more than one Title V permit for one stationary source. The amendment codifies Department policy to allow multiple permits under certain circumstances. The Department has issued multiple Title V permits to some single stationary sources. The Department will review requests for multiple Title V permits for a single stationary source and may issue multiple Title V permits, as appropriate.

Item 10 amends paragraph 22.106(3)“b” to provide for electronic submittal of Title V emissions inventories that are submitted to the Linn County or Polk County air quality programs. As with the Department, Linn County and Polk County currently allow electronic submittal of emissions inventories through SPARS.

Item 11 amends rule 567—22.106(455B) to add new subrule 22.106(8). Subrule 22.106(8) sets forth the provisions for correcting errors in Title V emissions inventories and Title V fees.

Item 12 amends the catchwords for rule 567—22.110(455B) to add the term “off-permit revision.” The term “off-permit revision” is sometimes used to refer to a change at a Title V source that does not require a revision to the current Title V permit. This amendment will make rule 567—22.110(455B) consistent with the amendment proposed in Item 8.

Item 13 amends subrule 22.116(2) to remove the sentence stating that required testing shall be completed prior to the submission of an application for Title V permit renewal. This statement is no longer needed because the Department’s Title V program has established procedures to address compliance testing. If a required test is not completed prior to Title V permit renewal, the Department has the option of including a compliance plan in the renewed permit that addresses the need to complete testing. It is not practical to delay submittal of a Title V renewal application because testing has not yet been completed.

Items 14 and 15 amend rule 567—22.120(455B), the introductory paragraph and the definitions of “40 CFR Part 72” and “40 CFR Part 75” to reflect recent EPA amendments to analytical test methods and procedures.

Item 16 amends subrule 22.207(1) to correct the cross reference to subrule 22.105(1) to reflect the amendments in Item 8.

Item 17 amends subrule 23.1(4), the emission standards for hazardous air pollutants for source categories, also known as National Emission Standards for Hazardous Air Pollutants or NESHAP, to adopt recent amendments that EPA made to 40 CFR Part 63. The amendments being adopted are as follows:

- Amendments to the NESHAP for dry cleaners (Subpart M, as adopted by reference in paragraph 23.1(4)“m”). This action amends federal language to correct applicability cross references that were not correctly amended between the most recent proposed and final rule revisions and to clarify that condenser performance monitoring may be done by either of two prescribed methods (pressure or temperature), regardless of whether an installed pressure gauge is present.

- Amendments to the NESHAP for hazardous waste combustors (Subpart EEE, as adopted by reference in paragraph 23.1(4)“be”). This action clarifies several compliance and monitoring provisions and also corrects several omissions and typographical errors in the final federal rule. EPA states that it is finalizing the amendments to facilitate compliance and improve understanding of the rule requirements.

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The final federal rule does not address issues for which petitioners sought reconsideration, and it does not address issues raised in EPA's comment solicitation of September 27, 2007.

- Amendments to the NESHAP for iron and steel foundries that are major sources of hazardous air pollutants (HAP) (Subpart EEEEE, as adopted by reference in paragraph 23.1(4) "de"). EPA issued amendments to this standard to add alternative compliance options for cupolas at existing foundries and to clarify several provisions to increase operational flexibility.

- Amendments consisting of technical corrections to the NESHAP for area sources for several source categories, including the NESHAP for acrylic and modacrylic fibers production (Subpart LLLLLL), carbon black production (Subpart MMMMMM), chemical manufacturing of chromium compounds (Subpart NNNNNN), flexible polyurethane foam production and fabrication (Subpart OOOOOO), lead acid battery manufacturing (Subpart PPPPPP), and wood preserving (Subpart QQQQQQ). The amendments clarify certain provisions in two of the final area source rules (flexible polyurethane foam production and fabrication and lead acid battery manufacturing) and correct editorial and publication errors in all of the final rules.

Additionally, the Department added language to subrule 23.1(4) to state that an earlier date for adoption by reference may apply for a particular subpart of Part 63 if that earlier date is specified in parentheses for the paragraph for which the federal subpart is adopted.

Item 18 amends paragraph 23.1(4) "cz," which is the NESHAP for stationary reciprocating internal combustion engines (RICE) (Subpart ZZZZ). The amendment specifies that the Department has adopted the federal provisions as amended through April 20, 2006. The amendment is being made because the Department is not adopting the federal amendments that EPA finalized on January 19, 2008. The Department is not adopting the new amendments at this time because the Department is still identifying facilities that may be affected by the federal amendments and is also developing an implementation plan for the new federal provisions. The Department plans to adopt the federal amendments in a rule making later this year.

Item 19 amends subrule 23.1(4) by adopting new paragraphs "dw," "dy," and "dz." This amendment adopts by reference three new NESHAP for area sources. Area sources are those new and existing sources that are not major sources for HAP. The new standards apply to the following source categories: Hospital Ethylene Oxide Sterilizers (Subpart WWWW); Steelmaking Electric Arc Furnaces (Subpart YYYYY); and Iron and Steel Foundries (Subpart ZZZZ).

The Department estimates that 18 hospitals may be affected by the NESHAP requirements for ethylene oxide (EO) sterilizers. Many hospitals no longer sterilize equipment with EO sterilizers. Hospitals that do operate new or existing EO sterilizers will be required to implement management practices for sterilizing full loads (except under medically necessary circumstances). Hospitals which route EO to an air pollution control device are in compliance with the required management practices. It is expected that any hospitals still operating EO sterilizers are already following the required management practices. However, the Department plans to contact the identified hospitals to assist with the applicable NESHAP requirements.

The Department has identified two facilities that may be affected by the NESHAP requirements for steelmaking electric arc furnaces (EAF). These two affected facilities already have Title V permits, as required by the NESHAP. The two

EAF facilities must implement and comply with a metal scrap handling plan by June 30, 2008. Additional NESHAP requirements may apply, such as compliance testing for particulate matter (PM) and opacity, as well as monitoring and record keeping. For purposes of the NESHAP, PM is a surrogate for HAP metals. The Department will be working with the two affected facilities to assist with applicable NESHAP provisions.

The Department estimates that 16 facilities may be affected by the NESHAP requirements for iron and steel foundries. Similar to the EAF NESHAP requirements, affected iron and steel foundries must implement a metal scrap handling plan by June 30, 2008. Affected foundries must also apply pollution prevention management practices, and larger foundries must comply with emission limits for PM (a surrogate for HAP metals). The Department will be working with the affected facilities to assist with applicable NESHAP provisions.

Item 20 amends subrule 23.1(4) by adopting new paragraphs "er," "es," and "et." This amendment adopts by reference three additional new NESHAP for area sources. The new standards apply to the following source categories: Clay Ceramics Manufacturing (Subpart RRRRRR); Glass Manufacturing (Subpart SSSSSS); and Secondary Nonferrous Metals Processing (Subpart TTTTTT).

At this time, the Department has not identified any facilities that appear to be affected by the NESHAP requirements for clay ceramics manufacturing.

The Department has identified one facility that may be affected by the NESHAP requirements for glass manufacturing. This facility already has a Title V permit, as required by the NESHAP. The NESHAP emission limits and testing requirements apply only to specific types of glass manufacturing that use one or more continuous furnaces that produce glass at a rate of at least 50 tons per year and that contain compounds or one or more "glass manufacturing metal HAP," as defined in Subpart SSSSSS. The Department will work with the glass manufacturing facility to determine what, if any, NESHAP requirements may apply.

The Department has identified three facilities that may be affected by the NESHAP requirements for secondary nonferrous metals processing. This standard applies to all furnace melting operations located at affected facilities. Existing facilities are required to route furnace emissions through a fabric filter or baghouse that achieves a PM control efficiency of at least 99 percent or to meet a specified outlet PM concentration limit. Affected facilities may be subject to other requirements, such as conducting performance testing. The Department will work with the three identified facilities to determine what, if any, NESHAP requirements apply.

Items 21, 22 and 23 amend subrule 25.1(9), rule 567—25.2(455B) and rule 567—25.3(455B), respectively, to adopt by reference amendments and corrections that EPA recently finalized for 40 CFR Part 75. The federal test methods and procedures contained in Part 75 affect the Acid Rain program, the Clean Air Interstate Rule (CAIR) and the Clean Air Mercury Rule (CAMR). The U.S. Court of Appeals for the District of Columbia recently ruled to vacate many provisions of CAMR. However, EPA has appealed the Court's ruling and continues to support the mercury monitoring provisions specified in Part 75. The Department will continue to require compliance with the mercury monitoring and testing provisions contained in Part 75 and will continue to adopt federal amendments to Part 75.

Item 24 amends subrule 33.3(17) to add a new paragraph "c." When the Department adopted the federal PSD reform

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rules last year, EPA requested that the Department include specific rules for public participation because the federal PSD rules do not specify the procedures for public comment on state-issued PSD permits. Therefore, the Department adopted public participation rules similar to those used in the Title V Operating Permit program. This amendment further clarifies the public participation procedures by including provisions for reopening the public comment period when necessary. These provisions will add clarity for those applying for PSD permits and for those seeking to comment on draft PSD permits. This amendment codifies Department procedures, which have closely followed the federal rules for EPA-issued PSD permits set forth in 40 CFR Part 124.

Item 25 amends subrule 33.3(18), paragraphs “c” and “d.” This amendment adopts the PSD source obligation provisions specified in the federal regulations under 40 CFR 52.21(r) that were inadvertently omitted when the Department adopted EPA’s PSD reform rules in 2006. These provisions had been included in the state’s PSD rules prior to that time. These added provisions make clear that a source owner or operator is subject to enforcement action if a source is not constructed according to its issued PSD permit, and if a source owner or operator does not obtain the required PSD permit prior to initiating construction. The amendment does not change the Department’s existing authority to enforce the PSD permit requirements. The amendment also clarifies the time period allowed for commencing and completing construction on PSD projects.

Item 26 adopts new subrule 33.3(21) to add provisions for administrative amendments to PSD permits. These provisions codify current Department procedures and will add clarity for those applying for administrative amendments to PSD permits.

Any person may make written suggestions or comments on the proposed amendments on or before July 8, 2008. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, fax (515) 242-5094, or by electronic mail to christine.paulson@dnr.iowa.gov.

A public hearing will be held on Monday, July 7, 2008, at 1 p.m. in the conference rooms at the Department’s Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa. All comments must be received no later than July 8, 2008.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242-5154 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133 and chapter 554D (electronic submittal provisions).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **567—20.2(455B)**, definition of “EPA reference method,” as follows:

“EPA reference method” means any method of sampling and analyzing for an air pollutant as described in 40 CFR 51, Appendix M, (as amended through June 16, 1997); 40 CFR 52, Appendices D and E, (as amended through February 6, 1975); 40 CFR 60, Appendix Appendices A, (as amended through March 12, 1996 September 28, 2007), B (as

amended through September 28, 2007), C (as amended through December 16, 1975), and F (as amended through January 12, 2004); 40 CFR 61, Appendix B, (as amended through April 6, 1973 October 17, 2000); 40 CFR 63, Appendix A, (as amended through December 7, 1995 October 17, 2000); and 40 CFR 75, Appendices A, B, and H, as amended through May 22, 1996, May 17, 1995, and July 30, 1993 (as amended through January 24, 2008), B (as amended through January 24, 2008), F (as amended through January 24, 2008, and corrected on February 13, 2008) and K (as amended through January 24, 2008).

ITEM 2. Amend subrule 21.1(3) as follows:

21.1(3) Emissions inventory. The person responsible for equipment as defined herein shall provide information on fuel use, materials processed, air contaminants emitted (including greenhouse gases as “greenhouse gas” is defined in rule 567—20.2(455B)), estimated rate of emissions, periods of emissions or other air pollution information to the director upon the director’s written request for use in compiling and maintaining an emissions inventory for evaluation of the air pollution situation in the state and its various parts. The information requested shall be submitted on forms *supplied or by electronic format specified* by the department. All information in regard to both actual and allowable emissions shall be public records, and any publication of such data shall be limited to actual and allowable air contaminant emissions.

ITEM 3. Amend subrule 21.1(4) as follows:

21.1(4) Emissions inventory to fulfill requirements of the Clean Air Interstate Rule (CAIR). Upon the director’s written request, the owner or operator shall provide information on fuel use, materials processed, air contaminants emitted, estimated rate of emissions, periods of emission or other air pollutant information related to the emissions of SO₂ and NO_x. The information requested shall be submitted on forms *supplied or by electronic format specified* by the department. The information shall be used by the department in compiling and maintaining an emissions inventory to fulfill the reporting requirements under 40 CFR 51.125 as amended through May 12, 2005.

ITEM 4. Amend 567—Chapter 21 by adopting **new** rule 567—21.6(455B) as follows:

567—21.6(455B) Temporary electricity generation for disaster situations. An electric utility may operate generators at an electric utility substation with a total combined capacity not to exceed 2 megawatts in capacity for a period of not longer than 10 calendar days and only for the purpose of providing electricity generation in the event of a sudden and unforeseen disaster that has disabled standard transmission of electricity to the public. Department approval shall be required if the electric utility intends to operate generators for a period longer than 10 calendar days. The electric utility shall provide an oral report to the appropriate department field office and to the department’s air quality bureau and shall specify the anticipated duration within 8 hours of commencing use of a generator or at the start of the first working day following the placement of a generator at each site. A written report shall be submitted to the department within 30 calendar days following the cessation of use of the generators. The written report shall state the nature of the sudden and unforeseen disaster, the location of each site, the number of generators used, the capacity of the generators used, the fuel type of the generators, and the duration of use of each generator. For purposes of this rule, the definition of “disaster” shall be as defined in Iowa Code section 29C.2(1), and a disaster may occur before,

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with, or without a gubernatorial or federal disaster proclamation.

ITEM 5. Amend subrule 22.1(3), introductory paragraph, as follows:

22.1(3) Construction permits. The owner or operator of a new or modified stationary source shall apply for a construction permit unless a conditional permit is required by Iowa Code chapter 455B or subrule 22.1(4) or requested by the applicant in lieu of a construction permit. Two copies of a construction permit application for a new or modified stationary source shall be presented or mailed to Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322. *Alternatively, the owner or operator may apply for a construction permit for a new or modified stationary source through the electronic submittal format specified by the department.* The owner or operator of any new or modified industrial anaerobic lagoon or a new or modified anaerobic lagoon for an animal feeding operation other than a small operation as defined in rule 567—65.1(455B) shall apply for a construction permit. Two copies of a construction permit application for an anaerobic lagoon shall be presented or mailed to Department of Natural Resources, Water Quality Bureau, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319.

ITEM 6. Amend paragraph **22.3(3)“F”** as follows:

f. A permit is not transferable from one location to another or from one piece of equipment to another, unless the equipment is portable. When portable equipment for which a permit has been issued is to be transferred from one location to another, the department shall be notified in writing at least ~~30 days~~ *14 days* prior to ~~transferring the transfer of the portable equipment~~ to the new location. *However, if the owner or operator is relocating the portable equipment to an area currently classified as nonattainment for ambient air quality standards or to an area under a maintenance plan for ambient air quality standards, the owner or operator shall notify the department at least 30 days prior to transferring the portable equipment to the new location. A list of nonattainment and maintenance areas may be obtained from the department, upon request, or on the department's Internet Web site.* The owner or operator will be notified at least 10 days prior to the scheduled relocation if said relocation will prevent the attainment or maintenance of ambient air quality standards and thus require a more stringent emission standard and the installation of additional control equipment. In such a case a supplemental permit shall be obtained prior to the initiation of construction, installation, or alteration of such additional control equipment.

ITEM 7. Amend rule **567—22.100(455B)**, definition of “EPA reference method,” as follows:

“EPA reference method” means any method of sampling and analyzing for an air pollutant as described in 40 CFR 51, Appendix M (as amended through June 16, 1997); 40 CFR 52, Appendices D (as amended through February 6, 1975) and E (as amended through February 6, 1975); 40 CFR 60, Appendices A (as amended through ~~October 17, 2000~~ *September 28, 2007*), B (as amended through ~~January 12, 2004~~ *September 28, 2007*), C (as amended through December 16, 1975), and F (as amended through January 12, 2004); 40 CFR 61, Appendix B (as amended through October 17, 2000); 40 CFR 63, Appendix A (as amended through October 17, 2000); and 40 CFR 75, Appendices A (as amended through ~~August 16, 2002~~ *January 24, 2008*) and, B (as amended through ~~September 9, 2002~~ *January 24, 2008*), *F (as amended through January 24, 2008, and corrected on*

February 13, 2008) and K (as amended through January 24, 2008).

ITEM 8. Amend subrule 22.105(1) as follows:

22.105(1) Duty to apply. For each source required to obtain a Title V permit, the owner or operator or designated representative, where applicable, shall present or mail a complete and timely permit application in accordance with this rule to the following locations: Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322 (two copies); and U.S. EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101 (one copy); and, if applicable, the local permitting authority, which is either Linn County Public Health Department, Air Quality Division, 501 13th Street NW, Cedar Rapids, Iowa 52405 (one copy); or Polk County Public Works, Air Quality Division, 5885 NE 14th Street, Des Moines, Iowa 50313 (one copy). *Alternatively, an owner or operator may submit a complete and timely application through the electronic submittal format specified by the department. If an application is submitted electronically, the owner or operator shall provide one hard copy of the application to U.S. EPA Region VII.*

a. Timely application. Each ~~source~~ *owner or operator* applying for a Title V permit shall submit an application as follows:

(1) *Initial application for an existing source. By November 15, 1994, if source The owner or operator of a stationary source that was existing on or before April 20, 1994, shall make for the first time submittals of a Title V permit applications application to the department by November 15, 1994. However, a source the owner or operator may choose to defer submittal of Part 2 of the permit application until December 31, 1995. The department will mail notice of the deadline for Part 2 of the permit application to all applicants who have filed Part 1 of the application by October 17, 1995.*

(2) *At least 6 months but not more than 18 months prior to the date of permit expiration if the application is for a permit renewal. Initial application for a new source. The owner or operator of a stationary source that commenced construction or reconstruction after April 20, 1994, or that otherwise became subject to the requirement to obtain a Title V permit after April 20, 1994, shall submit an application to the department within 12 months of becoming subject to the Title V permit requirements.*

(3) *By January 1, 1996, (for sulfur dioxide) or by January 1, 1998, (for nitrogen oxides) if the application is for an initial Phase II acid rain permit. Application related to 112(g), PSD or nonattainment. The owner or operator of a stationary source that is subject to Section 112(g) of the Act, that is subject to rule 22.4(455B) (prevention of significant deterioration (PSD)), or that is subject to rule 22.5(455B) (nonattainment area permitting) shall submit an application to the department within 12 months of commencing operation. In cases in which an existing Title V permit would prohibit such construction or change in operation, the owner or operator must obtain a Title V permit revision before commencing operation.*

(4) *For a change that is subject to the requirements for a significant permit modification (see rule 22.113(455B)), the permittee shall submit to the department an application for a significant permit modification not later than three months after commencing operation of the changed source unless the existing Title V permit would prohibit such construction or change in operation, in which event the operation of the changed source may not commence until the department revises the permit. Renewal application. The owner or operator of a stationary source with a Title V permit shall submit an*

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application to the department for a permit renewal at least 6 months prior to, but not more than 18 months prior to, the date of permit expiration.

(5) ~~Within 12 months of commencing operation for a source subject to 112(g) of the Act or subject to rule 22.4(455B) (prevention of significant deterioration permitting) or subject to rule 22.5(455B) (nonattainment area permitting). Where an existing Title V permit would prohibit such construction or change in operation, the source must obtain a Title V permit revision before commencing operation. Changes allowed without a permit revision (off-permit revision). The owner or operator of a stationary source with a Title V permit who is proposing a change that is allowed without a Title V permit revision (an off-permit revision) as specified in rule 22.110(455B) shall submit to the department a written notification as specified in rule 22.110(455B) at least 30 days prior to the proposed change.~~

(6) ~~Within 12 months of becoming subject to this rule for a new source or a source which has become subject to the Title V permit requirement after April 20, 1994. Application for an administrative permit amendment. Prior to implementing a change that satisfies the requirements for an administrative permit amendment as set forth in rule 22.111(455B), the owner or operator shall submit to the department an application for an administrative amendment as specified in rule 22.111(455B).~~

(7) *Application for a minor permit modification. Prior to implementing a change that satisfies the requirements for a minor permit modification as set forth in rule 22.112(455B), the owner or operator shall submit to the department an application for a minor permit modification as specified in rule 22.112(455B).*

(8) *Application for a significant permit modification. The owner or operator of a source that satisfies the requirements for a significant permit modification as set forth in rule 22.113(455B) shall submit to the department an application for a significant permit modification as specified in rule 22.113(455B) within three months after the commencing operation of the changed source. However, if the existing Title V permit would prohibit such construction or change in operation, the owner or operator shall not commence operation of the changed source until the department issues a revised Title V permit that allows the change.*

(9) *Application for an acid rain permit. The owner or operator of a source subject to the acid rain program, as set forth in rules 22.120(455B) through 22.148(455B), shall submit an application for an initial Phase II acid rain permit by January 1, 1996 (for sulfur dioxide), or by January 1, 1998 (for nitrogen oxides).*

(10) *Application for a CAIR annual NO_x permit. The owner or operator of a source subject to the Clean Air Interstate Rule (CAIR) annual nitrogen oxides (NO_x) requirements, as set forth in rules 567—34.201(455B) through 567—34.209(455B), shall submit a CAIR application as follows:*

1. *Initial permit application. The CAIR designated representative of any CAIR annual NO_x source required to have a Title V permit shall submit to the department a complete CAIR permit application for each CAIR NO_x unit by the later of July 1, 2007, or 18 months prior to the date on which the CAIR annual NO_x unit commences operation.*

2. *Renewal permit application. The CAIR designated representative of any CAIR annual NO_x source issued a CAIR permit shall submit a CAIR permit renewal application at*

least 6 months prior to, but not more than 18 months prior to, the expiration date of the CAIR permit.

(11) *Application for a CAIR SO₂ permit. The owner or operator of a source subject to the CAIR SO₂ requirements, as set forth in rule 567—34.210(455B), shall submit a CAIR application as follows:*

1. *Initial permit application. The CAIR designated representative of any CAIR SO₂ source required to have a Title V permit shall submit to the department a complete CAIR permit application for each CAIR SO₂ unit by the later of July 1, 2008, or 18 months prior to the date on which the CAIR SO₂ unit commences operation.*

2. *Renewal permit application. The CAIR designated representative of any CAIR SO₂ source issued a CAIR permit shall submit a CAIR permit renewal application at least 6 months prior to, but not more than 18 months prior to, the expiration date of the CAIR permit.*

(12) *Application for a CAIR NO_x ozone season permit. The owner or operator of a source subject to the CAIR NO_x ozone season requirements, as set forth in rules 567—34.220(455B) through 567—34.229(455B), shall submit a CAIR application as follows:*

1. *Initial permit application. The CAIR designated representative of any CAIR NO_x ozone season source required to have a Title V permit shall submit to the department a complete CAIR permit application for each CAIR NO_x ozone season unit by the later of July 1, 2007, or 18 months prior to the date on which the CAIR NO_x ozone unit commences operation.*

2. *Renewal permit application. The CAIR designated representative of any CAIR NO_x ozone season source issued a CAIR permit shall submit a CAIR permit renewal application at least 6 months prior to, but not more than 18 months prior to, the expiration date of the CAIR permit.*

b. No change.

ITEM 9. Amend rule 567—22.105(455B) by adopting **new** subrule 22.105(5) as follows:

22.105(5) More than one Title V operating permit for a stationary source. Following application made pursuant to subrule 22.105(1), the department may, at its discretion, issue more than one Title V operating permit for a stationary source, provided that the owner or operator does not have, and does not propose to have, a sourcewide emission limit or a sourcewide alternative operating scenario.

ITEM 10. Amend paragraph **22.106(3)“b”** as follows:

b. For emissions located in Polk County or Linn County, three copies of the following forms shall be submitted annually by March 31 documenting actual emissions for the previous calendar year. For emissions in all other counties, two copies of the following forms shall be submitted:

1. Form 1.0 “Facility identification”;
2. Form 4.0 “Emission unit—actual operations and emissions” for each emission unit;
3. Form 5.0 “Title V annual emissions summary/fee”;
- and
4. Part 3 “Application certification.”

Alternatively, an owner or operator may submit the required emissions inventory information through the electronic submittal format specified by the department.

If there are any changes to the emission calculation form, the department shall make revised forms available to the public by January 1. If revised forms are not available by January 1, forms from the previous year may be used and the year of emissions documented changed. The department shall

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calculate the total statewide Title V emissions for the prior calendar year and make this information available to the public no later than April 30 of each year.

ITEM 11. Amend rule 567—22.106(455B) by adopting **new** subrule 22.106(8) as follows:

22.106(8) Correction of errors. If an owner or operator, or the department, finds an error in a Title V emissions inventory or Title V fee payment, the owner or operator shall submit to the department revised forms making the necessary corrections to the Title V emissions inventory or Title V fee payment. Forms shall be submitted as soon as possible after the errors are discovered or upon notification by the department.

ITEM 12. Amend rule 567—22.110(455B), catchwords, as follows:

567—22.110(455B) Changes allowed without a Title V permit revision (off-permit revisions).

ITEM 13. Amend subrule 22.116(2) as follows:

22.116(2) Except as provided in rule 22.104(455B), permit expiration terminates a source's right to operate unless a timely and complete application for renewal has been submitted in accordance with rule 22.105(455B). ~~Any testing required for renewal shall be completed before the application is submitted.~~

ITEM 14. Amend rule 567—22.120(455B), introductory paragraph, as follows:

567—22.120(455B) Acid rain program—definitions. The terms used in rules 22.120(455B) through 22.147(455B) shall have the meanings set forth in Title IV of the Clean Air Act, 42 U.S.C. 7401, et seq., as amended through November 15, 1990, and in this rule. The definitions set forth in 40 CFR Part 72 as amended through ~~May 18, 2005~~ *January 24, 2008*, and 40 CFR Part 76 as amended through October 15, 1999, are adopted by reference.

ITEM 15. Amend rule **567—22.120(455B)**, definitions of "40 CFR Part 72" and "40 CFR Part 75," as follows:

"40 CFR Part 72," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 72, or the cited provision therein, as amended through ~~April 28, 2006~~ *January 24, 2008*.

"40 CFR Part 75," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 75, or the cited provision therein, as amended through ~~September 28, 2007~~ *February 13, 2008*.

ITEM 16. Amend subrule 22.207(1) as follows:

22.207(1) Construction permits issued after the voluntary operating permit is issued. If the issuance of a construction permit acts to make the source no longer eligible for a voluntary operating permit, then the source shall, in accordance with subparagraph ~~22.105(1)“a”(6)~~ *22.105(1)“a”(2)*, not operate without a Title V operating permit, and the source shall be subject to enforcement action for operating without a Title V operating permit.

ITEM 17. Amend subrule 23.1(4), introductory paragraph, as follows:

23.1(4) Emission standards for hazardous air pollutants for source categories. The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~July 16, 2007~~ *April 8, 2008*, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in pa-

rentheses. *An earlier date for adoption by reference may be included with the subpart designation in parentheses.* 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, "hazardous air pollutant" has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an "area source" means any stationary source of hazardous air pollutants that is not a "major source" as defined in this subrule. Paragraph 23.1(4)"a," general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below. The provisions of 40 CFR Part 60, Subparts A, B, Da, and HHHH for the Clean Air Mercury Rule (CAMR), are found at subrules 23.1(2) and 23.1(5) and in 567—Chapter 34.

ITEM 18. Amend paragraph **23.1(4)“cz”** as follows:

cz. Emission standards for stationary reciprocating internal combustion engines. These standards apply to new and existing major sources with stationary reciprocating internal combustion engines (RICE). For purposes of these standards, stationary RICE means any reciprocating internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile. (Part 63, Subpart ~~ZZZZ~~, *as amended through April 20, 2006*)

ITEM 19. Amend subrule **23.1(4)** by adopting **new** paragraphs "**dw**," "**dy**," and "**dz**" as follows:

dw. Emission standards for hazardous air pollutants for hospital ethylene oxide sterilizer area sources. This standard applies to a hospital that is an area source for hazardous air pollutant emissions and that owns or operates a new or existing ethylene oxide sterilization facility. (Part 63, Subpart ~~WWWWW~~)

dy. Emission standards for hazardous air pollutants for electric arc furnace steelmaking area sources. This standard applies to new or existing electric arc furnace (EAF) steelmaking facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart ~~YYYYY~~)

dz. Emission standards for hazardous air pollutants for iron and steel foundry area sources. This standard applies to new or existing iron and steel foundries that are area sources for hazardous air pollutant emissions. (Part 63, Subpart ~~ZZZZZ~~)

ITEM 20. Amend subrule **23.1(4)** by adopting **new** paragraphs "**er**," "**es**," and "**et**" as follows:

er. Emission standards for hazardous air pollutants for clay ceramics manufacturing area sources. This standard applies to any new or existing clay ceramics manufacturing facility with an atomized glaze spray booth or kiln that fires glazed ceramic ware, that processes more than 50 tons per

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

year of wet clay, and that is an area source for hazardous air pollutant emissions. (Part 63, Subpart RRRRRR)

es. Emission standards for hazardous air pollutants for glass manufacturing area sources. This standard applies to any new or existing glass manufacturing facility that is an area source for hazardous air pollutant emissions and meets the following criteria: (1) manufactures flat glass, glass containers or pressed and blown glass by melting a mixture of raw materials to produce molten glass and form the molten glass into sheets, containers or other shapes; and (2) uses one or more continuous furnaces to produce glass at a rate of at least 50 tons per year and that contains compounds of one or more "glass manufacturing metal HAP," as defined in 40 CFR 63.11459, as raw materials in a glass manufacturing batch formulation. (Part 63, Subpart SSSSSS)

et. Emission standards for hazardous air pollutants for secondary nonferrous metals processing area sources. This standard applies to any new or existing secondary nonferrous metals processing facility that is an area source for hazardous air pollutant emissions. This standard applies to all crushing and screening operations at a secondary zinc processing facility and to all furnace melting operations located at any secondary nonferrous metals processing facility. (Part 63, Subpart TTTTTT)

ITEM 21. Amend subrule 25.1(9) as follows:

25.1(9) Methods and procedures. Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are those specified in the "Compliance Sampling Manual"* adopted by the commission on May 19, 1977, as revised through January 30, 2003. Sampling methods, analytical determinations, minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are those found in Appendices A (as amended through September 28, 2007), B (as amended through September 28, 2007) and F (as amended through January 12, 2004) of 40 CFR Part 60, and Appendices A (as amended through ~~May 18, 2005~~ *January 24, 2008*), B (as amended through ~~May 18, 2005~~ *January 24, 2008*), F (as amended through ~~May 18, 2005~~ *February 13, 2008*) and K (as amended through ~~September 28, 2007~~ *January 24, 2008*) of 40 CFR Part 75.

*Available from the department.

ITEM 22. Amend rule 567—25.2(455B) as follows:

567—25.2(455B) Continuous emission monitoring under the acid rain program. The continuous emission monitoring requirements for affected units under the acid rain program as provided in 40 CFR Part 75, including Appendices A, B, F and K as amended through ~~September 28, 2007~~ *January 24, 2008* (*Appendix F also was corrected on February 13, 2008*), are adopted by reference.

ITEM 23. Amend rule 567—25.3(455B) as follows:

567—25.3(455B) Continuous emission monitoring under the Clean Air Mercury Rule (CAMR). The provisions in 40 CFR Part 75, including Appendices A, B, F and K as amended through ~~May 18, 2005~~ *January 24, 2008* (*Appendix F also was corrected on February 13, 2008*), are adopted by reference.

ITEM 24. Amend subrule **33.3(17)** by adopting **new** paragraph "c" as follows:

c. Reopening of the public comment period.

(1) If comments submitted during the public comment period raise substantial new issues concerning the permit, the

department may, at its discretion, take one or more of the following actions:

1. Prepare a new draft permit, appropriately modified;
2. Prepare a revised fact sheet;
3. Prepare a revised fact sheet and reopen the public comment period; or
4. Reopen or extend the public comment period to provide interested persons an opportunity to comment on the comments submitted.

(2) The public notice provided by the department pursuant to this rule shall define the scope of the reopening. Department review of any comments filed during a reopened comment period shall be limited to comments pertaining to the substantial new issues causing the reopening.

ITEM 25. Amend subrule **33.3(18)** by adopting **new** paragraphs "c" and "d" as follows:

c. Any owner or operator who constructs or operates a source or modification not in accordance with the application pursuant to the provisions in rule 567—33.3(455B) or with the terms of any approval to construct, or any owner or operator of a source or modification subject to the provisions in rule 567—33.3(455B) who commences construction after April 15, 1987 (the effective date of Iowa's PSD program), without applying for and receiving department approval, shall be subject to appropriate enforcement action.

d. Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The department may extend the 18-month period upon a satisfactory showing that an extension is justified. These provisions do not apply to the time between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

ITEM 26. Adopt **new** subrule 33.3(21) as follows:

33.3(21) Administrative amendments.

a. Upon request for an administrative amendment, the department may take final action on any such request and may incorporate the requested changes without providing notice to the public or to affected states, provided that the department designates any such permit revisions as having been made pursuant to subrule 33.3(21).

b. An administrative amendment is a permit revision that does any of the following:

- (1) Corrects typographical errors;
- (2) Corrects word processing errors;
- (3) Identifies a change in name, address or telephone number of any person identified in the permit or provides a similar minor administrative change at the source; or
- (4) Allows for a change in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement that contains a specific date for transfer of permit responsibility, coverage, and liability between the current permittee and the new permittee has been submitted to the department.

ARC 6828B**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 455B.304, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 113, "Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Nonhazardous Wastes," Iowa Administrative Code.

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

The amendment is intended to allow municipal solid waste landfills to continue to use previously approved landfill cells which have a basal liner and leachate collection system until those cells have been filled.

The amendment is also intended to address questions that have arisen regarding the current closure requirements for sites that were closed pursuant to the previous rule requirements.

Any interested person may make written suggestions or comments pertaining to the proposed amendment on or before 4:30 p.m. on July 10, 2008. Such written materials should be directed to Alex Moon, Land Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8646; or E-mail alex.moon@dnr.iowa.gov. Persons wishing to convey their views orally should contact Alex Moon by telephone at (515)281-6807.

When submitting comments, stakeholders are encouraged by the Department to utilize the following guidelines. These guidelines aid the Department in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments on behalf of a business or organization or as an individual.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.

6. Offer alternative language to improve the specific rule(s) and explain why.

A public hearing will be held on July 10, 2008, at 12 noon in the Fifth Floor Conference Rooms of the Wallace State Office Building, 502 East Ninth Street, 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 amendment.

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 to advise of special needs.

This amendment is intended to implement Iowa Code section 455B.304.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule 113.2(8) as follows:

113.2(8) Closure of existing MSWLF units.

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

b. Except as provided in paragraph 113.2(8)"c" below, existing MSWLF units that do not have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner modeled at an approved point of compliance shall cease accepting waste by October 1, 2007.

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

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

ARC 6819B**IOWA FINANCE AUTHORITY[265]****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 17A.3(1)“b” and Iowa Code Supplement section 16.5(1)“r,” the Iowa Finance Authority proposes to amend Chapter 9, “Title Guaranty Division,” Iowa Administrative Code.

These amendments revise the mortgage release certificate rules in Chapter 9.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority’s general rules concerning waivers at 265—Chapter 18.

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on June 24, 2008. Comments may be addressed to Loyd Ogle, Director, Title Guaranty Division, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Loyd Ogle at (515)725-4901 or E-mailed to loyd.ogle@iowa.gov.

The Authority anticipates that it may make changes to the proposed amendments based on comments received from the public.

These amendments are intended to implement Iowa Code Supplement section 16.5(1)“r,” Supplement section 16.92 as amended by 2008 Iowa Acts, House File 2700, and Iowa Code sections 17A.12 and 17A.16.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 265—9.20(78GA,ch54), parenthetical implementation statute, as follows:
265—9.20(78GA,ch54 16)

ITEM 2. Amend subrule **9.20(1)**, definitions of “claim for damages,” “mortgage,” “payoff statement,” and “real estate lender or closer,” as follows:

“Claim for damages” means a claim for actual money damages against the division caused by the ~~negligent, wrongful or erroneous~~ *division’s wrongfully or erroneously, through an act of negligence*, filing of a certificate while the staff of the division are acting within the scope of their office or employment, ~~under circumstances where the state, if a private person, would be liable to the claimant for such damage.~~

“Mortgage” means a mortgage or mortgage lien on an interest in real property in this state given to secure a loan in an original principal amount of \$500,000 ~~or less~~, *including any future advances, equal to or less than:*

1. *For mortgages paid off by the division staff, \$20,000,000.*
2. *For mortgages paid off by a division closer within a division closing, \$20,000,000.*
3. *For all other mortgages, without prior division written approval, \$1,000,000.*

Any future advance supported by the mortgage that exceeds the original principal amount of \$500,000 shall not be eligible for release under this rule.

“Payoff statement” means a written statement furnished by the mortgage servicer which sets forth all of the following:

1. to 3. No change.

4. If, after payment of the unpaid balance of the loan secured by the mortgage, the mortgage continues to secure any unpaid obligation due the mortgagee or any unfunded commitment by the mortgagor to the mortgagee, the legal description of the property that will ~~continue to be subject to the mortgage and the legal description of the property that will be released from the mortgage.~~

“Real estate lender or closer” means a person licensed to regularly lend moneys in Iowa to be secured by a mortgage on real property in this state, a licensed real estate broker, a *participating abstractor* or a licensed attorney.

ITEM 3. Amend subparagraphs **9.20(2)“a”(2)** and **9.20(2)“a”(3)** as follows:

(2) All necessary documents and information to support the certifications made on the request form, *if required to be submitted.*

(3) Payment, *if required by the division*, of the filing fee by check or money order made payable to the filing officer of the county in which the certificate is to be recorded in the amount of the filing fee imposed by the filing officer of the county in which the certificate is to be recorded. If duplicate certificates are to be recorded in more than one county, additional checks or money orders payable to the filing officer of such counties shall be submitted.

ITEM 4. Amend paragraph **9.20(2)“b”** as follows:

b. A certificate which is not a full release but is executed and recorded to release part of the security described in a mortgage shall be issued only when the real estate lender or closer has paid the mortgage servicer for the partial release. A certificate shall not be issued for a partial release if the real estate lender or closer is requesting a release pursuant to ~~1999 Iowa Acts, chapter 54, section 1(7) Iowa Code section 16.92(7).~~

ITEM 5. Amend subrule 9.20(3) as follows:

9.20(3) Forms.

a. No change.

b. The forms to request a certificate of release shall identify the mortgage to be released and shall contain sufficient information to identify that the requester is a real estate lender or closer; establish that the time requirements have elapsed; establish the party or parties to receive notice of the request; indicate that the debt secured by the mortgage to be released has been paid and the mortgage was ~~less than \$500,000 to be released meets the definition of “mortgage” set forth in subrule 9.20(1);~~ and, in the case of requests for partial releases, include the legal description of the property ~~that will continue to be subject to the mortgage and the property that will be released from the mortgage.~~

c. The forms giving notice of the request shall be directed to the last-known mortgage servicer and shall contain sufficient information to identify the mortgage to be released; inform the mortgage servicer what is required to prevent the filing of a certificate of release; establish a time limit for the mortgage servicer to respond; and, in the case of requests for partial releases, include the legal description of the property ~~that will continue to be subject to the mortgage and the property that will be released from the mortgage.~~

d. The certificate of release form shall contain sufficient information to identify the mortgage released; recite the au-

IOWA FINANCE AUTHORITY[265](cont'd)

thority for the certificate; recite that the substantive and procedural requirements as to the amount of debt, payment, notice, or other requirements of the division have been met; and, in the case of partial releases, include the legal description of the property that will continue to be subject to the mortgage and the property that will be released from the mortgage.

e. The notice by publication form shall contain sufficient information to identify the mortgage to be released; inform the mortgage servicer what is required to prevent the filing of a certificate of release; establish a time limit for the mortgage servicer to respond; and, in the case of requests for partial releases, include the legal descriptions *description* of the property that will continue to be subject to the mortgage and the property that will be released from the mortgage.

f. No change.

ITEM 6. Amend subrule **9.20(4)** as follows:

Amend paragraph "**c**," subparagraph (2), as follows:

(2) The statement contains the legal description of the property to be released from the mortgage and the legal description of the property that will continue to be subject to the mortgage.

Amend paragraph "**e**" as follows:

e. That the original principal amount of the mortgage was \$500,000 or less mortgage to be released meets the definition of "mortgage" set forth in subrule 9.20(1).

ITEM 7. Amend paragraph **9.20(5)"c"** as follows:

c. That the original principal amount of the mortgage was \$500,000 or less mortgage to be released meets the definition of "mortgage" set forth in subrule 9.20(1).

ITEM 8. Amend paragraphs **9.20(8)"d"** and **9.20(8)"h"** as follows:

d. In the event the notice sent by certified mail to the last-known mortgage servicer of record is returned to the division for the reason that the mortgage servicer is no longer at the address or the certificate of receipt is not returned within 30 days of mailing, the division shall attempt to serve the mortgage servicer pursuant to Iowa Rule of Civil Procedure 1.305 proceed pursuant to paragraph 9.20(8) "e."

h. If the division does not receive written notification setting forth a reason satisfactory to the division why the certificate of release should not be executed and recorded, the division shall proceed to execute and record the certificate. The certificate shall be delivered, by regular mail, along with proper recording fees, to the filing officer in the county where the subject property is located.

ITEM 9. Amend subrule **9.20(9)** as follows:

Amend paragraph "**a**" as follows:

a. That the division sent the 30-day notice required by 1999 Iowa Acts, chapter 54, section 1(2c), Iowa Code section 16.92(2) "c" and that more than 30 days have elapsed since the date the notice was sent.

Amend paragraph "**c**," subparagraph (2), as follows:

(2) That the mortgage release certificate is a partial release of the mortgage and contains the legal description of the property that will be released from the mortgage and the legal description of the property that will continue to be subject to the mortgage.

Amend paragraph "**e**" as follows:

e. That the original principal amount of the mortgage was \$500,000 or less mortgage to be released meets the definition of "mortgage" set forth in subrule 9.20(1).

ITEM 10. Amend subrule **9.20(10)** as follows:

Amend paragraph "**a**" as follows:

a. That the division sent the 30-day notice required by 1999 Iowa Acts, chapter 54, section 1(2c), Iowa Code section 16.92(2) "c" and that more than 30 days have elapsed since the date the notice was sent.

Amend paragraph "**d**" as follows:

d. That the original principal amount of the mortgage was \$500,000 or less to be released meets the definition of "mortgage" set forth in subrule 9.20(1).

ITEM 11. Amend subrule 9.20(11) as follows:

9.20(11) Authority to sign certificate. The board of directors of the division may, by resolution, authorize such personnel within the division as the board should determine to execute and record the certificates pursuant to 1999 Iowa Acts, chapter 54 Iowa Code section 16.92, and this rule.

ITEM 12. Amend subrule 9.20(14) as follows:

9.20(14) Effect of filing of the certificate of release. For purposes of a release or partial release of a mortgage, a certificate of release executed under this rule that contains the information and statements required under 1999 Iowa Acts, chapter 54, Iowa Code section 16.92 and this rule is prima facie evidence of the facts contained in such release or partial release, is entitled to be recorded with the county recorder where the mortgage is recorded, operates as a release or partial release of the mortgage described in the certificate of release, and may be relied upon by any person who owns or subsequently acquires an interest in the property released from the mortgage. The county recorder shall rely upon the certificate of release to release the mortgage.

ITEM 13. Amend subrule 9.20(16) as follows:

9.20(16) Liability of the division. In addition to any other remedy provided by law, if the division or the authority through an act of negligence wrongfully or erroneously records a certificate of release pursuant to this rule, the division is liable to the mortgagee and mortgage servicer for actual damages sustained due to the recording of the certificate of release. A claim for damages is a tort claim as described in Iowa Code chapter 669 since the claim is for money damages caused by the wrongful or erroneous actions of the staff of the division or the authority. The procedures of Iowa Code chapter 669 shall apply to any claim for damages arising out of 1999 Iowa Acts, chapter 54. Prior to any such satisfaction or resolution of a claim for wrongful or erroneous filing of a certificate of release, the division will inform the real estate lender or closer that requested the certificate about the proposed terms and allow it a reasonable opportunity to resolve or satisfy the claim on other terms.

ITEM 14. Amend rule **265—9.20(16)**, implementation sentence, as follows:

This rule is intended to implement 1999 Iowa Acts, chapter 54 Iowa Code Supplement section 16.92 as amended by 2008 Iowa Acts, House File 2700.

ARC 6818B**IOWA FINANCE AUTHORITY[265]****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 17A.3(1)“b” and Iowa Code Supplement section 16.5(1)“r,” the Iowa Finance Authority proposes to amend Chapter 9, “Title Guaranty Division,” Iowa Administrative Code.

These amendments replace current closing protection letter subrules with new subrules necessary due to the recent change in law pursuant to 2008 Iowa Acts, Senate File 2117, which was signed by the Governor and became effective on April 11, 2008. The amendments also update the rules generally.

This new legislation allows the Title Guaranty Division to issue closing protection letters to mortgage loan closers in addition to the Division’s named participating attorneys or participating abstractors. The proposed amendments regarding closing protection letters set forth the administrative rules needed to administer Iowa Code section 16.93 as amended by 2008 Iowa Acts, Senate File 2117.

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority’s general rules concerning waivers at 265—Chapter 18.

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on June 24, 2008. Comments may be addressed to Loyd Ogle, Director, Title Guaranty Division, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Loyd Ogle at (515)725-4901 or E-mailed to loyd.ogle@iowa.gov.

The Authority anticipates that it may make changes to the proposed amendments based on comments received from the public.

These amendments are intended to implement Iowa Code Supplement section 16.5(1)“r,” Iowa Code sections 17A.12 and 17A.16, and Iowa Code section 16.93 as amended by 2008 Iowa Acts, Senate File 2117.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **9.22(1)**, definitions of “closing protection letter” and “division closer,” as follows:

“Closing protection letter” means an agreement by the division to indemnify a lender or owner *or both* for loss caused by a division closer’s theft of settlement funds or failure to comply with written closing instructions relating to title certificate coverage when agreed to by the division closer.

“Division closer” means a participating attorney, ~~or a participating abstractor,~~ *or an independent closer* who is currently authorized by the division to close division commitments under protection of a closing protection letter.

ITEM 2. Amend subrule **9.22(1)** by rescinding the definition of “participant.”

ITEM 3. Amend subrule **9.22(1)** by adopting the following **new** definition in alphabetical order:

“Independent closer” means a person or entity, other than a participating attorney or participating abstractor, conducting real estate closings and authorized to close transactions under protection of closing protection letters from the division.

ITEM 4. Amend subrule **9.22(2)**, paragraphs “a,” “b,” “c,” and “d,” as follows:

~~a.—The division board has approved a closing protection letter program, recommended by the division, which may be revised from time to time by the division upon approval of the division board.~~

~~b a.~~ A division closer has completed division forms and procedures training,

~~e b.~~ The division director has approved the participant’s application, *and*

~~d c.~~ A division commitment is issued.

ITEM 5. Rescind subrule **9.22(3)** and renumber subrules **9.22(4)** and **9.22(5)** as **9.22(3)** and **9.22(4)**.

ITEM 6. Amend renumbered subrule 9.22(3) as follows:

9.22(3) Application. Application for designation of division closer status shall be on forms provided by the division, and all requested information shall be provided ~~on or~~ with the application form. The division may consider an application withdrawn if it does not contain all of the information required and the information is not submitted to the division within 30 days after the division requests the information. The application shall be accompanied by a fee to be set by the division board. *The division director shall approve or deny the application within 90 days after the application has been accepted for processing and send written notice thereof to the applicant.*

ITEM 7. Amend renumbered subrule 9.22(4) as follows:

9.22(4) Additional requirements. The division board may adopt program guidelines and application requirements such as indemnity agreements, criminal background checks, *and bonding* and insurance requirements.

ITEM 8. Adopt the following **new** subrules 9.22(5) to 9.22(7) and renumber existing subrules **9.22(6)** to **9.22(11)** as **9.22(8)** to **9.22(13)**:

9.22(5) Guidelines. In determining whether to approve or deny an application for designation of division closer status, the division director may consider the following factors, including but not limited to:

a. Needs of the public and existing or potential customers of the applicant to be served by a designation of division closer status.

b. A history of operation and management of the applicant’s business.

c. Character, fitness, financial responsibility and experience of the applicant and the applicant’s employees.

d. Criminal background checks for felony or misdemeanor convictions of the applicant or the applicant’s employees involving moral turpitude.

e. A record of defaulting by the applicant or the applicant’s employees in payment of moneys collected for others in this state or other states.

f. A history of discharge of debts by the applicant or the applicant’s employees through bankruptcy proceedings.

IOWA FINANCE AUTHORITY[265](cont'd)

g. The applicant's credit report, which is to be submitted directly to the division director at the expense of the applicant.

h. Other factors as determined by the division director to be relevant.

9.22(6) Investigation. The division director may conduct an investigation as deemed necessary. The division director may solicit, by whatever manner deemed appropriate, comments from other persons conducting closings, or from any other person or entity which may be affected by or have an interest in the pending application.

9.22(7) Revocation. The division director has discretion to revoke a division closer's status for reasons including but not limited to the following:

a. The financial condition of the division closer deteriorates.

b. The division director determines that the division closer's activities are being conducted unlawfully or in an unsafe or unsound manner.

ITEM 9. Amend renumbered subrule 9.22(8) as follows:

9.22(8) Authority of division closer.

a. A division closer is authorized to conduct division closings and issue commitments and certificates only for the purposes and in the manner set forth in the division closer's participating agreement, the Code of Iowa, these rules, manuals, requirements and any other instructions given by the division and in no other manner whatsoever. The authority of the division closer under the preceding sentence is not exclusive and is subject to the rights of the authority, the division and other division closers or participants of the division to transact the business of guaranteeing titles to real estate in Iowa and is further subject to the right of the division to appoint other division closers and participants.

b. A division closer shall obtain the written authorization of the division's legal staff prior to issuing a commitment or certificate which exceeds such amounts as the division board may set from time to time by resolution. If any authorization required under this rule is not obtained through the act or omission of the division closer, the division closer shall be strictly liable to the division for any *resulting* loss or damage *resulting from issuance of the commitment or certificate*.

ITEM 10. Amend **265—Chapter 9**, implementation sentence, as follow:

These rules are intended to implement Iowa Code sections 17A.3, 17A.9, 17A.10, 535.8(10), and 535A.12, 2007 Iowa Code Supplement sections 16.1, 16.2, 16.3, 16.5, 16.40, and 16.91, 535.8(10), and 535A.12 and Iowa Code section 16.93 as amended by 2008 Iowa Acts, Senate File 2117.

ARC 6815B

IOWA FINANCE AUTHORITY[265]

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 17A.3(1)"b" and Iowa Code Supplement section 16.5(1)"r," the Iowa Finance Authority proposes to amend Chapter 12,

"Low-Income Housing Tax Credits," Iowa Administrative Code.

These amendments replace the current qualified allocation plan for the low-income housing tax credit program with the 2009 qualified allocation plan, which is incorporated by reference in rule 265—12.1(16).

The qualified allocation plan sets forth the purpose of the plan, the administrative information required for participation in the program, the threshold criteria, the selection criteria, the post-reservation requirements, the appeal process, and the compliance monitoring component. The plan also establishes the fees for filing an application for low-income housing tax credits and for compliance monitoring. Copies of the qualified allocation plan are available upon request from the Authority and are available electronically on the Authority's Web site at www.iowafinanceauthority.gov. It is the Authority's intent to incorporate the 2009 qualified allocation plan by reference, which is consistent with Iowa Code chapter 17A and 265—subrules 17.4(2) and 17.12(2).

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority's general rules concerning waivers at 265—Chapter 18. The qualified allocation plan is subject to state and federal requirements that cannot be waived. (See Internal Revenue Code Section 42 and Iowa Code section 16.52.)

The Authority will receive written comments on the proposed amendments and on the qualified allocation plan until 4:30 p.m. on June 24, 2008. Comments may be addressed to Carla Pope, Affordable Rental Production Director, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Carla Pope at (515) 725-4901 or E-mailed to carla.pope@iowa.gov.

The Authority will hold a public hearing on June 24, 2008, to receive public comments on these amendments and on the proposed 2009 qualified allocation plan. The public hearing will be held from 9 to 11 a.m. at the Authority's offices, located at 2015 Grand Avenue, Des Moines, telephone (515) 725-4900.

The Authority anticipates that it may make changes to the 2009 qualified allocation plan based on comments received from the public.

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

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

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

265—12.1(16) Qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program 2008 2009 Qualified Allocation Plan effective October 3, 2007, shall be the qualified allocation plan for the allocation of 2008 2009 low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The qualified allocation plan includes the plan, application, and the application instructions. The qualified allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). *The qualified allocation plan does not include any amendments or editions created subsequent to September 3, 2008.*

IOWA FINANCE AUTHORITY[265](cont'd)

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

265—12.2(16) Location of copies of the plan. The qualified allocation plan can be reviewed and copied in its entirety on the authority's Web site at <http://www.iowafinanceauthority.gov>. Copies of the qualified allocation plan, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library *and shall be available on the authority's Web site*. The plan incorporates by reference IRC Section 42 and the regulations in effect as of ~~October~~ *September 3, 2007* 2008. Additionally, the plan incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority's Web site. ~~Copies are available upon request at no charge from the authority.~~

ARC 6816B**IOWA FINANCE AUTHORITY[265]****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 17A.3(1)"b" and Iowa Code Supplement sections 16.5(1)"r" and 16.181, the Iowa Finance Authority hereby gives Notice of Intended Action to amend Chapter 19, "State Housing Trust Fund," Iowa Administrative Code.

The purpose of these amendments is to adopt and incorporate by reference the Iowa Finance Authority State Housing Trust Fund Allocation Plan for the Local Housing Trust Fund Program dated May 2008 ("proposed plan") in place of the Iowa Finance Authority State Housing Trust Fund 2008 Allocation Plan for the Local Housing Trust Fund Program.

Chapter 19 does not provide for waivers. Persons seeking waivers must petition the Authority for a waiver in the manner set forth under 265—Chapter 18.

The Authority will receive written comments on the proposed plan and the proposed amendments until 4:30 p.m. on June 24, 2008. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to mark.thompson@iowa.gov. Persons who wish to comment orally should contact Mark Thompson by telephone at (515) 725-4937. Revisions to the proposed plan, the proposed amendments, or both may be made based upon comments received.

These amendments are intended to implement Iowa Code Supplement sections 16.5(1)"r" and 16.181.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule 265—19.1(16) as follows:

265—19.1(16) Trust fund allocation plans. The trust fund allocation plan entitled Iowa Finance Authority State Housing

Trust Fund 2008 Allocation Plan for the ~~local housing trust fund program~~ *Local Housing Trust Fund Program dated May 2008* shall be the allocation plan for the ~~distribution award~~, pursuant to the local housing trust fund program, of funds held within the state housing trust fund established in Iowa Code section 16.181. The trust fund allocation plan entitled Iowa Finance Authority State Housing Trust Fund 2008 Allocation Plan for the Project-Based Housing Program shall be the allocation plan for the distribution, pursuant to the project-based housing program, of funds held within the state housing trust fund. The trust fund allocation plans for the local housing trust fund program and the project-based housing program include the plans, applications, and application instructions. The trust fund allocation plans for the local housing trust fund program and the project-based housing program are incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

ITEM 2. Amend **265—Chapter 19**, implementation sentence, as follows:

These rules are intended to implement Iowa Code *Supplement* sections ~~16.5(17)~~ *16.5(1)"r"* and 16.181.

ARC 6827B**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 section 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

This amendment is requested by the Wright County Conservation Board to establish two no-wake zones on the north shore of Lake Cornelia by placement of regulatory buoys in such a way as to define the no-wake zones. One zone will designate the public swimming area, and the second zone will designate the boat harbor and harbor entrance. This amendment is being proposed in an effort to regulate and reduce boat speed and increase swimmer and boating safety.

Any person may make written comments on this proposed amendment on or before June 25, 2008. Such comments and written material should be directed to the Law Enforcement Bureau, Wallace State Office Building, Iowa Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034. Persons who wish to convey their comments orally should contact Steve Derman of the Law Enforcement Bureau at (515)281-4515.

A public hearing will be held on June 25, 2008, at 9 a.m. in the Fifth 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 amendment.

Any persons who plan 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.

NATURAL RESOURCE COMMISSION[571](cont'd)

This amendment is intended to implement Iowa Code section 456A.25.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt the following **new** rule 571—40.58(462A):

571—40.58(462A) Zoning of Lake Cornelia, Wright County. All vessels shall be operated at a no-wake speed in the boat harbor and at the boat harbor entrance within the zoned area extending 300 feet from shore and 100 feet in width. The Wright County Conservation Board shall designate the boat harbor entrance and the public swimming area with uniform marker buoys approved by the natural resource commission.

3274	Lamoni Municipal Utilities	0.00135315
3277	Laurens Municipal Utilities	0.00026869
3109	Lenox Mun. Light & Power	0.00045704
3284	Mapleton Municipal Utilities	0.00008732
3285	Maquoketa Municipal Utilities	0.00004721
3304	Ogden Municipal Utilities	0.00006019
3234	Onawa Municipal Utilities	0.00009900
3307	Osage Municipal Utilities	0.00004946
3309	Panora Municipal Electric Utility	0.00006632
3321	Sioux Center Municipal Utilities	0.00000090
3327	Story City Municipal Electric Utility	0.00010092
3337	Villisca Municipal Power Plant	0.00020737
3338	Waverly Light & Power	0.00071499
3342	Webster City Municipal Utilities	0.00029511
3346	West Liberty Municipal Electric Util.	0.00000641
3351	Winterset Municipal Utilities	0.00133211

REVENUE DEPARTMENT

Notice of Electric and Natural Gas Delivery Tax Rate Changes

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue hereby gives notice of the changes to the electric and the natural gas delivery tax rates. These rates will be used in conjunction with the number of kilowatt hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 2007 by each taxpayer, for replacement taxes payable in the 2008-2009 fiscal year.

**2007 ELECTRIC DELIVERY TAX RATES
BY SERVICE AREA
RATE CHANGES ONLY**

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3226	Akron Municipal Utilities	0.00006129
3205	Alta Municipal Power Plant	0.00008290
3227	Anthon Municipal Electric Utility	0.00013220
3074	Aurelia Municipal Electric Utility	0.00008478
3228	Bigelow Municipal Electric Utility	0.00194929
3076	Brooklyn Municipal Utilities	0.00162223
3216	Buffalo Municipal Electric System	0.00000286
3221	Cedar Falls Municipal Elec. Utility	0.00031030
3311	City of Pella	0.00006692
3236	Coggon Municipal Light Plant	0.00004291
3242	Corning Municipal Utilities	0.00031729
3244	Denison Municipal Utilities	0.00001014
3245	Denver Municipal Electric Utility	0.00005610
3085	Earlville Municipal Utilities	0.00120833
3252	Fontanelle Municipal Utilities	0.00031947
3256	Graettinger Municipal Light Plant	0.00028010
3095	Greenfield Municipal Utilities	0.00108686
3099	Hinton Municipal Electric/Water	0.00008142

CO. #	IOU's - ELECTRIC	DELIVERY TAX RATE
7248	Eldridge Electric & Water Utilities	0.00062117
7305	Omaha Public Power District	0.00116040

CO. #	REC's	DELIVERY TAX RATE
4208	Atchison Holt Electric Coop	0.00087070
4218	Butler County REC	0.00097749
4219	Calhoun County Electric Coop	0.00134909
4235	Clarke Electric Coop	0.00267847
4287	Consumers Energy	0.00208948
4246	East-Central Iowa REC	0.00200204
4247	Eastern Iowa Light & Power	0.00065074
4249	Farmers Electric Coop - Kalona	0.00040124
4253	Franklin Rural Electric Coop	0.00076497
4255	Glidden Rural Electric Coop	0.00053234
4265	Harrison County REC	0.00081475
4223	Heartland Power Coop	0.00044896
4273	Iowa Lakes Electric Coop	0.00065479
4279	Linn County REC	0.00147526
4280	Lyon Rural Electric Coop	0.00069748
4290	Midland Power Cooperative	0.00113193
4299	Nishnabotna Valley REC	0.00063871
4300	North West Rural Electric Coop	0.00046985
4308	Osceola Electric Coop	0.00037142
4313	Pleasant Hill Community Line	0.00027374
4316	Rideta Electric Coop	0.00278588
4320	Sac County Rural Electric Coop	0.00083918
4329	T.I.P. Rural Electric Coop	0.00201713
4348	Western Iowa Power Coop	0.00094679
4352	Woodbury County REC	0.00114780

REVENUE DEPARTMENT(cont'd)

**2007 NATURAL GAS DELIVERY TAX RATES
BY SERVICE AREA
RATE CHANGES ONLY**

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5215	Brighton Gas	0.00785371
5238	Coon Rapids Municipal Gas	0.00003013
5241	Corning Municipal Gas	0.00011371
5281	Manilla Municipal Gas	0.00037843
5283	Manning Municipal Gas	0.00018720
5317	Rock Rapids Municipal Gas	0.00008259
5344	West Bend Municipal Gas	0.00002616
5349	Winfield Municipal Gas	0.00054851
CO. #	IOU's - GAS	DELIVERY TAX RATE
5270	IES Utilities	0.00757313
5272	Interstate Power	0.00321157

ARC 6834B

SECRETARY OF STATE[721]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 47.1 and 53.46, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 21, “Election Forms and Instructions,” Iowa Administrative Code.

This proposed rule making establishes a process for the electronic transmission of absentee ballot materials to and from voters who are eligible to vote under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). These citizens are also covered under Iowa Code chapter 53, division II, “Absent Voting by Armed Forces.” This process for electronic transmission includes both E-mail and facsimile transmissions of ballots from the county commissioner of elections to voters and allows those voters to send their requests for absentee ballots by E-mail or facsimile.

In addition, current subrule 21.1(14), which requires an emergency declaration from the Federal Voting Assistance Program (FVAP) to trigger the use of electronic transmission for sending absentee ballots, is amended to permit the return of absentee ballots via electronic means only for UOCAVA voters who are in an area designated by the U.S. Department of Defense to be an imminent danger pay zone. The amendment to subrule 21.1(14) eliminates the requirement for an emergency declaration from FVAP and provides easier voting access to all UOCAVA voters who are in hazardous parts of the world.

Iowa Code section 53.46(4) authorizes and empowers the state commissioner “[t]o arrange for special transportation of ballots in co-operation with the government of the United States through any authorized instrumentality thereof and to that end the state commissioner is empowered to direct the

commissioners of the several counties of the state to send ballots to voters in the armed forces of the United States other than in the usual course of mail.” The state commissioner is also authorized to “co-operate with any authorized departments, agencies and instrumentalities of the government of the United States in effecting the intent and purposes of this division.” The Federal Voting Assistance Program is an authorized agency of the Department of Defense whose mission is to help U.S. citizens who are in military service or who are overseas participate in elections. The Uniformed and Overseas Citizens Absentee Voting Act established the FVAP.

FVAP provides a secure Web site and other services for the safe electronic transmission of absentee voting materials, including both applications and the ballots themselves. Pursuant to the authority of Iowa Code section 53.46, the Secretary of State proposes these amendments in order for Iowans to fully participate in both new and existing services provided by FVAP.

Any interested person may make written suggestions or comments on these proposed amendments through June 24, 2008. Written suggestions or comments should be directed to Sandy Steinbach, Director of Elections, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

Persons who want to convey their views orally should contact the Secretary of State’s office by telephone at (515) 281-5823 or at the Secretary of State’s offices on the first floor of the Lucas State Office Building. Requests for a public hearing must be received by June 24, 2008.

These amendments are intended to implement Iowa Code section 53.46 and Iowa Code Supplement section 53.40.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 21.1(14) as follows:

21.1(14) Military emergencies. ~~During an armed conflict involving the United States armed forces, or mobilization of those forces, the state commissioner of elections may order the use of facsimile transmission of absentee ballots to electors if the Federal Voting Assistance Office in the Department of Defense requests that this service be made available to personnel in military operations.~~

~~If requested by the Department of Defense, absentee ballots may be returned via facsimile transmission if the elector waives the right to a secret ballot. In addition to the affidavit required by Iowa Code section 53.13, the elector shall sign a statement in substantially the following form: “I understand that by returning this ballot by facsimile transmission my voted ballot will not be secret. I hereby waive my right to a secret ballot.”~~

~~When absentee ballots are received via facsimile transmission, the person receiving the transmission shall examine the transmission to determine that all pages have been received and are legible. The person receiving a facsimile transmission shall not reveal how the elector voted.~~

~~The absentee ballot shall be sealed in an envelope marked with the elector’s name. The affidavit of the elector and the application for the ballot shall be attached to the envelope. These materials shall be stored with other returned absentee ballots. A voter who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, “Absent Voting by Armed Forces,” may return an absentee~~

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ballot via electronic transmission only if the voter is located in an area designated by the U.S. Department of Defense to be an imminent danger pay area. The list of imminent danger pay areas can be found at www.defenselink.mil/comptroller/fmr/07a/07a_10.pdf. Procedures for the return of absentee ballots by electronic transmission are described in subrule 21.320(4).

ITEM 2. Adopt the following **new** rule:

721—21.320(53) Absentee voting by UOCAVA voters. This rule applies only to absentee voting by persons who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, “Absent Voting by Armed Forces.”

21.320(1) Definitions. The following definitions apply to this rule:

“Armed forces,” as used in this rule, is defined in Iowa Code section 53.37(3).

“FPCA” means the federal postcard absentee ballot application and voter registration form authorized for use in Iowa by Iowa Code section 53.38.

“UOCAVA voter” means any person who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, “Absent Voting by Armed Forces.”

21.320(2) Requests for absentee ballots. All requests for absentee ballots shall be made in writing. Additional requirements for requesting absentee ballots and for processing the requests are set forth below.

a. Forms. UOCAVA voters may use the following official forms to request absentee ballots:

(1) A federal postcard absentee ballot application and voter registration form (FPCA).

(2) A state of Iowa official absentee ballot request form.

(3) For general elections only, a proxy absentee ballot application prescribed by the state commissioner of elections and submitted pursuant to Iowa Code Supplement section 53.40(1)“b.”

b. Form not required. UOCAVA voters may request absentee ballots in writing without using an official form. The written request shall be honored if it includes all of the following information about the voter:

(1) Name.

(2) Age or date of birth.

(3) Iowa residence, including street address (if any) and city.

(4) Address to which the ballot shall be sent.

(5) Township of residence, if applicable.

(6) County of residence.

(7) Party affiliation, if the request is for a ballot for a primary election.

(8) Signature of voter.

(9) Statement explaining why the voter is eligible to receive ballots under the provisions of Iowa Code chapter 53, division II. For example, “I am a U.S. citizen living in France.”

c. Methods for transmitting absentee ballot requests. UOCAVA voters may transmit absentee ballot requests by any of the following methods:

(1) Mail.

(2) Personal delivery by the voter or a person designated by the voter.

(3) Facsimile machine.

(4) Scanned application form or letter transmitted by E-mail. Requests by E-mail that do not include either the physical signature or a digital signature shall not be accepted.

d. Original request not needed. If the request is sent by E-mail or by fax, it is not necessary for the UOCAVA voter to send to the commissioner the original copy of the FPCA or other official form or written request for an absentee ballot.

e. Multiple requests from the same person. Before the ballot is ready to mail, if the commissioner receives more than one request for an absentee ballot for a particular election (or series of elections) by or on behalf of a UOCAVA voter, the last request received shall be the one honored. However, if one of the requests is for a general election ballot and is made using the proxy absentee ballot application process permitted by Iowa Code Supplement section 53.40(1)“b,” the request received from the voter shall be the one honored, not the proxy request.

f. Subsequent request after ballot has been sent. Not more than one ballot shall be transmitted by the commissioner to any voter for a particular election unless, after the ballot has been mailed, the voter reports a change in the address to which the ballot should be sent. The commissioner shall void the original absentee ballot and include a comment in the voter’s registration record, noting the serial number of the original ballot and noting that a replacement ballot was sent to an updated address. The original ballot shall be counted only if the replacement ballot does not arrive.

g. Requests for absentee ballots for a period of two general elections. Iowa Code Supplement section 53.40 permits UOCAVA voters to request the commissioner to send absentee ballots for all elections as permitted by state law. In response to an absentee ballot request for all elections, the commissioner shall send the applicant a ballot for each election held after the application is received and through the next two general elections.

(1) When an absentee ballot for a UOCAVA voter who has requested absentee ballots for all elections through the next two general elections is returned as undeliverable by the United States Postal Service, the commissioner shall contact the Federal Voting Assistance Program (FVAP) to determine whether the voter has a forwarding address on file with that office. If so, the commissioner shall contact the voter by the best means available to notify the voter that the voter must provide the commissioner with a new address if the voter wishes to continue to receive absentee ballots until the end of the period for which the voter has requested ballots.

(2) The commissioner shall also send a written notice to the voter’s residence address by forwardable mail. The notice shall advise the voter that the voter must provide the commissioner with a new address if the voter wishes to continue to receive absentee ballots until the end of the period for which the voter has requested ballots.

(3) If the voter provides a new address before election day, the commissioner shall enter the revised information in the voter’s registration record and transmit the ballot. The voter may request that the commissioner transmit the ballot electronically pursuant to subrule 21.320(3).

(4) If the voter does not respond to either request for additional information within 30 days, the commissioner shall cancel the absentee ballot request and notify the voter.

21.320(3) Electronic transmission of absentee ballots to UOCAVA voters.

a. Electronic transmission of absentee ballots by facsimile machine or by E-mail is limited to UOCAVA voters who specifically ask for this service. A UOCAVA voter who asks for electronic transmission of an absentee ballot may request

SECRETARY OF STATE[721](cont'd)

this service for all elections for which the person is qualified to vote or for specific elections either individually or for a specific period of time. The commissioner shall employ FVAP's secure transmission program to facilitate electronic transmission of absentee ballots to UOCAVA voters.

b. Forms. The state commissioner shall provide the following forms and instructions for the electronic transmission of absentee ballots to UOCAVA voters:

(1) Instructions to the county commissioners of elections for providing this service.

(2) Instructions to the voter for marking and returning the ballot.

(3) The affidavit envelope form, which can be printed by the voter on an envelope and used for the voter's declaration of eligibility and voter registration application, if necessary.

(4) The return envelope form, which can be printed by the voter on an envelope and used to return the ballot, postage paid through the FPO/APO postal service.

21.320(4) Ballot return by electronic transmission.

a. Electronic transmission of a voted absentee ballot from the voter to the commissioner is permitted only for UOCAVA voters who are in an area designated as an imminent danger pay area, as provided in subrule 21.1(14). The absentee ballot may be returned via electronic transmission if the voter waives the right to a secret ballot. In addition to signing the affidavit required by Iowa Code section 53.13, the voter shall sign a statement in substantially the following form: "I understand that by returning this ballot by electronic transmission my voted ballot will not be secret. I hereby waive my right to a secret ballot."

b. When an absentee ballot is received via electronic transmission, the person receiving the transmission shall examine it to determine that all pages have been received and are legible. The person receiving an electronic transmission shall not reveal how the voter voted.

c. The absentee ballot shall be sealed in an envelope marked with the voter's name. The affidavit of the voter and the application for the ballot shall be attached to the envelope. These materials shall be stored with other returned absentee ballots.

This rule is intended to implement Iowa Code section 53.46 and Iowa Code Supplement section 53.40.

ARC 6813B

STATUS OF IOWANS OF ASIAN AND PACIFIC ISLANDER HERITAGE DIVISION[436]

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 216A.154, the Commission on the Status of Iowans of Asian and Pacific Islander Heritage hereby gives Notice of Intended Action to adopt new Chapter 1, "Organization," and Chapter 2, "Administrative Procedures," Iowa Administrative Code.

These new rules will govern the Division on the Status of Iowans of Asian and Pacific Islander Heritage, Iowa Depart-

ment of Human Rights, and the Commission on the Status of Iowans of Asian and Pacific Islander Heritage.

Any interested person may make written suggestions or comments on these proposed rules on or before June 24, 2008. Such written materials should be directed to Administrator, Division on the Status of Iowans of Asian and Pacific Islander Heritage, Department of Human Rights, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319; fax (515)242-6119. Persons who wish to convey their views orally should contact the Division by telephone at (515)281-4223 or in person at the Division office at the above address.

These rules are intended to implement Iowa Code sections 216A.151 to 216A.160.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Adopt the following **new** 436—Chapter 1:

CHAPTER 1 ORGANIZATION

436—1.1(216A) Definitions. For purposes of these rules, the following definitions apply unless the context otherwise requires:

"Administrator" means the administrator of the division on the status of Iowans of Asian and Pacific Islander heritage of the department of human rights.

"Asian and Pacific Islander" means an individual from any of the countries of Asia or islands of the Pacific.

"Commission" means the commission on the status of Iowans of Asian and Pacific Islander heritage.

"Division" means the division on the status of Iowans of Asian and Pacific Islander heritage of the department of human rights.

436—1.2(216A) Purpose of the commission and the division. The commission is established pursuant to Iowa Code section 216A.152 and is responsible for establishing policies for the division to be carried out by the administrator, as provided in Iowa Code section 216A.158. The division is established pursuant to Iowa Code section 216A.1 and is required to advocate, coordinate, implement, and provide services to, and on behalf of, Iowans of Asian and Pacific Islander heritage.

436—1.3(216A) Organization of the division.

1.3(1) Location, telephone number, business hours. The address of the division is Division on the Status of Iowans of Asian and Pacific Islander Heritage, Department of Human Rights, Second Floor, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. The telephone number is (515)281-4223. The hours of operation are 8 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The division's Web site address is www.iowacapi.org.

1.3(2) Method of contacting the division. Citizens may contact the division by telephone, mail, fax, E-mail, or personal visits. Citizens may call the office from within the state, station-to-station collect. Citizens who call the office may ask the staff to return the call on the division's telephone lines. Facsimile transmissions may be sent to the division at (515)242-6119. E-mail may be sent to info@iowacapi.org.

1.3(3) Staff of the division.

STATUS OF IOWANS OF ASIAN AND PACIFIC ISLANDER HERITAGE DIVISION[436](cont'd)

a. Administrator. The governor shall appoint the administrator, subject to senate confirmation.

b. Additions to division staff. The commission shall be responsible for establishing the division's personnel policies, which the administrator shall administer. The commission shall determine whether additions to division staff are necessary and whether funding is available for additional staff positions. If so, the commission shall establish the roles, responsibilities and general job duties of the position. Hiring of additional personnel shall be subject to the hiring policies and procedures of the human resources enterprise of the department of administrative services. If a selection committee is formed, the commission shall have the right to appoint up to two commissioners to serve on the committee, on which the administrator shall also serve. The administrator shall be responsible for the management of all division staff members.

436—1.4(216A) Organization of the commission.

1.4(1) Membership. The commission shall consist of nine members appointed by the governor, subject to confirmation by the senate. Members shall be appointed representing every geographical area of the state.

1.4(2) Term of office. Commission members shall be appointed to terms of not more than four years. Vacancies in the membership shall be filled for the remainder of the term of the original appointment.

1.4(3) Organization. The commission shall hold annual elections of officers which shall include, at a minimum, the offices of chairperson and secretary.

1.4(4) Commission meetings. The commission shall meet at least four times each year and may hold special meetings as described in paragraph "c" below. A majority of the members of the commission shall constitute a quorum. A quorum is necessary to carry or defeat a motion.

a. Nonattendance. In accordance with Iowa Code section 69.15, any person who has been appointed to serve on the commission shall be deemed to have submitted a resignation from the commission if either of the following occurs:

(1) The person does not attend three or more consecutive regular meetings.

(2) The person attends less than half of the regular meetings during a period of 12 calendar months, beginning either July 1 or January 1.

b. Public meetings. Members of the public may be present during regular and special meetings of the commission unless the commission votes to hold a closed session pursuant to Iowa Code section 21.5. At every regularly scheduled meeting of the commission, members of the public may speak during the public comment period on an issue of relevance to the commission. Members of the public shall be asked to identify themselves and to observe time limits established by the presiding officer. Written materials may be distributed by members of the public, with the consent of the presiding officer, after consultation with the commission.

c. Special meetings. Special meetings may be called by the chairperson or upon majority vote of the members of the commission.

d. Recording devices at meetings. Cameras and other recording devices may be used at open meetings, provided use of the devices does not obstruct the meeting.

e. Exclusion for disruptive behavior. The presiding officer of a commission meeting may exclude any person from the meeting for behavior that disrupts the meeting.

f. Cases not covered by these rules shall be governed by Robert's Rules of Order.

1.4(5) Minutes. Minutes of the commission meetings shall be prepared and sent to all commission members. Approved minutes shall be available for inspection at the division office during regular business hours.

These rules are intended to implement Iowa Code sections 17A.3 and 216A.151 to 216A.158.

ITEM 2. Adopt the following **new** 436—Chapter 2:

CHAPTER 2

ADMINISTRATIVE PROCEDURES

436—2.1(17A) Uniform rules. The commission hereby adopts by reference the uniform rules on agency procedure of the department of human rights as provided in the following chapters:

1. 421—Chapter 2, "Public Records and Fair Information Practices."

2. 421—Chapter 3, "Petitions for Rule Making."

3. 421—Chapter 4, "Agency Procedure for Rule Making."

4. 421—Chapter 5, "Declaratory Orders."

5. 421—Chapter 6, "Contested Cases."

6. 421—Chapter 7, "Waiver Rules."

This rule is intended to implement Iowa Code chapter 17A.

NOTICE—USURY

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

June 1, 2007 — June 30, 2007	6.75%
July 1, 2007 — July 31, 2007	6.75%
August 1, 2007 — August 31, 2007	7.00%
September 1, 2007 — September 30, 2007	7.00%
October 1, 2007 — October 31, 2007	6.75%
November 1, 2007 — November 30, 2007	6.50%
December 1, 2007 — December 31, 2007	6.50%
January 1, 2008 — January 31, 2008	6.25%
February 1, 2008 — February 29, 2008	6.00%
March 1, 2008 — March 31, 2008	5.75%
April 1, 2008 — April 30, 2008	5.75%
May 1, 2008 — May 31, 2008	5.50%
June 1, 2008 — June 30, 2008	5.75%

ARC 6829B

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 36, "Facility Assessments," Iowa Administrative Code.

These amendments reduce the amount of the fee assessed to intermediate care facilities for persons with mental retardation from 6 percent of the facility's total annual revenue to 5.5 percent, effective January 1, 2008. The 5.5 percent limit was established by Public Law 109-432, the Tax Relief and Health Care Act of 2006.

The amendments also remove implementation language that is no longer needed.

These amendments do not provide for waivers in specified situations. The Department does not have authority to waive a limit set in federal law.

The Council on Human Services adopted these amendments May 14, 2008.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments conform the rules to a change in federal law.

The Department finds that these amendments confer a benefit on facilities by reducing the amount of the fee they are required to pay. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 249A.21.

These amendments became effective May 15, 2008.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule 441—36.1(249A) as follows:

441—36.1(249A) Assessment of fee. Intermediate care facilities for the mentally retarded (ICFs/MR) licensed in Iowa under 481—Chapter 64 shall pay a monthly fee to the department. ~~The Effective January 1, 2008, the fee shall equal 6.5 percent of the total revenue of the facility for the facility's preceding fiscal year divided by the number of months of facility operation during the preceding fiscal year. For ICFs/MR operated by the state, the fee shall be retroactive to October 1, 2003.~~

ITEM 2. Amend rule **441—36.2(249A)** by rescinding and reserving subrule **36.2(4)**.

[Filed Emergency 5/14/08, effective 5/15/08]
[Published 6/4/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/4/08.

ARC 6831B

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," Iowa Administrative Code.

State legislation in 2005 Iowa Acts, chapter 175, section 9; 2006 Iowa Acts, chapter 1184, section 10; and 2007 Iowa Acts, chapter 218, section 11, has directed the Department to implement a program to reduce smoking among Medicaid members and expand coverage of smoking cessation drugs. These amendments allow coverage of the drug varenicline (Chantix™) for smoking cessation with prior authorization. The Department has determined that it will be beneficial to Medicaid members who are attempting to become smoke-free to have access to another effective non-nicotine replacement therapy other than bupropion to assist them in quitting. Some members do not tolerate or respond to the products currently covered, and there are positive health benefits when a member quits smoking.

These amendments also remove a reference to prior authorization for rehabilitative treatment services that was inadvertently overlooked in **ARC 6098B**, published in the Iowa Administrative Bulletin on August 1, 2007, which rescinded the coverage rules for rehabilitative treatment services.

These amendments do not provide for waivers in specified situations because they expand Medicaid coverage for smoking cessation products. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on March 26, 2008, as **ARC 6659B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on May 14, 2008.

The Department finds that these amendments confer a benefit on Medicaid members who are trying to quit smoking by allowing them access to another effective non-nicotine replacement therapy. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

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

These amendments became effective on May 15, 2008.

The following amendments are adopted.

ITEM 1. Amend subparagraph **78.2(4)"b"(4)** as follows:

(4) Drugs used to promote smoking cessation, except for *varenicline with prior authorization as provided in paragraph "a" above* and generic, *sustained-release* bupropion *sustained-release* products that are indicated for smoking cessation by the U.S. Food and Drug Administration.

ITEM 2. Rescind and reserve subrule **78.28(7)**.

[Filed Emergency After Notice 5/14/08, effective 5/15/08]
[Published 6/4/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/4/08.

ARC 6833B**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," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments:

- Add new components to supported employment services offered under Medicaid home- and community-based habilitation services and the mental retardation and physical disability services waivers and increase the reimbursement limits for these services.

- Add Medicaid reporting requirements for physical therapists, chiropractors, and audiologists and hearing aid dealers that were inadvertently omitted from rules Adopted and Filed and published in the Iowa Administrative Bulletin on January 30, 2008, as **ARC 6566B**.

- Remove the prohibition from receiving both Medicaid home- and community-based habilitation services and services under a home- and community-based services waiver. The federal requirement that the Department understood to prohibit this practice has been clarified.

- Update the home- and community-based habilitation services rules by removing obsolete provisions on assignment of service slots, clarifying the relationship between service plan approval and the beginning date of services, and clarifying that personal care and protective oversight and supervision may not be the only components received in home-based habilitation services.

- Update the upper payment limit for home- and community-based waiver respite services provided in a foster group care facility to refer to the amount paid for child welfare services instead of rehabilitative treatment and supportive services, which are no longer available.

Providers of supported employment services have contacted Iowa legislators requesting a change in reimbursement. Services to assist members in obtaining a job are not widely available due to inadequate reimbursement. These amendments create three components of "activities to obtain a job":

- Job development, which is directed at developing skills a person needs to obtain and keep a job and which is paid on the basis of a job placement that the person holds for 30 days or more.

- Employer development, which is directed at job analysis, support, accommodations, and technical assistance and which is paid on the basis of a job placement that the person holds for 30 days or more.

- Enhanced job search, which is available when a person has been unable to find a job after 30 days of job development services, has been laid off or fired, or seeks a new job based on personal choice and is paid using an hourly rate that is retrospectively adjusted based on the actual cost of the service.

Activities to obtain employment have a prerequisite of completion of the form that Iowa Vocational Rehabilitation Services uses to identify the supported employment services appropriate to meet a person's employment needs. This requirement is intended to facilitate coordination with Iowa Vocational Rehabilitation Services and to assist in using

funding sources appropriately. Services are available only to members who can reasonably be expected to obtain competitive employment within one year.

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

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on March 26, 2008, as **ARC 6676B**. The Department received 14 written comments on the Notice of Intended Action. The Department also held a public hearing on April 17, 2008, to receive comments. The hearing was attended by seven people. A complete summary of the comments is available at <http://www.dhs.state.ia.us/policyanalysis/RulePages/phcomm.htm>.

Some commenters were concerned about the requirement that, to qualify for job development services, a member must be expected to be able to enter competitive employment within a year. Activities to obtain a job are not intended to provide long-term funding of job development. The goal of the services has always been to obtain competitive employment. The definition of competitive employment has not changed.

Several comments criticized the requirements for obtaining funding both through Medicaid and through Iowa Vocational Rehabilitation Services, on the grounds that this service process is more inefficient and less effective than a "single-payer" process would be. However, federal Medicaid regulations for home- and community-based services specifically prohibit coverage of any service that is available through a program funded under Section 110 of the Rehabilitation Act of 1973.

Many persons who commented were concerned about providers being unable or unwilling to undertake job development services if the providers were not paid until after the person has obtained a job. In response, the Department has added the following sentence to subparagraph 78.27(10)"a"(1), numbered paragraph "1," subparagraph 78.41(7)"a"(1), and subparagraph 78.43(4)"a"(1) as published under Notice of Intended Action: "Payment is available once the service is authorized in the member's service plan."

The Department has also made changes to subrule 79.1(2) to clarify that:

- Job development services and employer development services are limited to two units per year; and

- The rate methodology for enhanced job search provided under the habilitation program is retrospective cost-related. Amendments to subrule 79.1(24) are added to refer to the new supported employment services.

The Council on Human Services adopted these amendments on May 14, 2008.

The Department finds that these amendments confer a benefit on Medicaid members and providers of supported employment services by increasing reimbursement for services. The changes to habilitation policies benefit Medicaid members by removing unnecessary limitations, streamlining procedures, and clarifying existing policies. The changes to the records rules benefit the affected providers by supplying needed detail on requirements for records. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

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

These amendments became effective on June 1, 2008.

The following amendments are adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend paragraph **78.27(2)“e”** by striking subparagraph (2) and renumbering subparagraphs (3) to (5) as (2) to (4), respectively.

ITEM 2. Amend paragraph **78.27(3)“a”** by striking subparagraph (2) and renumbering subparagraphs (3) and (4) as (2) and (3), respectively.

ITEM 3. Amend subrule **78.27(4)**, paragraph **“e,”** as follows:

e. Plan approval. Services shall be entered into ISIS based on the comprehensive service plan. A service plan that has been validated and authorized through ISIS shall be considered approved by the department. Services must be authorized in ISIS ~~before the service implementation date, as specified in paragraph 78.27(2)“e.”~~

ITEM 4. Amend subrule **78.27(7)**, paragraph **“b,”** by adopting **new** subparagraph (6) as follows:

(6) Personal care and protective oversight and supervision may be a component part of home-based habilitation services but may not comprise the entirety of the service.

ITEM 5. Rescind subparagraph **78.27(10)“a”(1)** and adopt the following **new** subparagraph in lieu thereof:

(1) Activities to obtain a job. Covered services directed to obtaining a job must be provided to or on behalf of a member for whom competitive employment is reasonably expected within less than one year. Services must be focused on job placement, not on teaching generalized employment skills or habilitative goals. Three conditions must be met before services are provided. First, the member and the interdisciplinary team described in subrule 78.27(4) must complete the form that Iowa vocational rehabilitation services uses to identify the supported employment services appropriate to meet a person's employment needs. Second, the member's interdisciplinary team must determine that the identified services are necessary. Third, the Iowa Medicaid enterprise medical services unit must approve the services. Available components of activities to obtain a job are as follows:

1. Job development services. Job development services are directed toward obtaining competitive employment. A unit of service is a job placement that the member holds for 30 consecutive calendar days or more. Payment is available once the service is authorized in the member's service plan. A member may receive two units of job development services during a 12-month period. The activities provided to the member may include job procurement training, including grooming and hygiene, application, résumé development, interviewing skills, follow-up letters, and job search activities; job retention training, including promptness, coworker relations, transportation skills, disability-related supports, job benefits, and an understanding of employee rights and self-advocacy; and customized job development services specific to the member.

2. Employer development services. The focus of employer development services is to support employers in hiring and retaining members in their workforce and to communicate expectations of the employers to the interdisciplinary team described in subrule 78.27(4). Employer development services may be provided only to members who are reasonably expected to work for no more than 10 hours per week. A unit of service is one job placement that the member holds for 30 consecutive calendar days or more. Payment for this service may be made only after the member holds the job for 30 days. A member may receive two units of employer development services during a 12-month period if the member is competitively employed for 30 or more consecutive calendar

days and the other conditions for service approval are met. The services provided may include: developing relationships with employers and providing leads for individual members when appropriate; job analysis for a specific job; development of a customized training plan identifying job-specific skill requirements, employer expectations, teaching strategies, time frames, and responsibilities; identifying and arranging reasonable accommodations with the employer; providing disability awareness and training to the employer when it is deemed necessary; and providing technical assistance to the employer regarding the training progress as identified on the member's customized training plan.

3. Enhanced job search activities. Enhanced job search activities are associated with obtaining initial employment after job development services have been provided to the member for a minimum of 30 days or with assisting the member in changing jobs due to layoff, termination, or personal choice. The interdisciplinary team must review and update the Iowa vocational rehabilitation services supported employment readiness analysis form to determine if this service remains appropriate for the member's employment goals. A unit of service is an hour. A maximum of 26 units may be provided in a 12-month period. The services provided may include: job opening identification with the member; assistance with applying for a job, including completion of applications or interviews; and work site assessment and job accommodation evaluation.

ITEM 6. Rescind paragraph **78.41(7)“a”** and adopt the following **new** paragraph in lieu thereof:

a. Activities to obtain a job. Covered services directed to obtaining a job must be provided to or on behalf of a consumer for whom competitive employment is reasonably expected within less than one year. Services must be focused on job placement, not on teaching generalized employment skills or habilitative goals. Three conditions must be met before services are provided. First, the consumer and the interdisciplinary team described in 441—subrule 83.67(1) must complete the form that Iowa vocational rehabilitation services uses to identify the supported employment services appropriate to meet a person's employment needs. Second, the consumer's interdisciplinary team must determine that the identified services are necessary. Third, the consumer's case manager must approve the services. Available components of activities to obtain a job are as follows:

(1) Job development services. Job development services are directed toward obtaining competitive employment. A unit of service is a job placement that the consumer holds for 30 consecutive calendar days or more. Payment is available once the service is authorized in the member's service plan. A consumer may receive two units of job development services during a 12-month period. The activities provided to the consumer may include:

1. Job procurement training, including grooming and hygiene, application, résumé development, interviewing skills, follow-up letters, and job search activities.

2. Job retention training, including promptness, coworker relations, transportation skills, disability-related supports, job benefits, and an understanding of employee rights and self-advocacy.

3. Customized job development services specific to the consumer.

(2) Employer development services. The focus of employer development services is to support employers in hiring and retaining consumers in their workforce and to communicate expectations of the employers to the interdisciplinary team described in 441—subrule 83.67(1). Employer de-

HUMAN SERVICES DEPARTMENT[441](cont'd)

velopment services may be provided only to consumers who are reasonably expected to work for no more than 10 hours per week. A unit of service is one job placement that the consumer holds for 30 consecutive calendar days or more. Payment for this service may be made only after the consumer holds the job for 30 days. A consumer may receive two units of employer development services during a 12-month period if the consumer is competitively employed for 30 or more consecutive calendar days and the other conditions for service approval are met. The services provided may include:

1. Developing relationships with employers and providing leads for individual consumers when appropriate.
2. Job analysis for a specific job.
3. Development of a customized training plan identifying job-specific skill requirements, employer expectations, teaching strategies, time frames, and responsibilities.
4. Identifying and arranging reasonable accommodations with the employer.
5. Providing disability awareness and training to the employer when it is deemed necessary.
6. Providing technical assistance to the employer regarding the training progress as identified on the consumer's customized training plan.

(3) Enhanced job search activities. Enhanced job search activities are associated with obtaining initial employment after job development services have been provided to the consumer for a minimum of 30 days or with assisting the consumer in changing jobs due to layoff, termination, or personal choice. The interdisciplinary team must review and update the Iowa vocational rehabilitation services supported employment readiness analysis form to determine if this service remains appropriate for the consumer's employment goals. A unit of service is an hour. A maximum of 26 units may be provided in a 12-month period. The services provided may include:

1. Job opening identification with the consumer.
2. Assistance with applying for a job, including completion of applications or interviews.
3. Work site assessment and job accommodation evaluation.

ITEM 7. Rescind paragraph **78.43(4)“a”** and adopt the following **new** paragraph in lieu thereof:

a. Activities to obtain a job. Covered services directed to obtaining a job must be provided to or on behalf of a consumer for whom competitive employment is reasonably expected within less than one year. Services must be focused on job placement, not on teaching generalized employment skills or rehabilitative goals. Three conditions must be met before services are provided. First, the consumer and the interdisciplinary team described in rule 441—83.87(249A) must complete the form that Iowa vocational rehabilitation services uses to identify the supported employment services appropriate to meet the consumer's employment needs. Second, the consumer's interdisciplinary team must determine that the identified services are necessary. Third, the consumer's case manager must approve the services. Available components of activities to obtain a job are as follows:

(1) Job development services. Job development services are directed toward obtaining competitive employment. A unit of service is a job placement that the consumer holds for 30 consecutive calendar days or more. Payment is available once the service is authorized in the member's service plan. A consumer may receive two units of job development ser-

vices during a 12-month period. The activities provided to the consumer may include:

1. Job procurement training, including grooming and hygiene, application, résumé development, interviewing skills, follow-up letters, and job search activities.
2. Job retention training, including promptness, coworker relations, transportation skills, disability-related supports, job benefits, and an understanding of employee rights and self-advocacy.
3. Customized job development services specific to the consumer.

(2) Employer development services. The focus of employer development services is to support employers in hiring and retaining consumers in their workforce and to communicate expectations of the employers to the interdisciplinary team described in rule 441—83.87(249A). Employer development services may be provided only to consumers who are reasonably expected to work for no more than 10 hours per week. A unit of service is one job placement that the consumer holds for 30 consecutive calendar days or more. Payment for this service may be made only after the consumer holds the job for 30 days. A consumer may receive two units of employer development services during a 12-month period if the consumer is competitively employed for 30 or more consecutive calendar days and the other conditions for service approval are met. The services provided may include:

1. Developing relationships with employers and providing leads for individual consumers when appropriate.
2. Job analysis for a specific job.
3. Development of a customized training plan identifying job-specific skill requirements, employer expectations, teaching strategies, time frames, and responsibilities.
4. Identifying and arranging reasonable accommodations with the employer.
5. Providing disability awareness and training to the employer when it is deemed necessary.
6. Providing technical assistance to the employer regarding the training progress as identified on the consumer's customized training plan.

(3) Enhanced job search activities. Enhanced job search activities are associated with obtaining initial employment after job development services have been provided to the consumer for a minimum of 30 days or with assisting the consumer in changing jobs due to layoff, termination, or personal choice. The interdisciplinary team must review and update the Iowa vocational rehabilitation services supported employment readiness analysis form to determine if this service remains appropriate for the consumer's employment goals. A unit of service is an hour. A maximum of 26 units may be provided in a 12-month period. The services provided may include:

1. Job opening identification with the consumer.
2. Assistance with applying for a job, including completion of applications or interviews.
3. Work site assessment and job accommodation evaluation.

ITEM 8. Amend rule 441—79.1(249A) as follows:

Amend subrule **79.1(2)** as follows:

Amend provider category “HCBS waiver service providers” as follows:

Amend numbered paragraph “6,” “Facility care: foster group care,” as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Foster group care	Fee schedule	\$12.99 per hour not to exceed daily per diem rate for rehabilitative treatment and supportive <i>child welfare</i> services.

Amend numbered paragraph "19" as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
19. Supported employment: Activities to obtain a job:		
<i>Job development</i>	Fee schedule	\$500 \$900 per unit not to exceed \$1,500 per calendar year (job placement). Maximum of two units per 12 months.
<i>Employer development</i>	Fee schedule	\$900 per unit (job placement). Maximum of two units per 12 months.
<i>Enhanced job search</i>	Retrospectively limited prospective rates. See 79.1(15)	Maximum of \$34.63 per hour and 26 hours per 12 months.
Supports to maintain employment	Retrospectively limited prospective rates. See 79.1(15)	No change.

Amend provider category "Home- and community-based habilitation services," numbered paragraph "5," as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
5. Supported employment: Activities to obtain a job:		
<i>Job development</i>	Retrospective cost-related. See 79.1(24) Fee schedule	\$500 \$900 per job unit, not to exceed \$1,500 per calendar year (job placement). Maximum of two units per 12 months.
<i>Employer development</i>	Fee schedule	\$900 per unit (job placement). Maximum of two units per 12 months.
<i>Enhanced job search</i>	Retrospective cost-related. See 79.1(24)	Maximum of \$34.63 per hour and 26 hours per 12 months.
Supports to maintain employment	Retrospective cost-related. See 79.1(24)	No change.

Amend subrule 79.1(15), introductory paragraph, as follows:

79.1(15) HCBS retrospectively limited prospective rates. This methodology applies to reimbursement for HCBS supported community living; HCBS family and community support services; HCBS supported employment *enhanced job search activities*; HCBS interim medical monitoring and treatment when provided by an HCBS-certified supported community agency; HCBS respite when provided by nonfacility providers, camps, home care agencies, or providers of residential-based supported community living; and HCBS group respite provided by home health agencies.

Amend subrule 79.1(24) as follows:

Amend the introductory paragraph as follows:

79.1(24) Reimbursement for home- and community-based habilitation services. Reimbursement for case management, *job development*, and *employer development* is based on a fee schedule developed using the methodology described in paragraph 79.1(1)"d." Reimbursement for home-based habilitation, day habilitation, prevocational habilitation, *enhanced job search* and ~~supported~~ *supports to maintain* employment is based on a retrospective cost-related rate calculated using the methodology in *this* subrule 79.1(24). All rates are subject to the upper limits established in subrule 79.1(2).

Amend paragraph "a," subparagraph (5), as follows:

(5) A unit of supported employment habilitation for activities to obtain a job is:

- ~~one~~ One job placement for *job development and employer development*.
- One hour for *enhanced job search*.

ITEM 9. Amend subrule **79.3(2)**, paragraph "d," by adopting **new** subparagraphs (36), (37), and (38) as follows:

(36) Physical therapist services:

- Physician order for physical therapy.
- Initial physical therapy certification, recertifications, and treatment plans.

3. Treatment notes and forms.

4. Progress or status notes.

(37) Chiropractor services:

1. Service or office notes or narratives.

2. X-ray results.

(38) Hearing aid dealer and audiologist services:

1. Physician examinations and audiological testing (Form 470-0361, Sections A, B, and C).

2. Documentation of hearing aid evaluation and selection (Form 470-0828).

3. Waiver of informed consent.

4. Prior authorization documentation.

5. Service or office notes or narratives.

[Filed Emergency After Notice 5/14/08, effective 6/1/08]

[Published 6/4/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/4/08.

ARC 6835B

**HUMAN SERVICES
DEPARTMENT[441]**

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 170, "Child Care Services," Iowa Administrative Code.

This amendment updates the Child Care Assistance fee schedule based on the federal poverty income guidelines issued for 2008. The annual increase in the income levels allows families that have received increased income to maintain eligibility for Child Care Assistance without paying increased fees.

Any fee that is determined before July 1, 2008, will be based on the current fee schedule and will remain in effect until the family's eligibility is redetermined. The new fee schedule will be applied to all new applications as of July 1, 2008, and will be applied to existing cases when the family's eligibility is redetermined. (Eligibility is redetermined at the annual recertification and when the family reports a change that affects eligibility, such as the birth of a child.)

Approximately three-fourths of the families receiving Child Care Assistance pay no fees, either because the family's income is below the federal poverty level or because the family's eligibility for assistance is determined without regard to income (such as Family Investment Program participants and families receiving protective child care).

This amendment does not provide for waivers in specified situations. Families may request a waiver under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on May 14, 2008.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because this amendment merely applies existing methodology to new poverty level guidelines. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

The Department also finds that this amendment confers a benefit by maintaining fees commensurate with the family's income in relation to current poverty income guidelines. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of the amendment is waived.

This amendment is intended to implement Iowa Code section 237A.13.

This amendment shall become effective on July 1, 2008.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/LAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Amend subrule **170.4(2)**, paragraph **"a,"** introductory paragraph and table of monthly income according to family size, as follows:

a. Sliding fee schedule. The fee schedule shown in the following table is effective for eligibility determinations made on or after July 1, 2007 2008:

Level	Monthly Income According to Family Size										Unit Fee Based on Number of Children in Care		
	1	2	3	4	5	6	7	8	9	10	1	2	3 or more
A	\$808	\$1,084	\$1,359	\$1,635	\$1,910	\$2,186	\$2,461	\$2,737	\$3,012	\$3,288	\$0.00	\$0.00	\$0.00
	\$824	\$1,109	\$1,394	\$1,679	\$1,964	\$2,249	\$2,534	\$2,819	\$3,104	\$3,389			
B	\$851	\$1,144	\$1,431	\$1,721	\$2,011	\$2,301	\$2,591	\$2,881	\$3,171	\$3,461	\$0.20	\$0.45	\$0.70
	\$867	\$1,167	\$1,467	\$1,767	\$2,067	\$2,367	\$2,667	\$2,967	\$3,267	\$3,567			
C	\$875	\$1,173	\$1,471	\$1,769	\$2,067	\$2,365	\$2,664	\$2,962	\$3,260	\$3,558	\$0.45	\$0.70	\$0.95
	\$891	\$1,200	\$1,508	\$1,816	\$2,125	\$2,433	\$2,742	\$3,050	\$3,358	\$3,667			
D	\$899	\$1,205	\$1,511	\$1,817	\$2,124	\$2,430	\$2,736	\$3,042	\$3,349	\$3,655	\$0.70	\$0.95	\$1.20
	\$916	\$1,232	\$1,549	\$1,866	\$2,183	\$2,500	\$2,816	\$3,133	\$3,450	\$3,767			
E	\$924	\$1,239	\$1,553	\$1,868	\$2,183	\$2,498	\$2,813	\$3,128	\$3,442	\$3,757	\$0.95	\$1.20	\$1.45
	\$941	\$1,267	\$1,593	\$1,918	\$2,244	\$2,570	\$2,895	\$3,221	\$3,547	\$3,872			
F	\$949	\$1,272	\$1,596	\$1,919	\$2,243	\$2,566	\$2,889	\$3,213	\$3,536	\$3,859	\$1.20	\$1.45	\$1.70
	\$967	\$1,301	\$1,636	\$1,970	\$2,305	\$2,640	\$2,974	\$3,309	\$3,643	\$3,978			
G	\$976	\$1,308	\$1,640	\$1,973	\$2,305	\$2,638	\$2,970	\$3,303	\$3,635	\$3,968	\$1.45	\$1.70	\$1.95
	\$994	\$1,338	\$1,682	\$2,026	\$2,370	\$2,713	\$3,057	\$3,401	\$3,745	\$4,089			
H	\$1,002	\$1,344	\$1,685	\$2,027	\$2,368	\$2,710	\$3,051	\$3,393	\$3,734	\$4,076	\$1.70	\$1.95	\$2.20
	\$1,021	\$1,374	\$1,728	\$2,081	\$2,434	\$2,787	\$3,141	\$3,494	\$3,847	\$4,200			
I	\$1,030	\$1,381	\$1,732	\$2,083	\$2,434	\$2,785	\$3,137	\$3,488	\$3,839	\$4,190	\$1.95	\$2.20	\$2.45
	\$1,050	\$1,413	\$1,776	\$2,139	\$2,502	\$2,865	\$3,229	\$3,592	\$3,955	\$4,318			
J	\$1,058	\$1,419	\$1,779	\$2,140	\$2,501	\$2,861	\$3,222	\$3,583	\$3,943	\$4,304	\$2.20	\$2.45	\$2.70
	\$1,078	\$1,451	\$1,824	\$2,197	\$2,570	\$2,943	\$3,316	\$3,690	\$4,063	\$4,436			
K	\$1,088	\$1,459	\$1,829	\$2,200	\$2,571	\$2,941	\$3,312	\$3,683	\$4,054	\$4,424	\$2.45	\$2.70	\$2.95
	\$1,108	\$1,492	\$1,875	\$2,259	\$2,642	\$3,026	\$3,409	\$3,793	\$4,176	\$4,560			

HUMAN SERVICES DEPARTMENT[441](cont'd)

Level	Monthly Income According to Family Size										Unit Fee Based on Number of Children in Care		
	1	2	3	4	5	6	7	8	9	10	1	2	3 or more
L	\$1,118 <i>\$1,139</i>	\$1,498 <i>\$1,532</i>	\$1,879 <i>\$1,926</i>	\$2,260 <i>\$2,320</i>	\$2,641 <i>\$2,714</i>	\$3,022 <i>\$3,108</i>	\$3,402 <i>\$3,502</i>	\$3,783 <i>\$3,896</i>	\$4,164 <i>\$4,290</i>	\$4,545 <i>\$4,684</i>	\$2.70	\$2.95	\$3.20
M	\$1,149 <i>\$1,170</i>	\$1,540 <i>\$1,575</i>	\$1,932 <i>\$1,980</i>	\$2,323 <i>\$2,385</i>	\$2,715 <i>\$2,790</i>	\$3,106 <i>\$3,195</i>	\$3,498 <i>\$3,600</i>	\$3,889 <i>\$4,005</i>	\$4,281 <i>\$4,410</i>	\$4,672 <i>\$4,815</i>	\$2.95	\$3.20	\$3.45
N	\$1,180 <i>\$1,202</i>	\$1,582 <i>\$1,618</i>	\$1,984 <i>\$2,034</i>	\$2,387 <i>\$2,450</i>	\$2,789 <i>\$2,866</i>	\$3,191 <i>\$3,282</i>	\$3,593 <i>\$3,698</i>	\$3,995 <i>\$4,114</i>	\$4,397 <i>\$4,530</i>	\$4,799 <i>\$4,946</i>	\$3.20	\$3.45	\$3.70
O	\$1,213 <i>\$1,236</i>	\$1,627 <i>\$1,664</i>	\$2,040 <i>\$2,091</i>	\$2,453 <i>\$2,519</i>	\$2,867 <i>\$2,947</i>	\$3,280 <i>\$3,374</i>	\$3,694 <i>\$3,802</i>	\$4,107 <i>\$4,230</i>	\$4,520 <i>\$4,657</i>	\$4,934 <i>\$5,085</i>	\$3.45	\$3.70	\$3.95
P	\$1,246 <i>\$1,270</i>	\$1,671 <i>\$1,709</i>	\$2,095 <i>\$2,148</i>	\$2,520 <i>\$2,588</i>	\$2,945 <i>\$3,027</i>	\$3,369 <i>\$3,466</i>	\$3,794 <i>\$3,905</i>	\$4,219 <i>\$4,345</i>	\$4,643 <i>\$4,784</i>	\$5,068 <i>\$5,223</i>	\$3.70	\$3.95	\$4.20
Q	\$1,281 <i>\$1,305</i>	\$1,718 <i>\$1,757</i>	\$2,154 <i>\$2,208</i>	\$2,591 <i>\$2,660</i>	\$3,027 <i>\$3,112</i>	\$3,464 <i>\$3,563</i>	\$3,900 <i>\$4,015</i>	\$4,337 <i>\$4,466</i>	\$4,773 <i>\$4,918</i>	\$5,210 <i>\$5,370</i>	\$3.95	\$4.20	\$4.45
R	\$1,316 <i>\$1,341</i>	\$1,764 <i>\$1,805</i>	\$2,213 <i>\$2,269</i>	\$2,661 <i>\$2,732</i>	\$3,110 <i>\$3,196</i>	\$3,558 <i>\$3,660</i>	\$4,007 <i>\$4,124</i>	\$4,455 <i>\$4,588</i>	\$4,904 <i>\$5,052</i>	\$5,352 <i>\$5,516</i>	\$4.20	\$4.45	\$4.70
S	\$1,353 <i>\$1,378</i>	\$1,814 <i>\$1,855</i>	\$2,275 <i>\$2,332</i>	\$2,736 <i>\$2,809</i>	\$3,197 <i>\$3,286</i>	\$3,658 <i>\$3,763</i>	\$4,119 <i>\$4,240</i>	\$4,580 <i>\$4,717</i>	\$5,041 <i>\$5,193</i>	\$5,502 <i>\$5,670</i>	\$4.45	\$4.70	\$4.95
T	\$1,390 <i>\$1,416</i>	\$1,863 <i>\$1,906</i>	\$2,337 <i>\$2,396</i>	\$2,810 <i>\$2,885</i>	\$3,284 <i>\$3,375</i>	\$3,757 <i>\$3,865</i>	\$4,231 <i>\$4,355</i>	\$4,705 <i>\$4,845</i>	\$5,178 <i>\$5,335</i>	\$5,652 <i>\$5,825</i>	\$4.70	\$4.95	\$5.20
U	\$1,429 <i>\$1,455</i>	\$1,915 <i>\$1,959</i>	\$2,402 <i>\$2,463</i>	\$2,889 <i>\$2,966</i>	\$3,376 <i>\$3,470</i>	\$3,863 <i>\$3,973</i>	\$4,349 <i>\$4,477</i>	\$4,836 <i>\$4,981</i>	\$5,323 <i>\$5,484</i>	\$5,810 <i>\$5,988</i>	\$4.95	\$5.20	\$5.45
V	\$1,467 <i>\$1,495</i>	\$1,968 <i>\$2,012</i>	\$2,468 <i>\$2,530</i>	\$2,968 <i>\$3,047</i>	\$3,468 <i>\$3,564</i>	\$3,968 <i>\$4,082</i>	\$4,468 <i>\$4,599</i>	\$4,968 <i>\$5,116</i>	\$5,468 <i>\$5,634</i>	\$5,968 <i>\$6,151</i>	\$5.20	\$5.45	\$5.70
W	\$1,509 <i>\$1,537</i>	\$2,023 <i>\$2,069</i>	\$2,537 <i>\$2,601</i>	\$3,051 <i>\$3,132</i>	\$3,565 <i>\$3,664</i>	\$4,079 <i>\$4,196</i>	\$4,593 <i>\$4,728</i>	\$5,107 <i>\$5,260</i>	\$5,621 <i>\$5,791</i>	\$6,135 <i>\$6,323</i>	\$5.45	\$5.70	\$5.95
X	\$1,550 <i>\$1,579</i>	\$2,078 <i>\$2,125</i>	\$2,606 <i>\$2,671</i>	\$3,134 <i>\$3,218</i>	\$3,662 <i>\$3,764</i>	\$4,190 <i>\$4,310</i>	\$4,718 <i>\$4,857</i>	\$5,246 <i>\$5,403</i>	\$5,774 <i>\$5,949</i>	\$6,302 <i>\$6,495</i>	\$5.70	\$5.95	\$6.20
Y	\$1,593 <i>\$1,623</i>	\$2,136 <i>\$2,185</i>	\$2,679 <i>\$2,746</i>	\$3,222 <i>\$3,308</i>	\$3,765 <i>\$3,869</i>	\$4,307 <i>\$4,431</i>	\$4,850 <i>\$4,993</i>	\$5,393 <i>\$5,554</i>	\$5,936 <i>\$6,116</i>	\$6,479 <i>\$6,677</i>	\$5.95	\$6.20	\$6.45
Z	\$1,636 <i>\$1,667</i>	\$2,194 <i>\$2,244</i>	\$2,752 <i>\$2,821</i>	\$3,309 <i>\$3,398</i>	\$3,867 <i>\$3,975</i>	\$4,425 <i>\$4,552</i>	\$4,982 <i>\$5,128</i>	\$5,540 <i>\$5,705</i>	\$6,098 <i>\$6,282</i>	\$6,655 <i>\$6,859</i>	\$6.20	\$6.45	\$6.70
AA	\$1,682 <i>\$1,714</i>	\$2,256 <i>\$2,307</i>	\$2,829 <i>\$2,900</i>	\$3,402 <i>\$3,493</i>	\$3,975 <i>\$4,086</i>	\$4,549 <i>\$4,679</i>	\$5,122 <i>\$5,272</i>	\$5,695 <i>\$5,865</i>	\$6,268 <i>\$6,458</i>	\$6,842 <i>\$7,051</i>	\$6.45	\$6.70	\$6.95
BB	\$1,728 <i>\$1,761</i>	\$2,317 <i>\$2,370</i>	\$2,906 <i>\$2,979</i>	\$3,495 <i>\$3,588</i>	\$4,084 <i>\$4,197</i>	\$4,672 <i>\$4,807</i>	\$5,261 <i>\$5,416</i>	\$5,850 <i>\$6,025</i>	\$6,439 <i>\$6,634</i>	\$7,028 <i>\$7,243</i>	\$6.70	\$6.95	\$7.20

[Filed Emergency 5/14/08, effective 7/1/08]

[Published 6/4/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/4/08.

ARC 6825B**NATURAL RESOURCE
COMMISSION[571]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission amends Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

Due to a dredging operation scheduled to start on approximately July 1, 2008, and ending on approximately July 1,

2009, Department staff is requesting that a speed restriction be placed at the west end of Clear Lake in the area locally known as "Little Lake."

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are impracticable because of safety concerns for recreational boating activity in this area.

In the interest of public safety and due to the fact that dredging will begin very soon, the Commission also finds that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing with the Administrative Rules Coordinator, pursuant to Iowa Code section 17A.5(2)"b"(2) in order to protect the

NATURAL RESOURCE COMMISSION[571](cont'd)

safety and welfare of the Clear Lake recreational boating public.

The Natural Resource Commission adopted this amendment on May 8, 2008.

This amendment is intended to implement Iowa Code sections 462A.17, 462A.26, and 462A.31.

This amendment became effective on May 14, 2008.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

Rescind rule 571—40.55(462A) and adopt the following **new** rule in lieu thereof:

571—40.55(462A) Zoning of Clear Lake, Cerro Gordo County.

40.55(1) Areas may be specifically designated for swimming with the use of regulatory buoys.

40.55(2) Areas within close proximity of dredging operations may be designated restricted speed areas.

[Filed Emergency 5/14/08, effective 5/14/08]

[Published 6/4/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/4/08.

ARC 6811B
EDUCATIONAL EXAMINERS
BOARD[282]

Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 15, "Requirements for Special Education Endorsements," Iowa Administrative Code.

The amendment to subrule 15.11(2) is intended to make the requirements for the school psychologist endorsement more clear.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 12, 2008, as **ARC 6642B**. A public hearing on the amendment was held on April 2, 2008. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective July 9, 2008.

The following amendment is adopted.

Amend subrule 15.11(2) as follows:

15.11(2) Program requirements.

a. An applicant shall have completed ~~an approved~~ a program of graduate study *that is currently approved (or that was approved at the time of graduation) by the National Association of School Psychologists or the American Psychological Association, or be certified as a Nationally Certified School Psychologist by the National Association of School Psychologists*, in preparation for service as a school psychologist through one of the following options:

(1) Completion of a master's degree with sufficient graduate semester hours beyond a baccalaureate degree to total 60; or

(2) Completion of a specialist's degree of at least 60 graduate semester hours with or without completion of a terminal master's degree program; or

(3) ~~Completion of a 60-semester-hour master's degree program; or~~ *Completion of a doctoral degree program of at least 60 graduate semester hours with or without completion of a terminal master's degree program or specialist's degree program.*

(4) ~~Completion of a graduate school psychology program that is currently approved (or was approved at the time of graduation) by the National Association of School Psychologists or the American Psychological Association; or~~

(5) ~~Certification as a Nationally Certified School Psychologist by the National Association of School Psychologists.~~

~~The program must include a practicum in a school setting designed to give the school psychologist an opportunity to develop an understanding of the role of psychology in the classroom through participation in classroom procedures in a supportive role.~~

b. The program shall include an approved human relations component.

c. The program must include preparation that contributes to the education of students with disabilities and students who are gifted and talented.

[Filed 5/12/08, effective 7/9/08]

[Published 6/4/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/4/08.

ARC 6817B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

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

These amendments update and replace the current low-income housing tax credit compliance manual with an updated compliance manual, which is incorporated by reference in rule 265—12.3(16).

Copies of the updated compliance manual, dated March 5, 2008, are available upon request from the Authority and are available electronically on the Authority's Web site at www.iowafinanceauthority.gov.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 26, 2008, as **ARC 6681B**. The Authority received public comment on the amendments and, based upon this comment, made certain changes to the compliance manual. The amendments, however, are identical to those published under Notice.

The Iowa Finance Authority adopted these rules on May 7, 2008.

These amendments will become effective on July 9, 2008.

These amendments are intended to implement Iowa Code Supplement section 16.4(3), Iowa Code sections 16.52, 17A.12, and 17A.16, and IRC Section 42.

The following amendments are adopted.

ITEM 1. Amend rule 265—12.3(16) as follows:

265—12.3(16) Compliance manual. The compliance manual for all low-income housing tax credit projects monitored by the authority for compliance with IRC Section 42, effective ~~December 6, 2000~~ *March 5, 2008*, is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

ITEM 2. Amend rule 265—12.4(16) as follows:

265—12.4(16) Location of copies of the manual. The compliance manual can be reviewed and copied in its entirety on the authority's Web site at www.iowafinanceauthority.gov. Copies of the compliance manual shall be deposited with the administrative rules coordinator and at the state law library. The compliance manual incorporates by reference IRC Section 42 and the regulations in effect as of ~~December 6, 2000~~

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March 5, 2008. Additionally, the compliance manual incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and links to these statutes, regulations and rules are on the authority's Web site. Copies are available from the authority upon request at no charge.

[Filed 5/13/08, effective 7/9/08]
[Published 6/4/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/4/08.

ARC 6824B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 30, "Water Recreation Access Cost-Share Program," Iowa Administrative Code.

These amendments supplement the current chapter with a Water Trails Development Program and Low-Head Dam Public Hazard Program and rename the chapter "Waters Cost-Share and Grant Programs."

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 5, 2007, as **ARC 6444B**. Public comments were accepted on or before January 2, 2008. No public comments were received.

Changes to the Notice of Intended Action have been made in response to priorities established in 2008 Iowa Acts, Senate File 2380 and House File 2700, and in order to instate reporting requirements similar to those of other Department grant programs. These changes include the following: change the name of the program to Low-Head Dam Public Hazard Program to mirror 2008 Iowa Acts, House File 2700, in order to eliminate any confusion between this program and the Department's floodplains dam safety program that relates to reducing flooding when dams fail; extend eligibility to all dam owners rather than only to communities; make signage, posts, and related cabling eligible at the lower 20 percent local cost share, rather than at the 50 percent Department cost share required on all other eligible projects; clarify that secondary recreational and ecological goals may be included in projects; and require the applicant to file midterm reports.

These amendments are intended to implement Iowa Code chapters 455A, 461A, and 462A and 2008 Iowa Acts, Senate File 2380 and House File 2700.

These amendments shall become effective July 9, 2008. The following amendments are adopted.

ITEM 1. Amend **571—Chapter 30**, title, as follows:

CHAPTER 30
WATER RECREATION ACCESS COST-SHARE
PROGRAM
WATERS COST-SHARE AND GRANT PROGRAMS

ITEM 2. Amend **571—Chapter 30** by adding the following **new** title before rule 571—30.1(452A):

DIVISION I
WATER RECREATION ACCESS COST-SHARE PROGRAM

ITEM 3. Amend rule 571—30.1(452A) as follows:

571—30.1(452A) Purpose Title and purpose. *This division shall provide rules for the water recreation access cost-share program.* The purpose of this ~~rule~~ **division** is to define procedures for cost sharing between state and local public agencies to provide for the acquisition or development of public recreational boating accesses to Iowa waters.

ITEM 4. Amend 571—Chapter 30 by adopting the following **new** Division II:

DIVISION II
WATER TRAILS DEVELOPMENT PROGRAM AND
LOW-HEAD DAM PUBLIC HAZARD PROGRAM

571—30.51(455A,461A,462A) Definitions. For purposes of this division, the following definitions shall apply:

"Advisory committee" means the water trails advisory committee.

"Commission" means the natural resource commission.

"Coordinator" means the staff person of the department responsible for implementing this division.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources.

"Low-head dam" means a uniform structure across a river or stream that causes an impoundment upstream, with a recirculating current downstream.

"Navigable waters" means all lakes, rivers, and streams, which can support a vessel capable of carrying one or more persons during a total of six months period in one out of every ten years.

"Scoring committee" means the water trails scoring committee, which consists of the coordinator, two other department staff members appointed by the director, and two representatives of the water recreation community selected by the director.

"Sponsor" means an eligible applicant, as described in these rules.

"Water trail" means a point-to-point travel system on a navigable water and a recommended route connecting the points.

571—30.52(455A,461A,462A) Purpose and intent. The water trails development program and the low-head dam public hazard program provide funds to assist development of local water trails on navigable waters of the state of Iowa and to support safety projects for low-head dams in the state of Iowa. The programs will be available to fund two types of projects: those that enhance water trails development and recreation and those that are limited to projects that primarily enhance dam safety in order to reduce drownings.

571—30.53(455A,461A,462A) Program descriptions.

30.53(1) Water trails development program. The department will provide funds to cities, counties and nonprofit organizations in the state of Iowa to develop water trails eligible for designation throughout the state. The goal of the water trails development program is to assist and encourage the development of community-driven water trails that provide features described herein and appropriate river management through the design and spacing of accesses. At the same time, the program shall discourage unnecessary impacts to natural resources through construction. Water trails development program projects may be eligible to become designated water trails, as determined by the department, and may be eligible for inclusion in the department's marketing materials.

30.53(2) Low-head dam public hazard program. The department will provide funds to dam owners, including counties, cities, state agencies, cooperatives, and individuals,

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within Iowa to undertake projects that warn the general public about drowning hazards related to low-head dams or that remove or otherwise modify low-head dams to create a safer experience on Iowa's navigable waters. Low-head dam removal and modification projects, when possible, shall enhance or restore ecological and recreational functions of rivers, including but not limited to fish passage, aquatic habitat, and navigation.

571—30.54(455A,461A,462A) Announcement of funding opportunity. The coordinator shall announce, at least annually, the availability of funds for the programs, designate a time and place for receiving proposals, identify any additional requirements to those enumerated in this division for successful applications, and provide at least 90 days for sponsors to submit such proposals. Not more than quarterly, the department shall provide for additional application cycles if additional funds are made available or otherwise become available.

571—30.55(455A,461A,462A) Grant requirements. By submitting a proposal pursuant to this division, a sponsor will agree to the following terms and conditions:

30.55(1) Maintenance and ownership. The sponsor will assume the overall maintenance of the integrity of the project or shall otherwise make agreements with landowners and other interested parties for such long-term maintenance as may be required.

30.55(2) Agreements. Before funds are disbursed, the sponsor will enter into a project agreement with the department. The agreement shall detail and further define the relationship of the parties.

30.55(3) Resource impacts. The sponsor will install safeguards and otherwise ensure that the proposed project will have minimum or negligible impacts on natural resources.

30.55(4) Timely commencement of projects. Funds must be completely expended within two years of the award. If the sponsor is not able to complete a project within the original time period, the sponsor must seek and receive an extension from the department to be eligible for funds beyond the original time period for completion.

30.55(5) Reports. The sponsor shall be responsible for the filing of a midterm report about the status of the project. The report shall include a description of funds expended and any issues encountered or problems that may delay or otherwise cause the project not to be completed. The sponsor shall submit a final report, which shall include the complete budget outlay for the completed project; samples of the completed project, if applicable; and a narrative of the project.

30.55(6) Expenditures. The sponsor shall expend all funds in accordance with the sponsor's governance documents, which may include applicable provisions of the Code of Iowa.

30.55(7) Record keeping. The sponsor shall keep all project records for three years after the final report is completed. These records are to be available for audit by the state.

30.55(8) Grant amendments. For any deviation from the project outlined in the original application, the sponsor must receive approval from the coordinator in advance via electronic mail or in writing.

30.55(9) Permits and licenses. The sponsor must obtain any and all required licenses and permits from federal, state, and local authorities before commencing any activity pursuant to a grant award.

30.55(10) Control of project site. The sponsor must demonstrate that the project site or sites are under the physical control of the sponsor or its partners, either by fee title, lease,

management agreement, or easement. The term of a lease, management agreement, or easement must be commensurate with the life expectancy of the proposed improvements.

571—30.56(455A,461A,462A) Application procedures. For proposals to be considered for funding, the sponsor shall submit them in the following manner:

30.56(1) The sponsor will submit an application on the forms provided by the department postmarked by the date provided in the grant opportunity announcement. The forms shall include in the project narrative a statement of grounds for eligibility.

30.56(2) The sponsor will support any claim of cost share through a signed letter from the organization providing the cost share.

571—30.57(455A,461A,462A) Proposal evaluation. Proposals will be evaluated by the scoring committee. The scoring committee shall evaluate both water trails development program proposals and low-head dam public hazard program proposals.

571—30.58(455A,461A,462A) Sponsor eligibility.

30.58(1) Water trails development program. The water trails development program is limited to local divisions of Iowa government and to nonprofit organizations recognized and incorporated pursuant to the laws of Iowa.

30.58(2) Low-head dam public hazard program. The low-head dam public hazard program is available to dam owners, including counties, cities, state agencies, cooperatives, and individuals.

571—30.59(455A,461A,462A) Project eligibility.

30.59(1) Water trails development program. The scoring committee will evaluate proposals for water trails development projects to determine whether the projects will achieve, or achieve progress related to, the goal of creating water trails that may ultimately be eligible for designation on navigable waters in the state of Iowa. The following types of projects may be eligible:

a. **Accesses.** Construction of low-impact water access points or other conveyances by which recreational users are provided a means of legally placing vessels in the water and removing them.

b. **Land acquisition for water trail development.** Purchases of easements or fee title lands that will be used for water trail navigation, such as access, portage, camping, or other uses related to navigation on a water trail.

c. **Dam warning signage.** Warning signs, supporting structures, and navigational aids such as buoys at and near low-head dams.

d. **Navigation and interpretive signage.** Various water trail signs and markers, as needed, to instruct recreational users about safe uses, regulation of access areas, and surrounding area characteristics.

e. **Portages.** Construction of portage trails where a portage would aid navigation or around dangerous water areas, such as dams, unnavigable waters, or any other sections of water that are potentially dangerous or life-threatening.

f. **Related construction and development.** Construction and development of items related to water trail navigation, including dam modification/removal; amenities such as access roads or parking areas, canoe racks or bike racks for shuttling purposes, and restrooms, picnic areas, and campsites that are easily accessible from waterways of primary use by water travelers; and contracted costs of developing any of the water trails navigational amenities listed. Direct labor

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costs to the sponsor may count toward in-kind match according to prevailing local wages, up to \$10.50 per hour.

g. Promotion. Informational publications of water trails for public access and online materials available to the public.

h. Education. Education projects related to water safety and appropriate etiquette, with a primary focus on water trails recreation.

i. Materials and equipment. Actual material cost of trail maintenance tools, gravel, fencing supplies, gates, bridges, culverts, riprap, and other materials necessary for trail, portage and access maintenance.

30.59(2) Low-head dam public hazard program. The scoring committee will evaluate proposals for projects that enhance safety at low-head dams on or adjacent to navigable waters in Iowa. The scoring committee will evaluate the following three categories of proposals:

a. Small projects. Small projects shall include proposal requests of up to \$20,000. Eligible projects for consideration for award as small projects shall include: warning signage and supporting infrastructure; feasibility, environmental, or preliminary design or engineering studies related to removal of hazardous structures; and construction costs related to portage trails and modification or removal of hazardous dams.

b. Medium-sized projects. Medium-sized projects shall include proposal requests of \$20,001 to \$50,000. Eligible projects for consideration of award as medium-sized projects shall include: warning signage and supporting infrastructure; and construction and engineering costs related to portage trails and modification or removal of hazardous dams.

c. Large projects. Large projects shall include proposal requests of more than \$50,000. Eligible projects for consideration of award as large projects shall include construction and engineering costs related to modification or removal of hazardous dams.

571—30.60(455A,461A,462A) Cost-share requirements.

30.60(1) Water trails development program. Grant proposals for water trails development projects do not require cost share; however, cost share is strongly encouraged through the selection criteria. Any claim of cost share shall be supported through a signed letter from the organization providing the cost share.

30.60(2) Low-head dam public hazard program. Proposals requesting funds to be used for warning signs, supporting structures, and navigational aids such as buoys at and near low-head dams shall receive priority and shall be selected pursuant to the dam owner's contribution of at least 20 cents for every 80 cents awarded by the department. For the remainder of funds, proposals for other low-head dam public hazard projects shall provide at least 50 percent of the funds required to complete small, medium-sized, and large projects. Cost-share funds may include local, private, federal or other state funds. Any claim of cost share required by this subrule shall be supported through a signed letter from the organization providing the cost share. The department strongly encourages sponsors to provide more cost share than is required by these rules, and the scoring committee will provide additional consideration to those proposals that exceed cost-share requirements.

571—30.61(455A,461A,462A) Evaluation criteria.

30.61(1) Water trails development program.

a. The scoring committee shall evaluate grant proposals for water trails development program projects based on the following criteria:

- (1) Feasibility of the proposed project;
- (2) Level of private resources or local resources or both available to the project; and

(3) The project's contribution to developing a designated water trail or designated wilderness water trail.

b. The scoring committee shall publish its ranking system, which shall be based on the criteria described above, with the application forms. The department shall post this ranking system on its Web site, www.iowadnr.gov, at least 30 days prior to proposal due dates.

c. Designated water trails.

(1) For purposes of this rule, designated water trails shall include those bodies of water with the following minimum treatment:

1. Provide signs to users about possible dangers and portages;
2. Possess adequate portage around obstructions and dams, or have modified obstructions and dams to make them safe to navigate, or ensure that the water trail begins or ends a safe distance upstream and downstream from the obstruction or dam;
3. Have accesses spaced and developed appropriately to the natural resource integrity of the water body from public roadways to the water trails;
4. Provide periodic kiosks with information for users;
5. Identify access to camping, lodging or other overnight accommodations; and
6. Have adequate promotion through maps, brochures and other media, which include information about the access points, difficult areas, distance between accesses, nearby cities, ADA amenity information, safety information, and other information related to use of the water trail.

(2) For purposes of this rule, designated wilderness water trails, because they are located in areas of special scenic, ecological, geological, habitat or wildlife value, shall be a type of designated water trail that encourages only low-impact human uses and keeps signage and accesses to a minimum, but still provides critical information and access.

30.61(2) Low-head dam public hazard program. The scoring committee shall consider the following criteria when evaluating cost-share proposals for low-head dam public hazard program projects:

- a. Improvements to public safety;
- b. Demonstrated beneficial impacts to the overall stream health, fish migration and habitat, aesthetics, and recreational impacts; and
- c. Contribution of private resources or local resources or both beyond the minimum requirements provided by these rules.

571—30.62(455A,461A,462A) Disbursement of awards.

30.62(1) Water trails development program. Grants for water trails development projects will be announced not later than 90 days after the grant proposals are due. The earliest disbursement date is July 1 of the following state fiscal year.

30.62(2) Low-head dam public hazard program. Grants for low-head dam public hazard projects will be announced not later than 90 days after the grant proposals are due. All funds shall be obligated not later than July 1 of the next fiscal year.

571—30.63(455A,461A,462A) Water trails advisory committee.

The advisory committee shall provide input to the water trails development program and the low-head dam public hazard program. The advisory committee appointed by the director shall be comprised of a minimum of six members of the water recreation community, including canoe and kayak enthusiasts and club leaders, interested conservation associations, canoe and kayak livery owners, and county conservation board staff in Iowa. Members of the advisory committee shall serve for two years.

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The meetings of the advisory committee shall be held at least four times per calendar year and shall be arranged by the coordinator. The advisory committee will provide expertise to the scoring committee and assist the department in the development of any water trails or low-head dam public hazard master planning that the department may undertake.

These rules are intended to implement Iowa Code chapters 455A, 461A, and 462A and 2008 Iowa Acts, Senate File 2380 and House File 2700.

[Filed 5/14/08, effective 7/9/08]

[Published 6/4/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/4/08.

ARC 6823B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 37, "Boating Safety Equipment," Iowa Administrative Code.

The amendment modifies visibility requirements for vessels not powered by motor or sail; excludes some rivers from the rules regarding such vessels; and adds a requirement to make such vessels apparent in the event that light is obscured.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 16, 2008, as **ARC 6539B**. Public comments were accepted on or before February 5, 2008. No public comments were received, and no changes were made to the Notice of Intended Action.

This amendment is intended to implement Iowa Code chapters 455A and 462A.

This amendment shall become effective July 9, 2008.

The following amendment is adopted.

Amend subrule 37.6(2) as follows:

37.6(2) Vessels not powered by motor or sail. All vessels not powered by motor or sail and not at anchor shall exhibit a white light to show 360 degrees around the horizon *that is visible from at least one mile under clear conditions* between the hours of sunset and sunrise when operated on natural lakes, Corps of Engineers impoundments, border rivers *excluding border portions of the Big Sioux and Des Moines rivers*, and impoundments on inland rivers. *If the white light is partially obscured due to the nature of the craft, an additional white light must be shown in sufficient time to prevent collision.* When operated on bodies of water other than those listed in this subrule, all vessels not powered by motor or sail and not at anchor shall have in possession a ~~hand-held~~ white light to be used when necessary between the hours of sunset and sunrise.

[Filed 5/14/08, effective 7/9/08]

[Published 6/4/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/4/08.

ARC 6808B

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455G.4(3)"a," the Iowa Comprehensive Petroleum Underground Storage Tank Fund Board hereby amends Chapter 11, "Claims," Iowa Administrative Code.

This amendment modifies rules and procedures for the reimbursement of claims for the removal of eligible upgraded underground storage tanks, pursuant to Iowa Code Supplement section 455G.9(1)"l." The changes address comments received after the public comment period for the recent rule making to implement 2007 Iowa Acts, Senate File 499. The amendment broadens the number of eligible sites and provides greater flexibility to the Board to work with the Iowa Department of Natural Resources in removing in a more timely manner tanks that may cause environmental harm. Additionally, in order to address the large number of sites that have changed owners and the various methods of transfer or retention of liability, the amendment simplifies documenting eligibility at sites where ownership has changed.

This amendment was published under Notice of Intended Action in the March 12, 2008, Iowa Administrative Bulletin as **ARC 6648B**. Comments were received from the Department of Natural Resources; however, since the Notice of Intended Action no changes have been made in response to the comments.

This amendment was approved at the April 25, 2008, meeting of the UST Board.

This amendment shall become effective July 9, 2008.

This amendment is intended to implement Iowa Code Supplement section 455G.9(1)"l."

The following amendment is adopted.

Rescind subrule 11.3(11) and adopt the following **new** subrule in lieu thereof:

11.3(11) Permanent closure of an underground storage tank system. Costs for the permanent closure of underground storage tank systems are eligible for reimbursement from the board if all of the following requirements are met:

a. The underground storage tank system to be permanently closed was already in place on the date an eligible claim was submitted to the board.

b. A claim for reimbursement from the board must have been made and must have been deemed eligible for the site, pursuant to Iowa Code section 455G.9 or 455G.21.

c. The permanent closure activities occurred on or after July 1, 2007. All costs must have been preapproved prior to the commencement of work.

d. For projects that include the removal of tank systems that are also associated with a larger scope of work, for example, the installation of a remediation system or expanded excavation or upgrading of a fuel delivery system, the budget for the entire scope of work must be submitted for any costs to be considered eligible for reimbursement.

e. The board may elect to provide for the direct removal of any tanks eligible through a board-contracted vendor. Any copayment shall be paid by the claimant upon removal of the tank system. The board will limit reimbursement for any removal to no more than the board would have paid had the board removed the tanks with any board-contracted vendor.

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f. For claims submitted in situations where the tank owner and the eligible claimant are different parties, the board will reimburse costs under this subrule after invoices have been paid and only with written acknowledgment consenting to the work completed by both parties and submitted with the invoices.

g. Claimants shall be responsible for ensuring that any persons performing work meet all applicable licensing or certification requirements or both that may exist at the time of completion of the work to be reimbursed. If the work is performed by a board-contracted vendor, the board shall ensure that licensing and certification requirements of the general contractor are met.

h. Claims made under this subrule are subject to Iowa Code chapter 455G copayment requirements and cost recovery enforcement.

i. The board may remove tanks at sites that fail to meet the requirements under paragraph "a" or "b" of this subrule through a board-contracted vendor. These sites shall be subject to cost recovery, which may include a lien on the property.

[Filed 5/8/08, effective 7/9/08]
[Published 6/4/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/4/08.

ARC 6810B

PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]

Adopted and Filed

Pursuant to the authority of Iowa Code Supplement section 101C.3, subsection 12, the Iowa Propane Education and Research Council hereby adopts new Chapter 1, "Iowa Propane Education and Research Council," Iowa Administrative Code.

These rules implement the authority of the Iowa Propane Education and Research Council organized in accordance with Iowa Code Supplement chapter 101C to engage in the activities of developing programs and projects relating to propane and collecting and managing funds derived from an assessment on sales of propane in accordance with and under the authority of Iowa Code Supplement chapter 101C.

These rules were Adopted and Filed Emergency and published in the January 30, 2008, Iowa Administrative Bulletin as **ARC 6553B**. Notice of Intended Action to solicit public comment on these rules was published simultaneously as **ARC 6554B**.

A public hearing was held on February 22, 2008; no comments were received, either at the public hearing or in writing. No changes have been made to the rules contained in the Notice of Intended Action. These rules are identical to those published under Notice of Intended Action.

These rules are intended to implement Iowa Code Supplement chapter 101C.

These rules will become effective on July 9, 2008, at which time the Adopted and Filed Emergency rules are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of

these rules [Ch 1] is being omitted. These rules are identical to those published under Notice as **ARC 6554B** and Adopted and Filed Emergency as **ARC 6553B**, IAB 1/30/08.

[Filed 5/9/08, effective 7/9/08]
[Published 6/4/08]

[For replacement pages for IAC, see IAC Supplement 6/4/08.]

ARC 6830B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 136B.4, 136C.3 and 136D.7, the Department of Public Health hereby amends Chapter 38, "General Provisions for Radiation Machines and Radioactive Materials," Chapter 39, "Registration of Radiation Machine Facilities, Licensure of Radioactive Materials and Transportation of Radioactive Materials," Chapter 40, "Standards for Protection Against Radiation," Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials," Chapter 42, "Minimum Certification Standards for Diagnostic Radiographers, Nuclear Medicine Technologists, and Radiation Therapists," Chapter 44, "Minimum Requirements for Radon Mitigation," and Chapter 46, "Minimum Requirements for Tanning Facilities," Iowa Administrative Code.

The following paragraphs itemize the changes:

Items 1, 3, 9, and 13 amend the rules to reflect current federal regulations.

Item 2 adds an application fee for industrial radiographers. Fees are used to meet the costs of processing the application and issuing the permit card.

Item 4 adds a category for service provider registration. This category is added to clarify the categories of those required to register.

Item 5 corrects the language previously corrected elsewhere by changing the two-working-day period to a three-working-day period.

Item 6 rescinds a requirement for a permanent office in Iowa for registrants and licensees.

Item 7 adds an omitted reference.

Item 8 adds a new paragraph in order to meet the Nuclear Regulatory Commission compatibility requirements.

Items 10 and 12 amend language involving nationally tracked sources. Items 10 and 12 amend language to meet Nuclear Regulatory Commission compatibility requirements.

Item 11 corrects the address for obtaining forms.

Items 14 and 46 add clarifying language to require operators to have a current permit to practice. The permit is required by Chapter 42.

Items 16 to 21, 23 to 25, and 27 to 44 correct references to meet Nuclear Regulatory Commission compatibility requirements.

Item 22 amends the title of the studies. This change corrects language previously corrected elsewhere in Chapter 41 in order to meet the Nuclear Regulatory Commission compatibility requirements.

Item 26 rescinds a paragraph to meet Nuclear Regulatory Commission compatibility requirements.

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Item 45 corrects the name of the college to meet Nuclear Regulatory Commission compatibility requirements.

Item 47 amends definitions and adds new definitions to meet FDA standards for digital mammography.

Item 48 adds language to include reinstatement for mammography certification.

Items 49 and 50 amend language to include suspension, revocation and denial of mammography certification.

Items 51 and 52 amend and adopt new language regarding the accreditation process for mammography facilities.

Item 53 adds new language for computers used for mammography interpretation.

Items 54 to 61 add and correct language for training and continuing education for physicians, physicists, and technologists involved with mammography.

Items 62 to 64 adopt new language for clarification of mammography requirements.

Item 65 changes the time requirements for retaining mammography films.

Items 66 to 68 add language for digital mammography or to specify film-screen mammography or digital mammography.

Item 69 adds language requiring the reviewing physician to sign the required audits.

Item 70 corrects language for base plus fog density tests.

Item 71 removes language allowing a different requirement before an effective date of October 28, 2002.

Item 72 adds a new paragraph for digital mammography units.

Items 73 and 75 add new language for digital mammography units.

Item 74 clarifies language for mammography equipment evaluations.

Item 76 adopts new definitions necessary for clarification of terms in mammography.

Item 77 clarifies the type of physicist needed for the mammography evaluations.

Item 78 changes references to "withdrawal" to "suspension" or "revocation" for clarification of mammography disciplinary actions.

Item 79 adds a statement requiring inspections after revocation of mammography authorization.

Items 80, 84, and 86 correct references and remove a quality control responsibility for mammography physicians.

Items 81, 83, 85, and 87 add language for physicians performing stereotactically guided breast biopsies. The wording adds requirements for physicians who do not maintain the experience or education requirements. Items 81 and 83 also adopt new language to require physicians to have an Iowa medical license.

Item 82 adopts new language to require physicians to be responsible for supervision of radiologic technologists during procedures.

Item 88 rearranges wording for clarification.

Item 89 adds language for requalification in mammography.

Item 90 adds language to restrict hours to be earned for continuing education in mammography.

Item 91 amends wording for clarification and adds wording for requalification in mammography.

Item 92 adds language for additional identifiers for mammography records and corrects the type of physicist allowed.

Item 93 changes "radiation physicist" to "medical physicist" to clarify the qualifications of the individual.

Item 94 adds a new paragraph for responsibilities for a supervising stereotactic biopsy physician.

Items 95 to 97 expand language that specifies the requirements for mammography equipment.

Item 98 adds wording to clarify the qualifications of a medical physicist in mammography.

Item 99 adds wording to include all types of individuals covered under Chapter 42.

Item 100 changes the term "podiatry assistant" to "podiatric radiographer." The new term more accurately reflects the position. The amendment also clarifies definitions by specifying "advanced" CPR and by adding language to differentiate between indirect and direct supervision and adds two new definitions for "directly related" and "formally educated" for clarification.

Item 101 adds language to accurately reflect the supervision requirements for the different modalities.

Items 102, 103, 106, 109, 110, and 115 to 118 change the term "podiatry assistant" to "podiatric radiographer." The new term more accurately reflects the position.

Item 104 changes wording to make the language more uniform.

Item 105 adds the word "current" to clarify the distinction between "expired" and "current."

Items 107 and 111 add language for clarity.

Item 108 corrects a misspelled word.

Item 109 removes language requiring penalty hours for late submission of continuing education. This action follows guidelines of the national certification body.

Item 112 adds language to refer the various modalities to the proper area of the rules for training requirements. The amendment explains the requirements to be submitted for approval of a training program and includes requirements for instructors.

Item 113 changes the word "trained" to "educated" to better define the requirements for a supervising individual.

Item 114 removes a provision allowing temporary certification. The requirement for examination before certification is now uniform with other modalities.

Item 119 adds wording to clarify the fees required for radon mitigation installations.

Item 120 adds wording to require posting of instructions in tanning rooms to make the requirement uniform with other parts of Chapter 46.

Notice of Intended Action was published in the April 9, 2008, Iowa Administrative Bulletin as **ARC 6711B**. A public hearing was held on April 29, 2008. No individuals attended the hearing. Four sets of written comments were received and reviewed. Comments concerned items that are required by NRC compatibility or that are not allowed because the Agency does not have regulatory authority in the areas discussed. The adopted amendments are identical to those published under Notice.

These amendments were adopted by the State Board of Health on May 14, 2008.

These amendments will become effective on July 9, 2008.

These amendments are intended to implement Iowa Code chapters 136B, 136C, and 136D.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of

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these amendments [amendments to Chs 38 to 42, 44, 46] is being omitted. These amendments are identical to those published under Notice as **ARC 6711B**, IAB 4/9/08.

[Filed 5/14/08, effective 7/9/08]
[Published 6/4/08]

[For replacement pages for IAC, see IAC Supplement 6/4/08.]

ARC 6832B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby adopts new Chapter 82, "Office of Multicultural Health," Iowa Administrative Code.

The rules in Chapter 82 describe the purpose and responsibilities of the Office of Multicultural Health. The rules further describe the membership, duties, and meeting procedures of the Multicultural Health Advisory Council.

Notice of Intended Action was published in the March 26, 2008, Iowa Administrative Bulletin as **ARC 6684B**. No comments were received. The adopted rules are identical to those published under Notice.

These rules were adopted by the State Board of Health on May 14, 2008.

These rules will become effective on July 9, 2008.

These rules are intended to implement Iowa Code section 135.12.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 82] is being omitted. These rules are identical to those published under Notice as **ARC 6684B**, IAB 3/26/08.

[Filed 5/14/08, effective 7/9/08]
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[For replacement pages for IAC, see IAC Supplement 6/4/08.]

ARC 6822B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby amends Chapter 131, "Emergency Medical Services Provider Education/Training/Certification," Iowa Administrative Code.

The rules in Chapter 131 describe the standards for the education, training, and certification of emergency medical providers and establish a standard of conduct for training programs, students, and providers. These amendments clarify the certification testing process and fees, adopt a clear process for those wishing to move to a lower level of certification, set a time frame for notification of address changes, establish a renewal process for those meeting National Registry of EMT reregistration requirements, update the authori-

zation standards for EMS training programs, and update disciplinary rules for providers and training programs.

Notice of Intended Action was published in the March 26, 2008, Iowa Administrative Bulletin as **ARC 6680B**. No comments were received. The adopted amendments are identical to those published under Notice.

These amendments were adopted by the State Board of Health on May 14, 2008.

These amendments will become effective on July 9, 2008.

These amendments are intended to implement Iowa Code chapter 147A.

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 131] is being omitted. These amendments are identical to those published under Notice as **ARC 6680B**, IAB 3/26/08.

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[For replacement pages for IAC, see IAC Supplement 6/4/08.]

ARC 6814B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 306B.2, 306B.3, 306C.11, 307.10 and 307.12, the Department of Transportation, on May 13, 2008, adopted amendments to Chapter 117, "Outdoor Advertising," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the March 12, 2008, Iowa Administrative Bulletin as **ARC 6637B**.

Chapter 117 pertains to outdoor advertising along interstate, freeway-primary and primary highways. The following summarizes the amendments to this chapter:

1. Municipal, county and school district recognition signs. Several amendments strike references to municipal, county and school district recognition signs. 2006 Iowa Acts, chapter 1068, sections 1 to 3, eliminated the permit requirement for these recognition signs. Recognition signs are official signs and notices which may be erected without Department approval.

2. LED displays. Item 1 adds a new definition of "LED display." Item 1 also amends the definition of "modification" to clarify that the addition of LED display capabilities to an advertising device is a modification (a new permit is required prior to the modification of an advertising device). Item 3 adds new language that allows LED displays to be used provided that the message is displayed in the minimum required time frame, is changed within the prescribed time frame, and is not a traveling or segmented message, and that the light intensity presented does not exceed that allowed for other illuminated displays. Item 5 amends subrule 117.5(5), paragraphs "c" to "f," to provide for a minimum spacing between LED displays of 500 feet within cities and 1000 feet outside cities.

3. Modifications. Item 1 amends the definition of "modification" to clarify that temporary extensions or cutouts may

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be illuminated only by existing sign lighting and shall not contain internal lighting and to clarify that replacing one metal face with another metal face of a different type on a conforming sign is not a modification.

4. Regularly used. Item 1 adds a new definition of “regularly used.” This term is used in Iowa Code subsection 306C.10(19) and subrule 117.4(4). It is also used in the amendment to subrule 117.5(5), paragraph “b,” which is discussed in paragraph “8” of this preamble.

5. Service club and religious notices. Item 1 amends the definition of “service club or religious notice” to add signing for cemeteries, which the Federal Highway Administration allows, and to allow service club or religious notices to display the hours open to the public.

6. Obstructions in the right-of-way. 2006 Iowa Acts, chapter 1097, enacted Iowa Code chapter 318 and repealed former Iowa Code chapter 319 regarding obstructions in the highway right-of-way. Item 2 amends subrules 117.2(4) and 117.2(5) to make conforming amendments. Item 7 amends subrule 117.8(5) to renumber it as subrule 117.8(2) and to cross-reference subrule 117.2(5).

7. Flashing, intermittent or moving lights. Item 3 amends the first sentence of paragraph 117.3(1)“e” and adds a new sentence to distinguish between off-premises and on-premises signs. The current language incorrectly restricts on-premises signs.

8. Advertising devices along interstate highways. Item 5 amends subrule 117.5(5), paragraph “b,” to provide that an advertising device visible from an interstate highway must be located within an area zoned and used for commercial or industrial purposes; within 750 feet of the regularly used portion of a commercial or industrial activity visible from the main-traveled way; and on the same, individual, platted parcel of land as that commercial or industrial activity.

9. Side-by-side and double-deck configurations. Item 5 amends subrule 117.5(5), paragraph “k,” to clarify that, for permit purposes, side-by-side and double-deck sign configurations are considered one face with the surface areas combined into one square footage.

10. Illegal and abandoned advertising devices. Item 7 renumbers subrule 117.8(2) as subrule 117.8(1). This subrule, which pertains to the removal of illegal and abandoned advertising devices, is also amended to mirror the provisions of Iowa Code sections 306B.5 and 306C.19. Language that addresses the sale of advertising devices after removal is stricken. The Iowa Code does not provide for this option, and the Department has had no success in selling used advertising structures. Item 7 also strikes subrule 117.8(3), which duplicates renumbered and amended subrule 117.8(1) and is therefore unnecessary.

11. Development directory signing. 2007 Iowa Acts, chapter 143, section 1 [Iowa Code Supplement section 306C.11(2)], provides that businesses located within the limits of a commercial or industrial development may be advertised on a sign located anywhere within the development regardless of land ownership. To implement this legislation, Item 8 adopts a new rule regarding development directory signing. Also, Item 1 amends the existing definition of “on-premises sign” to exclude development directory signs from the seven listed criteria. The new development directory signing rule:

- Defines “development directory sign” to mean a type of on-premises sign displaying a message that is limited to the names of two or more businesses located within a commercial or industrial development. The sign may also display the name of the development.

- Allows the name of a business to appear on no more than two development directory signs visible to traffic proceeding in any one direction.

- Includes requirements that must be met for a premises to qualify as a commercial or industrial development. These requirements are based on Federal Highway Administration criteria and are needed to remain in compliance with 23 U.S.C. Section 131 and avoid the loss of federal highway funds.

12. Other. Item 4 corrects cross references. Item 7 strikes subrule 117.8(4), which is out of date and unnecessarily repeats language from the Iowa Code.

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.

One change was made from the Notice of Intended Action. The Outdoor Advertising Association of Iowa submitted a comment at the Administrative Rules Review Committee meeting on April 4, 2008, requesting that the Department clarify that replacing one metal face with another metal face of a different type on a conforming sign is not a modification. The Department agreed to this change and in Item 1 has added new numbered paragraph “3” to the definition of “modification” as follows:

“3. On an advertising device that conforms to all current requirements, the replacement of one metal-framed face with another metal-framed face of the same size, using dissimilar component parts or assembly methods, or both, is not a modification.”

Also, what was numbered paragraph “3” is now numbered paragraph “4.”

The Department also received comments from Media-Quest Outdoor but did not make any changes as a result of these comments. Persons who wish to obtain copies of these comments and the Department’s response to them may contact Brooks Glasnapp at (515)239-1255 or brooks.glasnapp@dot.iowa.gov.

These amendments are intended to implement Iowa Code chapters 306B and 306C.

These amendments will become effective July 9, 2008.

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 117] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 6637B**, IAB 3/12/08.

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ARC 6821B

**TRANSPORTATION
DEPARTMENT[761]**

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10, 307.12, 321.449 and 321.450, the Department of Transportation, on May 14, 2008, adopted amendments to Chapter 520,

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“Regulations Applicable to Carriers,” Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the April 9, 2008, Iowa Administrative Bulletin as **ARC 6693B**.

Iowa Code section 321.449 requires the Department to adopt rules consistent with the Federal Motor Carrier Safety Regulations (FMCSR) promulgated under United States Code, Title 49, and found in 49 Code of Federal Regulations (CFR) Parts 385 and 390 to 399. Iowa Code section 321.450 requires the Department to adopt rules consistent with the Federal Hazardous Materials Regulations (HMR) promulgated under United States Code, Title 49, and found in 49 CFR Parts 107, 171 to 173, 177, 178 and 180. To ensure the consistency required by statute, the Department annually adopts the specified parts of 49 CFR as adopted by the United States Department of Transportation.

Commercial vehicles transporting goods in interstate commerce are subject to the FMCSR on the effective dates specified in the Federal Register (FR). Commercial vehicles transporting hazardous materials in interstate commerce or transporting certain hazardous materials intrastate are subject to the HMR on the effective dates specified in the FR. The adoption of the federal regulations by the Department will extend the enforcement of the regulations to commercial vehicles operated intrastate unless exempted by statute.

Proposed federal regulations are published in the FR to allow a period for public comment, and, after adoption, the final regulations are published in the FR. Each year a revised edition of 49 CFR is published, incorporating all of the final regulations adopted during the year. Although revised editions of 49 CFR are usually dated October or November, the publication is not actually available in Iowa for several months after that date.

The amendments to the FMCSR and the HMR that have become final and effective since the 2006 edition of the CFR are listed in the information below. The parts affected are followed by FR citations.

Amendments to the FMCSR and Federal HMR

Part 173 (FR Vol. 71, No. 242, Page 75679, 12-18-06)

This CFR correction to Section 173.302a in 49 CFR, Parts 100 to 185, reinstates the second sentence of paragraph “d” pertaining to the maximum filling density of a cylinder containing diborane, which was inadvertently omitted from the original text. Effective date: December 18, 2006.

Parts 171, 172, 173, 178 and 180 (FR Vol. 71, No. 250, Pages 78596-78635, 12-29-06)

This final rule revised the HMR to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements. These revisions will harmonize the HMR with changes to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization’s Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the United Nations Recommendations on the Transport of Dangerous Goods. Effective date: January 1, 2007.

Part 393 (FR Vol. 72, No. 43, Pages 9855-9871, 03-06-07)

This final rule amends the FMCSR to allow the use of automatic hydraulic inertia brake systems (surge brakes) on trailers when the ratios of gross vehicle weight ratings (GVWR) for the towing vehicle and trailer are within certain

limits. A surge brake is a self-contained, permanently closed hydraulic brake system activated in response to the braking action of the towing vehicle. The amount of braking force developed by the trailer surge-brake system is proportional to the ratio of the towing vehicle to trailer weight and deceleration rate of the towing vehicle. Effective date: April 5, 2007.

Part 107 (FR Vol. 72, No. 85, Pages 24536-24539, 05-03-07)

This final rule amends the statutorily mandated registration and fee assessment program for persons who transport or offer for transportation certain categories and quantities of hazardous materials. This final rule eliminated a 24-hour, seven-days-per-week telephonic expedited registration system and adopted an exception from registration requirements for Indian tribes. There was no increase in registration fees in this final rule. Effective date: June 30, 2007.

Parts 171, 172, and 173 (FR Vol. 72, No. 85, Pages 25162-25177, 05-03-07)

This final rule amends the HMR to revise and consolidate the requirements applicable to the use of the International Civil Aviation Organization’s Technical Instructions for the Safe Transport of Dangerous Goods by Air, the International Maritime Dangerous Goods Code, Transport Canada’s Transportation of Dangerous Goods Regulations, and the International Atomic Energy Agency’s Safety Standards Series: Regulations for the Safe Transport of Radioactive Material. The revisions and reformatting provide a user-friendly format to promote understanding of the conditions and limitations on the use of international standards and regulations. In addition, the Pipeline and Hazardous Materials Safety Administration authorizes the use in domestic transportation of portable tanks, cargo tank motor vehicles, and rail tank cars manufactured in accordance with Transport Canada’s Transportation of Dangerous Goods Regulations. Effective date: October 1, 2007.

Part 393 (FR Vol. 72, No. 111, Pages 32011-32014, 06-11-07)

This final rule amends the FMCSR in response to a petition for reconsideration filed by the Truck Manufacturers Association. As requested by the petitioner, this amendment resolves an inconsistency between the Federal Motor Carrier Safety Administration’s FMCSR and the National Highway Traffic Safety Administration’s FMCSR regarding the location and placement of identification lamps on commercial motor vehicles. Effective date: July 11, 2007.

Part 393 (FR Vol. 72, No. 116, Page 33562, 06-18-07)

This CFR correction relates to a typographical error in the final rule issued on June 11, 2007. Effective date: July 11, 2007.

Parts 385, 390, and 395 (FR Vol. 72, No. 128, Pages 36760-36791, 07-05-07)

This final rule relates to certain regulations required by the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). These regulations govern state compliance plans under the Motor Carrier Safety Assistance Program; withholding of federal-aid highway funds based on state noncompliance with the Commercial Driver’s License Program; intrastate operations of interstate motor carriers; civil penalties and disqualifications for violations of out-of-service orders; civil penalties for denial of access to records and property and for violations of statutes and regulations governing hazardous materials transportation; exemption from the federal hours-of-service regulations for operators of commercial motor vehicles engaged in certain defined operations; exemption of drivers of pro-

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pane service or pipeline emergency vehicles during emergency conditions requiring immediate response; and interstate transportation of household goods. The SAFETEA-LU provisions requiring these rules became effective on August 10, 2005. Adoption of the rules is a nondiscretionary ministerial action that was taken without issuing a notice of proposed rule making and receiving public comment, in accordance with an exception available to federal agencies under the Administrative Procedure Act. Effective date: September 4, 2007.

Part 393 (FR Vol. 72, No. 151, Pages 44035-44036, 08-07-07)

This final rule amends Part 393 of the FMCSR concerning parts and accessories necessary for safe operation in response to a petition for rule making filed by JHT Holdings, Inc. The petitioner requested that the previous provision excepting driveaway-towaway operations from supplying each power unit with a fire extinguisher be reinstated. This amendment is intended to correct that inadvertent omission in the final rule issued on August 15, 2005, by reinstating the exception language which was omitted during a previous revision. Effective date: September 6, 2007.

Part 171 (FR Vol. 72, No. 188, Pages 55090-55091, 09-28-07)

This final rule provides correction to errors in the final rule issued on May 3, 2007, by the Pipeline and Hazardous Materials Safety Administration which revised HMR Parts 171-180 to be consistent with the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, the International Maritime Dangerous Goods Code, Transport Canada's Transportation of Dangerous Goods Regulations, and the International Atomic Energy Agency Safety Standards Series: Regulations for the Safe Transport of Radioactive Material. Effective date: September 28, 2007.

Parts 107, 171, 172, 173, 178 and 180 (FR Vol. 72, No. 189, Pages 55678-55697, 10-01-07)

This final rule corrects editorial errors, makes minor regulatory changes and, in response to requests for clarification, improves the clarity of certain provisions in the HMR. The intended effect of this rule is to enhance the accuracy and reduce misunderstandings of the regulations. The amendments contained in this rule are nonsubstantive changes that do not impose new requirements. Effective date: October 1, 2007.

Parts 385, 390, 391, 392, 393, 395, and 397 (FR Vol. 72, No. 189, Pages 55697-55704, 10-01-07)

This final rule makes technical corrections throughout 49 CFR, Subtitle B, Chapter III. In 2007, the Federal Motor Carrier Safety Administration moved to 1200 New Jersey Avenue, SE, Washington, DC 20590. This rule changes obsolete references to the old address. In addition, the rule makes minor editorial changes to correct errors and omissions and improve clarity. This rule does not make any substantive changes to the affected parts of the FMCSR. Effective date: October 1, 2007.

Various portions of the federal regulations and Iowa statutes allow some exceptions when the exceptions will not adversely impact the safe transportation of commodities on the nation's highways. Granting additional exceptions for drivers and the motor carrier industry in Iowa would adversely impact the safety of the traveling public in Iowa.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 321.

These amendments will become effective July 9, 2008.

Rule-making actions:

ITEM 1. Amend paragraph **520.1(1)“a”** as follows:

a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 385 and 390-399 (October 1, ~~2006~~ 2007).

ITEM 2. Amend paragraph **520.1(1)“b”** as follows:

b. Hazardous materials regulations. The Iowa department of transportation adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, ~~2006~~ 2007).

[Filed 5/14/08, effective 7/9/08]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/4/08.

ARC 6820B**TRANSPORTATION
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on May 14, 2008, adopted an amendment to Chapter 529, "For-Hire Interstate Motor Carrier Authority," Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the April 9, 2008, Iowa Administrative Bulletin as **ARC 6692B**.

Because the Code of Federal Regulations (CFR) was updated in October 2007, the Department must cite the current version in the administrative rules. The amendments to the Federal Motor Carrier Safety Regulations (FMCSR) that have become final and effective since the 2006 edition of the CFR are listed in the information below. The parts affected are followed by the Federal Register (FR) citations.

Amendments to the FMCSRPart 365 (FR Vol. 72, No. 189, Page 55697, 10-1-07)

This final rule makes technical corrections throughout 49 CFR, Subtitle B, Chapter III. In 2007, the Federal Motor Carrier Safety Administration moved to 1200 New Jersey Avenue, SE, Washington, DC 20590. This rule changes obsolete references to the old address in Part 365. Effective date: October 1, 2007.

Part 367 (FR Vol. 72, No. 164, Page 48585, 8-24-07)

This final rule establishes initial fees for 2007 and a fee bracket structure for the Unified Carrier Registration Agreement. This action is required under the Uniform Carrier Registration Act of 2005, enacted as Subtitle C of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU). The Unified Carrier Registration Agreement replaced the Single State Registration System. Effective date: August 24, 2007.

TRANSPORTATION DEPARTMENT[761](cont'd)

Part 375 (FR Vol. 72, No. 128, Page 36760, 7-5-07)

This final rule adopts certain regulations required by SAFETEA-LU. The changes to Part 375 relate to interstate transportation of household goods. Definitions were amended and other conforming changes were adopted to comply with the statutory directives. Effective date: September 4, 2007.

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

This amendment is intended to implement Iowa Code chapter 327B.

This amendment will become effective July 9, 2008.

Rule-making action:

Amend rule 761—529.1(327B) as follows:

761—529.1(327B) Motor carrier regulations. The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-368 and 370-379, dated October 1, ~~2006~~ 2007, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library or through the Internet at <http://www.fmcsa.dot.gov>.

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