



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

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### CITATION of Administrative Rules

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

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

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

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

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

## Schedule for Rule Making 2011

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
7	Friday, September 16, 2011	October 5, 2011
8	Friday, September 30, 2011	October 19, 2011
9	Friday, October 14, 2011	November 2, 2011

**PLEASE NOTE:**

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

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

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

**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

Information technology enterprise; human resources enterprise, amendments to chs 1, 20, 50 to 54, 56 to 61, 63 IAB 9/7/11 <b>ARC 9738B</b>	Rooms 329 & 330, Third Floor Hoover State Office Bldg. Des Moines, Iowa	September 27, 2011 1 to 3 p.m.
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**ECONOMIC DEVELOPMENT AUTHORITY[261]**

Endow Iowa tax credits, 47.1 to 47.5 IAB 9/7/11 <b>ARC 9748B</b>	Southeast Conference Room, First Floor 200 E. Grand Ave. Des Moines, Iowa	September 27, 2011 3:30 to 4:30 p.m.
Brownfield redevelopment program, 65.1, 65.2, 65.4 to 65.8, 65.10 to 65.12 IAB 9/7/11 <b>ARC 9747B</b> (See also <b>ARC 9746B</b> herein)	Southeast Conference Room, First Floor 200 E. Grand Ave. Des Moines, Iowa	September 27, 2011 10 to 11 a.m.

**EDUCATIONAL EXAMINERS BOARD[282]**

Teacher intern license—options to obtain initial license, 13.9(7) IAB 9/7/11 <b>ARC 9744B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 28, 2011 1 p.m.
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**EDUCATION DEPARTMENT[281]**

Community colleges—approved providers of instructional course for drinking drivers, 21.31 IAB 8/24/11 <b>ARC 9686B</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 13, 2011 2 to 3 p.m.
Concurrent enrollment program—transportation, 22.12 IAB 8/24/11 <b>ARC 9684B</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 13, 2011 1 to 2 p.m.
Community college accreditation—criteria, standards, process, 24.4 to 24.6 IAB 8/24/11 <b>ARC 9685B</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 13, 2011 2 to 3 p.m.
High school equivalency diploma—test scoring, fees, 32.3, 32.5 to 32.7 IAB 8/24/11 <b>ARC 9683B</b>	State Board Room, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 13, 2011 1 to 2 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Air quality—carbon dioxide emissions, 22.100, 33.1, 33.3(1) IAB 9/7/11 <b>ARC 9736B</b>	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Windsor Heights, Iowa	October 11, 2011 2 p.m.
Drinking water, amendments to chs 40 to 43, 83 IAB 9/7/11 <b>ARC 9737B</b>	Conference Rooms, Suite I Water Supply Section Office 401 SW 7th St. Des Moines, Iowa	September 28, 2011 11 a.m.

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Executive branch lobbyist client reporting, 8.9 IAB 8/24/11 <b>ARC 9681B</b>	Suite 1A 510 E. 12th St. Des Moines, Iowa	September 13, 2011 1 to 2 p.m.
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Athletic trainers—license renewal, discipline, 351.9(1), 353.2(12) IAB 8/10/11 <b>ARC 9677B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	September 15, 2011 9 to 9:30 a.m.

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**REAL ESTATE APPRAISER EXAMINING BOARD[193F]**

Reciprocity; continuing education, 2.1, 10.2, 11.1, 11.2, 11.4 IAB 9/7/11 <b>ARC 9716B</b>	Second Floor Small Conference Room 1920 SE Hulsizer Rd. Ankeny, Iowa	September 27, 2011 9 a.m.
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**TRANSPORTATION DEPARTMENT[761]**

Special truck stickers; special registration plates, 400.53(4), 401.18 IAB 9/7/11 <b>ARC 9742B</b>	Motor Vehicle Division Offices 6310 SE Convenience Blvd. Ankeny, Iowa	September 29, 2011 10 a.m. (If requested)
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The following list will be updated as changes occur.

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

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

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

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**ARC 9738B****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 section 8A.104(5), the Department of Administrative Services (DAS) proposes to amend Chapter 1, “Department Organization,” Chapter 20, “Information Technology Governance,” Chapter 50, “Human Resources Definitions,” Chapter 51, “Coverage and Exclusions,” Chapter 52, “Job Classification,” Chapter 53, “Pay,” Chapter 54, “Recruitment, Application and Examination,” Chapter 56, “Filling Vacancies,” Chapter 57, “Appointments,” Chapter 58, “Probationary Period,” Chapter 59, “Promotion, Transfer, Temporary Assignment, Reassignment and Voluntary Demotion,” Chapter 60, “Separations, Disciplinary Actions and Reduction in Force,” Chapter 61, “Grievances and Appeals,” and Chapter 63, “Leave,” Iowa Administrative Code.

The Department of Administrative Services is undertaking a comprehensive review of all existing DAS rules. This Notice of Intended Action is the first installment related to this review and encompasses amendments related to the Information Technology Enterprise (ITE) and the Human Resources Enterprise (HRE) within DAS. The HRE rules relating to benefits were previously reviewed and updated in 2009. DAS intends to adopt additional amendments in 2011 relating to ITE operations as well as the operations of the General Services Enterprise and the State Accounting Enterprise.

These amendments make several necessary improvements to existing rules including but not limited to the following: (1) amending certain definitions to reflect existing statutes, eliminate unnecessary terms, and make various technical and grammatical changes; and (2) conforming the Information Technology Enterprise rules with current statutory law by deleting obsolete terminology, replacing the Technology Governance Board with the Technology Advisory Council, and providing for the state Chief Information Officer.

The Department of Administrative Services does not intend to grant waivers under the provisions of these rules, other than as may be allowed under the Department’s general rules concerning waivers.

Interested persons may make written comments on the proposed amendments until 4:30 p.m. on September 27, 2011. Comments should be directed to Caleb Hunter, Department of Administrative Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-6140 or by E-mail to [Caleb.Hunter@iowa.gov](mailto:Caleb.Hunter@iowa.gov).

A public hearing will be held on September 27, 2011, from 1 to 3 p.m. in Rooms 329 and 330, 3rd Floor, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact and advise the Department of Administrative Services of their specific needs by calling (515)281-3351.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 8A.

The following amendments are proposed.

ITEM 1. Amend subrule 1.4(3) as follows:

**1.4(3) *Information technology enterprise.*** The mission of the information technology enterprise is to provide high-quality, customer-focused information technology services and business solutions to government and to citizens. The director appoints ~~the chief information officer for the state, who also serves as~~ the chief operating officer of the enterprise. The following bureaus have been established within the information technology enterprise:

a. to c. No change.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

d. Information security office. The information security office is responsible for developing, implementing and maintaining information security policies, standards, and practices that enhance the confidentiality, integrity and availability of computer systems and electronic data resources and for ensuring enterprise-wide compliance with security requirements. This office includes the chief information security officer for state government.

e. IowaAccess. IowaAccess is established as a service to the citizens of this state that is the gateway for one-stop electronic access to government information and transactions, whether federal, state, or local.

d. f. Advisory groups Technology advisory council.

~~(1) Technology governance board. The technology governance board operates pursuant to 2005 Iowa Acts, House File 839. The technology advisory council operates pursuant to Iowa Code section 8A.204.~~

~~(2) IowaAccess advisory council. The IowaAccess advisory council is established within the department for the purpose of creating and providing to the citizens of this state a gateway for one-stop electronic access to government information and transactions, whether federal, state, or local.~~

ITEM 2. Amend subrule 1.4(5) as follows:

**1.4(5) Central administration.**

a. No change.

~~b. Information security office. The information security office is responsible for developing, implementing and maintaining information security policies, standards, and practices that enhance the confidentiality, integrity and availability of computer systems and electronic data resources, and for ensuring enterprise-wide compliance with security requirements. This office includes the chief information security officer for state government.~~

b. Chief information officer. The chief information officer (CIO) is appointed by the governor to serve at the pleasure of the governor and is subject to confirmation by the senate. The CIO is located in the department of administrative services and attached to the department of management. The CIO, in consultation with the director, shall do all of the following as it relates to information technology services:

(1) Advise the director concerning the adoption of information technology standards and rules.

(2) Develop and recommend legislative proposals deemed necessary for the continued efficiency of the department in performing information technology functions, and review legislative proposals generated outside of the department which are related to matters within the department's purview.

(3) Provide advice to the governor on issues related to information technology.

(4) Consult with agencies and other governmental entities on issues related to information technology.

(5) Work with all governmental entities in an effort to achieve the information technology goals established by the department.

(6) Coordinate the internal operations of the department as they relate to information technology and develop and implement policies and procedures designed to ensure the efficient administration of the department as they relate to information technology.

(7) Recommend to the director for adoption rules deemed necessary for the administration of Iowa Code chapter 8A, subchapter II, in accordance with Iowa Code chapter 17A.

(8) Advise the director concerning contracts for the receipt and provision of information technology services as deemed necessary.

(9) Exercise and perform such other powers and duties related to information technology as may be delegated by the director or as may be prescribed by law.

c. No change.

ITEM 3. Amend **11—Chapter 1**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 8A and sections 7E.1 through 7E.5 and 17A.3, and 2005 Iowa Acts, House File 776 and House File 839.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

ITEM 4. Amend rule 11—20.1(81GA,ch90) as follows:

**11—20.1(81GA,ch90 8A) General provisions Advisory council established.**

~~20.1(1) Establishment.~~ The technology ~~governance board~~ advisory council is established within the department of administrative services by ~~2005 Iowa Acts, chapter 90~~ Iowa Code section 8A.204.

~~20.1(2) Mission.~~ The mission of the technology ~~governance board~~ is to set priorities for statewide technology investments and initiatives and to assist the department of management and the state's chief information officer in developing a statewide information technology budget. The budget shall reflect the total information technology spending of the executive branch, resulting in better decision making and financial investment performance reporting.

ITEM 5. Amend rule 11—20.2(81GA,ch90) as follows:

**11—20.2(81GA,ch90 8A) Definitions.** For the purpose of this chapter, the following definitions apply:

"Agency" or "state agency" means a participating agency as defined in Iowa Code section 8A.201, unit of state government, which is an authority, board, commission, committee, council, department, 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 mean 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.

~~"Board" means the technology governance board.~~

~~"Council" means the technology advisory council established in Iowa Code section 8A.204.~~

~~"Department" means the department of administrative services, including the information technology enterprise.~~

~~"Director" means the director of the department of administrative services.~~

~~"Iowa Access advisory council" means the council established pursuant to Iowa Code section 8A.221.~~

~~"Large agency" means a state agency with more than 700 full-time, year-round employees.~~

~~"Medium-sized agency" means a state agency with 70 or more full-time, year-round employees, but not more than 700 full-time, year-round employees.~~

~~"Participating agency" means any state agency, except the state board of regents and institutions operated under the authority of the state board of regents.~~

~~"Small agency" means a state agency with less than 70 full-time, year-round employees.~~

ITEM 6. Amend rule 11—20.3(81GA,ch90) as follows:

**11—20.3(81GA,ch90 8A) Membership of the board council.**

~~20.3(1) Composition.~~ The technology ~~governance board~~ advisory council is composed of ten members as follows:

~~a. The director of state chief information officer.~~

~~b. and c. No change.~~

~~d. A director, deputy director, chief financial officer or the equivalent or employee with information technology expertise is preferred as an appointed representative for each of the agency categories of membership pursuant to paragraph 20.3(1) "c."~~

~~e. Appointments of public members to the board council are subject to Iowa Code sections 69.16 and 69.16A governing balance in political affiliation and gender of members of appointed boards.~~

~~20.3(2) Length of term.~~ Members appointed to the ~~board council~~ pursuant to paragraph 20.3(1) "c" shall serve two-year fixed terms.

~~a. Initial member terms.~~ In order to stagger terms of board council members so that one half of the terms expire each year, ~~four~~ three of the ~~eight~~ six agency members appointed by the governor shall serve initial terms of no longer than one year. ~~Designation of which members are appointed to the initial~~

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

~~staggered terms shall be at the discretion of the governor.~~ The three members serving an initial term of no longer than one year will include one member from a large agency, one member from a medium-sized agency, and one member from a small agency. The terms of the public members shall be staggered at the discretion of the governor.

*b. and c.* No change.

ITEM 7. Amend rule 11—20.5(8A) as follows:

**11—20.5(8A) Officers of the board council.** The ~~technology governance board~~ technology advisory council annually shall elect a chairperson and a vice chairperson from among the members of the ~~board council~~, by majority vote, to serve one-year terms.

ITEM 8. Amend rule 11—20.6(81GA,ch90) as follows:

**11—20.6(81GA,ch90 8A) Meetings of the board council.**

**20.6(1)** Meetings of the ~~board council~~ shall be held at the call of the chairperson or at the request of three members. ~~However, the board shall meet no less than monthly for the one-year period following the appointment of all members.~~

**20.6(2)** A majority of the members of the ~~board council~~ shall constitute a quorum.

**20.6(3)** Meetings of the ~~board council~~ are subject to the open meetings provisions of Iowa Code section 21.3.

ITEM 9. Amend rule 11—20.7(81GA,ch90) as follows:

**11—20.7(81GA,ch90 8A) Correspondence and communications.** The office of the ~~technology governance board~~ technology advisory council is maintained in the office of the department of administrative services. Correspondence and communications to the ~~board council~~ shall be directed in care of the Iowa Department of Administrative Services, Information Technology Enterprise, Hoover State Office Building, Level B, Des Moines, Iowa 50319.

ITEM 10. Rescind rule 11—20.8(81GA,ch90) and adopt the following **new** rule in lieu thereof:

**11—20.8(8A) Powers and duties of the council.** The powers and duties of the technology advisory council as they relate to information technology services shall include, but are not limited to, all of the following:

**20.8(1)** Advise the chief information officer in developing and adopting information technology standards pursuant to Iowa Code sections 8A.203 and 8A.206 applicable to all agencies.

**20.8(2)** Make recommendations to the chief information officer regarding all of the following:

*a.* Technology utility services to be implemented by the department.

*b.* Improvements to information technology service levels and modifications to the business continuity plan for information technology operations developed by the department for agencies.

*c.* Improvements to maximize the value of information technology investments by the state.

*d.* Technology initiatives for the executive branch.

**20.8(3)** Advise the department regarding rates to be charged for access to and for value-added services performed through IowaAccess.

ITEM 11. Amend **11—Chapter 20**, implementation sentence, as follows:

These rules are intended to implement ~~2005 Iowa Acts, chapter 90~~ Iowa Code chapter 8A, subchapter II.

ITEM 12. Amend the following definitions in rule **11—50.1(8A)**:

“Agency” means a department, independent agency, or statutory office ~~provided for in the Iowa Code section 7E.2.~~

“Certification” means the referral of ~~available~~ qualified names from an eligible list to an agency for the purpose of making a selection in accordance with these rules.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

*“Class” or “job classification” or “job class”* means one or more positions so similar in duties, responsibilities, and qualifications that each may be assigned to the same job title and pay plan.

*“Classification plan”* means the ~~printed~~ published list of job classifications and the related elements assigned to each. The classification plan is published annually by the department and revised as necessary.

*“Grievance”* means ~~an expressed difference, dispute, or controversy between an employee and the appointing authority, with respect to circumstances or conditions of employment~~ a written complaint alleging a specific violation of these rules or of Iowa Code chapter 8A, subchapter IV.

*“Merit system”* means ~~those positions or employees in the state personnel system determined by the director to be covered by the provisions of 2003~~ the system of human resource administration based on merit principles and scientific methods to govern the appointment, compensation, promotion, welfare, development, transfer, layoff, removal, and discipline of its civil employees, and other incidents of state employment established pursuant to Iowa Code Supplement chapter 8A as it pertains to qualifications, examinations, probation, and just cause discipline and discharge hearings.

*“Minimum qualifications”* means the minimum education, experience, or other background required to be considered eligible to apply for, or otherwise perform the duties of a particular job classification. Minimum qualifications are published in classification descriptions, ~~and pertain only to positions covered by merit system provisions.~~

*“Overtime”* means those hours that exceed 40 in a workweek for which an eligible employee is entitled to be compensated, unless otherwise specified in a collective bargaining agreement.

*“Pay increase”* means ~~a periodic step or percentage~~ an increase in pay within the pay range ~~for the class based on time spent, performance, or both.~~

*“Permanent employee”* means any executive branch employee (except board of regents employees) who has completed at least six months of continuous nontemporary employment. When used in conjunction with coverage by the merit system provisions referred to in ~~2003~~ Iowa Code Supplement section 8A.411, it further means those employees who have completed the period of probationary status provided for in ~~2003~~ Iowa Code Supplement section 8A.413. For peace officers employed by the department of public safety, “permanent employee” means a peace officer who has completed a 12-month probationary period after appointment.

*“Premium overtime rate of compensation”* means compensation equal to one and one-half hours for each hour of overtime.

*“Probationary employee”* means any executive branch employee (except board of regents employees) who has completed less than six months of continuous nontemporary employment. When used in conjunction with coverage by the merit system provisions referred to in ~~2003~~ Iowa Code Supplement section 8A.411, it further means those employees who have not completed the period of probationary status provided for in ~~2003~~ Iowa Code Supplement section 8A.413. For peace officers employed by the department of public safety, “probationary employee” means a peace officer who has completed less than 12 months continuous nontemporary employment following appointment to a peace officer classification.

*“Reassignment”* means the movement of an employee ~~and the position the employee occupies~~ within the same organizational unit or to another organizational unit at the discretion of the appointing authority. A reassignment may include a change in duties, work location, days of work or hours of work, and may be temporary or permanent. A reassignment may result in a change ~~form~~ from the employee’s previous job classification.

*“Same pay grade”* means those pay grades in the various pay plans having the same pay grade number as well as those pay grades using a three-step pay range where those steps correspond to the top three steps of a six-step range. A three-step pay grade shall be considered the same as the corresponding six-step pay grade in determining whether an action is a promotion, demotion, or transfer.

*“Standby”* means those times when eligible employees are required by the appointing authority to restrict their activities during off-duty hours so as to be immediately available for duty ~~when required by the appointing authority, and is other than simply the requirement to leave word of their whereabouts in case of the need to be contacted.~~

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

ITEM 13. Rescind the definitions of “Fee-for-services contractor,” “Immediate family” and “Job classification” in rule **11—50.1(8A)**.

ITEM 14. Rescind the definition of “Confidential employee” in rule **11—50.1(8A)** and adopt the following **new** definition in lieu thereof:

“*Confidential employee*” means any public employee who works in the personnel offices of a public employer or who has access to information subject to use by the public employer in negotiating or who works in a close continuing working relationship with public officers or representatives associated with negotiating on behalf of the public employer.

“Confidential employee” also includes the personal secretary of any of the following: any elected official or person appointed to fill a vacancy in an elective office; member of any board or commission; the administrative officer, director, or chief executive officer of a public employer or major division thereof; or the deputy or first assistant of any of the foregoing.

ITEM 15. Amend rule 11—51.2(8A) as follows:

**11—51.2(8A) Merit system.** The merit system shall include and apply to those positions in the state personnel system which have been determined by the director to be covered by the provisions of 2003 Iowa Code Supplement section 8A.411 as it pertains to qualifications, examinations, probation, and just cause discipline and discharge hearings, hereafter referred to as merit system provisions. Whenever the director determines that a position should be covered by or not covered by merit system provisions, the director shall notify the appointing authority in writing of the decision and the effective date.

**51.2(1) Exclusion of division administrators and policy-making positions.** The appointing authority of each agency shall submit to the director for approval the position number and title of each position referred to in 2003 Iowa Code Supplement section 8A.412, proposed for exclusion from coverage by the merit system provisions referred to in 2003 Iowa Code Supplement section 8A.411(4). Subsequent changes in the number or duties of these positions shall be submitted to the director for exclusion approval.

**51.2(2)** No change.

**51.2(3) Other exclusions.** For further information regarding exclusions from merit system coverage, refer to 2003 Iowa Code Supplement section 8A.412.

ITEM 16. Amend **11—Chapter 51**, implementation sentence, as follows:

These rules are intended to implement 2003 Iowa Code Supplement section 8A.413 and Iowa Code chapters 19B and 70A.

ITEM 17. Amend subrule 52.4(5) as follows:

**52.4(5)** The maximum time periods in the position classification review process may be extended when mutually agreed to in writing ~~and signed~~ by the parties.

ITEM 18. Amend subrule 52.5(1) as follows:

**52.5(1)** If, following a position classification review request, a decision notice is not issued within the time limit provided for in these rules, or the appointing authority or the incumbent does not agree with the department’s final position classification review decision, the appointing authority or the incumbent may request a classification appeal committee hearing. The request shall be in writing and shall be ~~mailed~~ submitted to: Classification Appeal Committee Chair, Department of Administrative Services—Human Resources Enterprise, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0150. The classification appeal hearing process is a contested case as defined by Iowa Code chapter 17A.

ITEM 19. Amend paragraph **52.5(4)“a”** as follows:

a. The classification appeal committee shall schedule a hearing ~~within 30 calendar days following receipt of the request for a hearing unless otherwise mutually agreed to in writing and signed by the parties pursuant to Iowa Code section 17A.12.~~

ITEM 20. Amend subrule 52.6(1) as follows:

**52.6(1)** Position classification changes shall not be retroactive and shall become effective only after approval by the director. Position classification changes approved by the director that are not made

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

effective by the appointing authority within 90 calendar days following the date approved shall be void. Position classification changes that will have a budgetary impact shall not become effective until approved by the department of management. If the appointing authority decides not to implement the change or the department of management does not approve funding for the change, duties commensurate with the current job classification shall be restored by the appointing authority within three pay periods following the date of that decision.

ITEM 21. Amend **11—Chapter 52**, implementation sentence, as follows:

These rules are intended to implement ~~2003~~ Iowa Code ~~Supplement~~ section 8A.413 and Iowa Code chapters 19B and 70A.

ITEM 22. Amend rule 11—53.2(8A) as follows:

**11—53.2(8A) Pay plan content.** Pay plans shall have numbered pay grades showing minimum and maximum salaries ~~and intermediate salary steps, if applicable.~~

ITEM 23. Amend subrule 53.4(1) as follows:

**53.4(1) Employees.** The director shall assign classes to pay plans and grades and shall assign employees to classes. Employees shall be paid ~~either at one of the established steps or~~ at a rate between the minimum and maximum of the pay grade of the class to which assigned. Pay decisions shall be at the discretion of the appointing authority, unless otherwise provided for in this chapter or by the director.

ITEM 24. Amend subrule 53.4(6) as follows:

**53.4(6) General pay increases.** The director shall administer general pay increases for employees that have been authorized by the legislature and approved by the governor. An employee in a ~~noncontract~~ class position whose pay has been red-circled above the maximum pay rate of the class to which assigned shall not receive a general pay increase, unless specifically authorized by the Acts of the general assembly or otherwise provided for in these rules.

ITEM 25. Amend subrule 53.4(7) as follows:

**53.4(7) Pay corrections.** An employee's pay shall be corrected if it is found to be in violation of these rules or a collective bargaining agreement. ~~If the correction is the result of an error or omission, the pay may be corrected within 12 pay periods following the date the employee's pay was incorrectly set or the transaction that should have occurred was omitted.~~ Corrections shall be made on the first day of a pay period.

*a. Retroactive pay.* An employee may receive retroactive pay ~~for a period of up to 90 calendar days preceding the date the error was corrected or the omission occurred~~ in the same fiscal year for which the pay should have been paid. A request for retroactive pay must be received and processed no later than August 31 following the close of the fiscal year for which the request is made. Requests for retroactive pay beyond 90 calendar days or which extend into a previous fiscal year are not made in a timely fashion must be submitted to the state appeal board.

*b. No change.*

ITEM 26. Amend subrule 53.5(1) as follows:

**53.5(1) Individual advanced appointment rate.** For new hires, reinstatements, or promotions ~~and upward reclassifications~~ of employees in contract classes, the appointing authority may ~~grant steps or request pay rates~~ in excess of the minimum based on education and experience directly related to duties that exceed the minimum qualifications of the class. The appointing authority shall maintain a written record of the justification for the advanced appointment rate. The record shall be a part of the official employee file. All employees possessing equivalent qualifications in the same class and with the same appointing authority may be adjusted to the advanced rate. Individual advanced appointment rates are subject to prior approval by the department.

ITEM 27. Amend subrule 53.5(5) as follows:

**53.5(5) Temporary, seasonal, and internship.** When an appointment is made to a class on a temporary, seasonal, or internship basis, the employee may be paid at any rate within the pay grade to which the class is assigned. Such employees may be given authorized, noncontract salary,

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

across-the-board adjustments within the minimum and maximum rates of the pay grade. Temporary, seasonal and internship employees are not eligible for within-grade increases based on performance or time in service.

ITEM 28. Amend subrule 53.6(4) as follows:

**53.6(4) Pay plan changes.** If a transaction results in an employee's being paid from a different pay plan ~~without steps~~, the employee shall be paid at the employee's current pay rate, except as provided in subrules 53.6(1) and 53.6(2). ~~When the transaction results in an employee's being paid from a pay plan with steps, the employee shall be paid at a step in the pay plan that is closest to but not less than the employee's current pay rate, except that for~~ For demotions, the employee's pay shall be at the discretion of the appointing authority so long as it is not greater than it was prior to the demotion. For setting eligibility dates, see subrule 53.7(5).

ITEM 29. Amend paragraph **53.6(6)“b”** as follows:

*b. Contract classes.* If an employee is promoted to a contract-covered class ~~without steps~~, the employee shall receive a 5 percent pay increase. ~~If promoted to a contract-covered class with steps, the employee shall receive a one-step pay increase,~~ except as provided in subrules 53.5(1), 53.6(1), 53.6(2), and 53.6(4).

ITEM 30. Amend subrule 53.6(7) as follows:

**53.6(7) Demotion.** If an employee demotes voluntarily or is disciplinarily demoted, the employee may be paid at any ~~step or~~ pay rate that does not exceed the employee's pay at the time of demotion, except as provided in subrules 53.6(1), 53.6(2) and 53.6(4). For setting eligibility dates, see subrule 53.7(5).

ITEM 31. Amend subrule 53.6(10) as follows:

**53.6(10) Return from leave.** If an employee returns from an authorized leave, the employee shall be paid at the same ~~step or~~ pay rate as prior to the leave, including any pay grade, pay plan, class or general salary increases for which the employee would have been eligible if not on leave, except as provided for in subrules 53.6(1) and 53.6(2). For setting eligibility dates, see subrule 53.7(5).

ITEM 32. Amend subrule 53.6(12) as follows:

**53.6(12) Reinstatement.** When an employee is reinstated, the employee may be paid at any ~~step or~~ pay rate for the class to which reinstated.

ITEM 33. Amend subrule 53.7(1) as follows:

**53.7(1) General.** An employee, upon completion of a minimum pay increase eligibility period, may receive a periodic ~~step or percentage~~ increase in base pay that is within the pay grade and pay plan of the class to which the employee is assigned upon completion of a minimum pay increase eligibility period.

*a. Pay increase eligibility periods.* The minimum pay increase eligibility period for employees ~~paid from pay plans without steps~~ shall be 52 weeks, except that it shall be 26 weeks for new hires and employees who receive an increase in base pay as a result of a promotion, reclassification or pay grade change. ~~Minimum pay increase eligibility periods for employees paid from pay plans with steps shall be the number of weeks in the pay plan that corresponds to the employee's step.~~

*b. Noncreditable periods.* Except for required educational and military leave, periods of leave without pay exceeding 30 calendar days shall not count toward an employee's pay increase eligibility period.

*c. Reduction of time periods.* The director may authorize a reduction in the pay increase eligibility periods for classes a position where there are is an unusual recruitment and retention ~~circumstances~~ circumstance.

ITEM 34. Amend subrule 53.7(5) as follows:

**53.7(5) Eligibility dates.** An employee's pay increase eligibility date shall be set at the time of hire, and if the employee starts on the first working day of the pay period, it shall be the first day of the pay period following completion of the employee's minimum pay increase eligibility period. Otherwise, it shall be the first day of the pay period following the date the employee starts work.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

*a. General.* A new eligibility date shall be set when an employee receives an increase in base pay, except when transferring in the same pay grade to a different pay plan. ~~The following pay increase eligibility periods shall be used to set these dates.~~

~~(1) Fifty-two~~ Such date will be set at 52 weeks for employees paid from pay plans without steps, except that for new hires and employees who receive a pay increase as a result of a promotion, reclassification or pay grade change. The date for such employees shall be 26 weeks following the effective date of the action.

~~(2) For employees paid from pay plans with steps, it shall be the number of weeks in the pay plan that corresponds to the employee's pay step after the pay increase.~~

*b. to d.* No change.

~~*e. Prior service credit.* If a transfer or demotion results in an employee's having a longer pay increase eligibility period, credit shall be given for the time served toward completion of the employee's new pay increase eligibility period.~~

*f. e. Administrative changes.* The director may change eligibility dates when economic or other pay adjustments are made to the classification plan or pay plans.

ITEM 35. Amend subrule 53.8(1) as follows:

**53.8(1) Leadworker:** An employee who is temporarily assigned lead work duties, as defined in rule 11—50.1(8A), may be given additional pay of up to 15 percent, unless otherwise provided in an applicable collective bargaining agreement.

ITEM 36. Amend subrule 53.9(4) as follows:

**53.9(4) Discretionary payments.** A lump sum payment for exceptional job performance may be given to an employee ~~whenever the appointing authority deems it appropriate.~~ A written explanation setting forth the reasons shall first be submitted to the director for approval.

ITEM 37. Amend subrule 54.2(6) as follows:

**54.2(6) Disqualification or removal of applicants.** The director may refuse to place an applicant on a list of eligibles, refuse to refer an applicant for a vacancy, refuse to approve the appointment of an applicant, or remove an applicant from a list of eligibles for a position if it is found that the applicant:

*a. to g.* No change.

*h.* Has resigned in lieu of discharge for cause.

~~*i.*~~ Has been convicted of a crime that is shown to have a direct relationship to the duties of a job class or position.

~~*j.*~~ Is proven to be an unrehabilitated substance abuser who would be unable to perform the duties of the job class or who would constitute a threat to state property or to the safety of others.

~~*k.*~~ Is not a United States citizen and does not have a valid permit to work in the United States under regulations issued by the U.S. Immigration and Naturalization Service.

Applicants disqualified or removed under this subrule shall be notified in writing by the director within five workdays following removal. Applicants may informally request that the director reconsider their disqualification or removal by submitting additional written evidence of their qualifications or reasons why they should not be removed in accordance with rule 11—61.3(8A). Formal appeal of disqualification or removal shall be in accordance with 11—subrule 61.2(4).

ITEM 38. Amend subrule 54.3(3) as follows:

**54.3(3) Background checks.** Background checks and investigations, including, but not limited to, checks of arrest or conviction records, fingerprint records, driving records, financial or credit records, and child or dependent adult abuse records, constitute an examination or test within the meaning of this subrule, Iowa Code chapter 19A and 161—subrule 8.1(1). Confidential documents provided to the director by other agencies in conjunction with the administration of this rule shall continue to be maintained in ~~their~~ the documents' confidential status. The director is subject to the same policies and penalties regarding the confidentiality of the documents as any employee of the agency providing the documents.

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

Background checks shall be conducted only after receiving approval from the director concerning the areas to be checked and the standards to be applied in evaluating the information gathered. Background checks are subject to the following limitations and requirements:

*a.* and *b.* No change.

*c.* The ~~director~~ appointing authority shall provide a statement that shall be presented by the ~~appointing authority~~ to each applicant that is to be investigated under this subrule. This statement shall inform the applicant that the applicant is subject to a background check as a condition of employment and the topics to be covered in the background check. It shall also inform the applicant that all information gathered will be treated as confidential within the meaning of Iowa Code section 22.7, but that all such information gathered shall be available to the applicant upon request through the agency authorized to release such information, unless otherwise specifically provided by law. The statement shall be signed and dated by the applicant and shall include authorization from the applicant for the appointing authority to conduct the background check as part of the application and selection process ~~and to share the information gathered with the director.~~

~~*d.* Information obtained from a background check is not necessarily a bar to an applicant's employment.~~

~~*e.* Appointing authorities shall send information periodically to the director on forms prescribed by the director. This information shall include the following:~~

~~(1) The total number of applicants for each position who were eligible for a background check.~~

~~(2) A list of all applicants for whom background checks were conducted, by organizational unit, name, social security number, type of background check, and result (pass or fail).~~

~~(3) Documentation of specific business necessity and job relatedness when any inequitable rejection rate is identified by the director.~~

ITEM 39. Amend subrule 54.4(2) as follows:

**54.4(2) Examination administration.** The director or appointing authority shall arrange for suitable locations and conditions to conduct examinations. Locations in various areas of the state and out of state may be used. Examinations may be postponed, canceled, or rescheduled.

*a. Examination of persons with disabilities.* Persons with disabilities may request specific examination accommodations. Reasonable accommodations will be granted in accordance with policies for accommodations established by the department. ~~Persons in the certified disability program or any other formal waiver program established by the department may be exempt from examinations.~~

~~*b. Special admittance.* Requests for special admittance after the closing date for application shall be submitted in writing to the director or the appointing authority. The request shall explain why the applicant seeks special admittance.~~

~~*e. b. Retaking examinations.* Applicants may not retake aptitude, psychological, video-based or other examinations for 60 calendar days following the last date the examination was taken except as provided for in rule 11—54.6(8A). Violation of the waiting period for an examination shall result in the current examination score being voided and an additional 60-calendar-day waiting period being imposed.~~

~~Keyboard examinations, such as typing, may be retaken at any time without a waiting period, if equipment is available.~~

The most recent examination score shall determine the applicant's qualification for the corresponding eligible lists.

Applicants who are required to take examinations covered by the rules or procedures of other agencies are subject to applicable rules or procedures on retakes for such examinations of that agency.

ITEM 40. Amend rule 11—54.6(8A) as follows:

**11—54.6(8A) Review of written examination questions.** Applicants may request to review their incorrectly answered questions on department-administered written examinations except that aptitude, psychological, and video-based examinations are not subject to review. An applicant who reviews written examination questions may not retake that examination or an examination with the same or similar content for 60 calendar days following the review ~~and then only if the class is open for~~

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

~~recruitment~~. Violation of this waiting period shall result in the current examination score being voided and an additional 60-calendar-day waiting period being imposed.

ITEM 41. Amend rule 11—56.6(8A) as follows:

**11—56.6(8A) Incomplete lists.** If the number of names available on a nonpromotional list is less than six, the appointing authority will be granted provisional appointment authority.

ITEM 42. Amend rule 11—57.1(8A) as follows:

**11—57.1(8A) Filling vacancies.** Unless otherwise provided for in these rules or the Iowa Code, the filling of all vacancies shall be subject to the provisions of these rules. No vacant position in the executive branch shall be filled until the position has been classified in accordance with Iowa Code ~~Supplement~~ chapter 8A and these rules.

An employee who has participated in the phased retirement program shall not be eligible for permanent employment for hours in excess of those worked at the time of retirement. ~~An~~ A former employee who has participated in ~~the~~ any early retirement or early termination program shall not be eligible for any state employment, except as provided for in the applicable program.

A person who has served as a commissioner or board member of a regulatory agency shall not be eligible for employment with that agency until two years after termination of the appointment.

ITEM 43. Amend rule 11—57.5(8A), introductory paragraph, as follows:

**11—57.5(8A) Reinstatement.** A permanent employee who left employment for other than just cause may be reinstated with permanent or probationary status to any class for which qualified at the discretion of an appointing authority. Reinstatement shall not require appointment from a list of eligibles. Former employees who retired and applied for retirement benefits under an eligible state retirement system or program are not eligible for reinstatement.

ITEM 44. Amend rule 11—58.1(8A), introductory paragraph, as follows:

**11—58.1(8A) Duration.** All original full-time or part-time appointments to permanent positions shall require a six-month period of probationary status. Appointments to peace officer positions at the department of public safety require a 12-month probationary period following appointment. Employees with probationary status shall not be eligible for promotion, reinstatement following separation, or other rights to positions unless provided for in this chapter, nor have reduction in force, recall, or appeal rights.

ITEM 45. Amend rule 11—58.4(8A) as follows:

**11—58.4(8A) Promotion during the period of probationary status.** A probationary employee who is promoted during the period of probationary status to a position covered by merit system provisions shall be hired in accordance with 11—subrule 56.3~~(2)~~(3). The total required probationary period shall include the probationary service in the class from which promoted. The rate of pay shall be set in accordance with 11—subrule 53.6(6).

ITEM 46. Amend rule 11—59.1(8A) as follows:

**11—59.1(8A) Promotion.**

**59.1(1)** An appointing authority may promote an employee with permanent status if the employee meets the minimum qualifications and other promotional screening requirements for the position. The employee must be on the list of eligibles for the position and available under the conditions stated on the list request.

~~59.1(2) Agencies shall collect and forward to the director data on the characteristics of applicants considered for promotion in accordance with the director's requirements and these rules.~~

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

ITEM 47. Amend rule 11—59.2(8A) as follows:

**11—59.2(8A) Reassignment.** An appointing authority may reassign an employee. Reassignments may be intra-agency or interagency. Interagency reassignments require the approval of both the sending and the receiving appointing authorities.

An employee who refuses a reassignment may be discharged in accordance with rule 11—60.2(8A), except as provided for in the ~~second unnumbered paragraph~~ of this rule.

If the reassignment of an employee would result in the loss of merit system coverage, an appointing authority may not reassign that employee without the employee's written consent regarding the change in merit system coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement.

ITEM 48. Amend paragraph **60.1(1)“a”** as follows:

*a.* To resign or retire in good standing an employee must give the appointing authority at least 14 calendar days' prior notice unless the appointing authority agrees to a shorter period. A written notice of resignation or retirement shall be given by the employee to the appointing authority, with a copy forwarded to the director by the appointing authority at the same time. An employee who fails to give this prior notice may, at the request of the appointing authority, be barred from certification or appointment to that agency for a period of up to two years. Resignation or retirement shall not be subject to appeal under 11—Chapter 61 unless it is alleged that it was submitted under duress.

Employees who are absent from duty for three consecutive workdays without proper authorization from the appointing authority may be considered to have voluntarily terminated employment. The appointing authority shall notify the employee ~~by registered letter (return receipt requested) that they must return to work within two workdays following receipt of the notification or be removed from the payroll. If the appointing authority receives notice from the U.S. post office that the letter was undeliverable, the employee may be removed from the payroll five days following receipt of that notice.~~ of the authority's decision to remove the employee from the payroll. Notification shall be sent to the employee's last-known address, with delivery confirmation required. The appointing authority shall consider requests to review circumstances.

ITEM 49. Rescind subrule 60.1(3) and adopt the following **new** subrule in lieu thereof:

**60.1(3) Early retirement incentive program—1992.** This early retirement incentive program is provided for in 1992 Iowa Acts, chapter 1220. Employees who participated in this program are not eligible to accept any further employment with the state of Iowa. This prohibition does not apply to a program participant who is later elected to public office.

ITEM 50. Rescind subrule 60.1(4) and adopt the following **new** subrule in lieu thereof:

**60.1(4) Sick leave and vacation incentive program—2002.** This termination incentive program is provided for in 2001 Iowa Acts, Second Extraordinary Session, chapter 5. An employee who elected participation in this program is not eligible to accept any further permanent employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

ITEM 51. Rescind subrule 60.1(5) and adopt the following **new** subrule in lieu thereof:

**60.1(5) Sick leave and vacation incentive program—Fiscal Year 2003.** This termination incentive program is provided for in 2002 Iowa Acts, Second Extraordinary Session, chapter 1001. An employee who elected participation in this program is not eligible to accept any further permanent part-time or full-time employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

ITEM 52. Rescind subrule 60.1(6) and adopt the following **new** subrule in lieu thereof:

**60.1(6) Sick leave and vacation incentive program—Fiscal Year 2005.** This termination incentive program is provided for in 2004 Iowa Acts, chapter 1035. An employee who elected participation in this program is not eligible to accept any further permanent part-time or full-time employment with the state

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

ITEM 53. Amend rule 11—60.2(8A), introductory paragraph, as follows:

**11—60.2(8A) Disciplinary actions.** Except as otherwise provided, in addition to less severe progressive discipline measures, any employee is subject to any of the following disciplinary actions when based on a standard of just cause: suspension, reduction of pay within the same pay grade, disciplinary demotion, or discharge. Disciplinary action involving employees covered by collective bargaining agreements shall be in accordance with the provisions of the agreement. Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, refusal of a reassignment, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated substance abuse, negligence, conduct which adversely affects the employee's job performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct, or any other just cause.

ITEM 54. Amend subrule 60.2(2) as follows:

**60.2(2)** Reduction of pay within the same pay grade. An appointing authority may reduce the pay of an employee who is covered by the overtime provisions of the federal Fair Labor Standards Act to a lower ~~step or~~ rate of pay within the same pay grade assigned to the employee's class for any number of pay periods considered appropriate. A written statement of the reasons for the reduction and its duration shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

Employees who are exempt from the overtime provisions of the federal Fair Labor Standards Act will not be subject to reductions of pay within the same pay grade except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director.

ITEM 55. Amend paragraph **60.3(2)“d”** as follows:

*d.* The appointing authority shall develop a plan for the reduction in force and shall submit that plan to the director for approval in advance of the effective date. The plan must be approved by the director before it can become effective. The plan shall include the reason(s) for and the effective date of the reduction in force, the reduction in force unit(s), the reason(s) for choosing the unit(s) if smaller than a bureau, the number of permanent merit system covered employees by class to be eliminated or reduced in hours, the cutoff date for length of service and performance credits to be utilized in determining retention points, and any other information requested by the director. ~~The appointing authority shall post each approved reduction in force plan for 60 calendar days in conspicuous places throughout the reduction in force unit. The posting shall include the names of all permanent merit system covered employees for each affected job class in the reduction in force unit by retention point order.~~

ITEM 56. Amend subrule 60.3(3), introductory paragraph, as follows:

**60.3(3)** Retention points. The reduction in force shall be in accordance with total retention points made up of a combination of points for length of service and points for performance record. The director, at the request of the appointing authority, may approve specific exemptions from reduction in force where special skills or abilities are required and have been previously documented in the records of the department as essential for performance of the assigned job functions. An employee with greater retention points who has received a rating of less than “meets expectations” on the most recent performance review given within the last 12 months, or who has a disciplinary suspension or demotion within the last 12 months, may be subject to reduction in force before the employee with the next lowest retention points, subject to approval of the director. A cutoff date shall be set by the appointing authority beyond which no points shall be credited. Length of service and performance credits shall be calculated as follows:

ITEM 57. Amend subrule 60.3(4), introductory paragraph, as follows:

**60.3(4)** Order of reduction in force. Permanent merit system covered employees in the approved reduction in force unit shall be placed on a list in descending order by class beginning with the employee

## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

having the highest total retention points in the class in the layoff unit. Reduction in force selections shall be made from the list in inverse order regardless of full-time or part-time status, except as provided in subrule 60.3(3). If two or more employees have the same combined total retention points, the order of reduction shall be determined by giving preference in the following sequence:

ITEM 58. Amend paragraphs **60.3(5)“b”** and **“c”** as follows:

b. Employees who choose to exercise bumping rights must do so to a position in the applicable reduction in force unit. Bumping may be to a lower class in the same series or to a lower formerly held class (or its equivalent if the class has been retitled) in which the employee had nontemporary status while continuously employed in the state service. Bumping shall not be permitted to classes from which employees were voluntarily or disciplinarily demoted. Bumping by nonsupervisory employees shall be limited to positions in nonsupervisory classes. Bumping to classes that have been designated as collective bargaining exempt shall be limited to persons who occupy classes with that designation at the time of the reduction in force. Bumping shall be limited to positions covered by merit system provisions and positions covered by a collective bargaining agreement.

The director may, at the request of the appointing authority, approve specific exemptions from the effects of bumping where special skills or abilities are required and have been previously documented in the records of the department of administrative services as essential for performance of the assigned job functions. An employee with greater retention points who has received a rating of less than “meets expectations” on the most recent performance review given within the last 12 months, or who has a disciplinary suspension or demotion within the last 12 months, may be subject to reduction in force before the employee with the next lowest retention points, subject to approval of the director.

c. When bumping as set forth in paragraph “b” of this subrule, the employee shall indicate the class, but the appointing authority shall designate the specific position assignment within the reduction in force unit. The appointing authority may designate a vacant position if the department of management certifies that funds are available and after all applicable contract transfer and recall provisions have been exhausted. The appointing authority shall notify the employee in writing of the exact location of the position to which the employee will be assigned. After receipt of the notification, the employee shall have five calendar days in which to notify the appointing authority in writing of the acceptance of the position or be laid off.

Bumping to another noncontract class in lieu of layoff shall be based on retention points regardless of full-time or part-time status and shall not occur if the result would be to cause the removal or reduction of an employee with more total retention points except as provided for in this subrule. If bumping occurs, the employee with the fewest total retention points in the class shall then be subject to reduction in force.

Pay upon bumping shall be in accordance with 11—subrule 53.6(11).

ITEM 59. Amend paragraph **60.3(6)“g”** as follows:

g. Notice of recall shall be sent ~~by certified mail, restricted delivery~~ with delivery confirmation. Employees must respond to an offer of recall within five calendar days following the date the notice was received. A notice that is undeliverable to the most recent address of record will be considered a declination of recall. The declination of a recall offer shall be documented in writing by the appointing authority, with a copy to the director.

ITEM 60. Amend rule 11—61.1(8A) as follows:

**11—61.1(8A) Grievances.** The grievance procedure is an informal process. It is not a contested case.

All employees shall have the right to file grievances. The right to file a grievance and the grievance procedure provided for in these rules shall be made known and available to employees throughout the agency by the appointing authority through well-publicized means. Employees covered by a collective bargaining agreement may use this grievance procedure for issues that are not covered by their respective collective bargaining agreements.

Grievances shall state the issues involved, the relief sought, the date the incident or violation took place and any rules involved, and shall be filed on forms prescribed by the director. Grievances involving suspension, reduction in pay within the same pay grade, disciplinary demotion, or discharge shall be filed

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as appeals in accordance with subrule 61.2(6) and commence with Step 3 of the grievance procedure described in subrule 61.1(1).

~~Employees covered by collective bargaining agreements shall be governed by the terms of their contract grievance procedures for those provisions contained in the contract. Otherwise, the provisions of this rule shall apply.~~

**61.1(1) to 61.1(5)** No change.

ITEM 61. Rescind paragraph **61.2(1)“d.”**

ITEM 62. Amend subrule 61.2(5) as follows:

**61.2(5) Appeal of grievance decisions.** An employee who has alleged a violation of 2003 Iowa Code Supplement sections 8A.401 to 8A.458 or the rules adopted to implement 2003 Iowa Code Supplement sections 8A.401 to 8A.458 may, within 30 calendar days after the date the director's response at the third step of the grievance procedure was issued or should have been issued, file an appeal with the public employment relations board. A nontemporary, noncontract employee covered by merit system provisions who is suspended, reduced in pay within the same pay grade, disciplinarily demoted, or discharged, except during the employee's period of probationary status may, if not satisfied with the decision of the director, request an appeal hearing before the public employment relations board within 30 calendar days after the date the director's decision was issued or should have been issued. However, when the grievance concerns allegations of discrimination within the meaning of Iowa Code chapter 216, the Iowa civil rights commission procedures shall be the exclusive remedy for appeal and shall, in such instances, constitute final agency action. In all other instances, decisions by the public employment relations board constitute final agency action.

ITEM 63. Amend subrule 63.3(12) as follows:

**63.3(12)** If an absence because of illness, injury or other proper reason for using sick leave provided for in this rule extends beyond the employee's accrued sick leave, the appointing authority may require or permit additional time off to be charged to any other accrued leave ~~except that employees~~. Employees shall, upon request, be paid accrued vacation and compensatory leave in a lump sum to prevent delay of long-term disability benefits. When all accrued sick leave has been used, the employee may be granted leave without pay or terminated except as provided in subrule 63.5(4). ~~Leave without pay for temporary disabilities for medically related reasons shall be in accordance with rule 11—63.5(8A), prior to termination.~~

ITEM 64. Amend subrule 63.4(1), introductory paragraph, as follows:

**63.4(1)** It is the appointing authority's responsibility to designate leave as FMLA leave. The appointing authority shall designate leave as FMLA leave when the leave qualifies for FMLA leave, even if the employee makes no request for FMLA leave or does not want the leave to be counted as FMLA leave. When both spouses are employed by the state, they shall be limited to a combined total of 12 weeks of FMLA leave taken in accordance with paragraph "a" or "c" below. The hourly equivalent for part-time employees shall be prorated based upon the average number of hours worked during the previous ~~six~~ 12 months. Leave may be for one or more of the following reasons:

ITEM 65. Amend subrule 63.5(4), introductory paragraph, as follows:

**63.5(4)** When requested in writing and verified by the employee's physician or other licensed practitioner, an employee shall be granted sick leave, either paid, unpaid or a combination of the two at the discretion of the employee, for at least an eight-week period when the purpose is to provide recovery from a medically related disability ~~except that leave without pay shall not be granted unless accrued sick leave has been exhausted~~. If the employee's accrued sick leave is exhausted prior to completion of the eight-week period, the employee shall be granted additional leave, paid or unpaid, for the remainder of the period, in accordance with these rules. The appointing authority may grant leave in excess of the eight-week period. Paid leave shall not be granted in excess of that accrued. At any time during the period of leave the appointing authority may require that the employee submit written verification of continuing disability from the employee's physician or other licensed practitioner. In addition to the reason listed, subrule 63.5(2) shall also apply under the following circumstances:

**ARC 9732B****AGING, DEPARTMENT ON[17]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 231.23 and 17A.3, the Iowa Department on Aging hereby terminates the rule making initiated by its Notice of Intended Action to amend Chapter 5, “Department Fiscal Policy,” published in the Iowa Administrative Bulletin as **ARC 9576B** on June 29, 2011. The amendments were also Adopted and Filed Emergency as **ARC 9577B** and published on the same date.

The period for comments passed without receipt by the Department of any public comments requiring changes to the amendments as they appeared in the Iowa Administrative Bulletin on June 29, 2011. The Iowa Department on Aging finds no further need to proceed with rule making for **ARC 9576B**.

**ARC 9733B****AGING, DEPARTMENT ON[17]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 231.23 and 17A.3, the Iowa Department on Aging hereby gives Notice of Intended Action to rescind Chapter 10, “Senior Internship Program (SIP),” Iowa Administrative Code, and to adopt a new Chapter 10 with the same title.

The proposed rules in Chapter 10 are necessary to respond to a 25 percent reduction in federal program funding. The new Chapter 10 has been updated to comply with recent changes in regulations and policy as mandated by the United States Department of Labor. The majority of the changes are the result of updated terminology and change in policy related to monitoring and grievance procedures.

Any interested person may make written suggestions or comments on the proposed rules on or before September 27, 2011. Such written comments or suggestions should be directed to Kimberly Murphy, Iowa Department on Aging, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [kimberly.murphy@iowa.gov](mailto:kimberly.murphy@iowa.gov).

After analysis and review of this rule making, no impact on jobs has been found.

These rules are intended to implement Iowa Code section 231.52.

The following amendment is proposed.

Rescind 17—Chapter 10 and adopt the following **new** chapter in lieu thereof:

CHAPTER 10  
SENIOR INTERNSHIP PROGRAM (SIP)

**17—10.1(231) Scope and purpose.** The senior internship program (SIP) fosters individual economic self-sufficiency, promotes useful opportunities in community service activities for unemployed and low-income persons who are aged 55 or older, and increases the number of persons who may enjoy the benefits of unsubsidized employment in both the public and private sectors. SIP is a grantee of the Community Service Employment Program, also known as Title V of the Older Americans Act.

**17—10.2(231) Definitions.** Words and phrases used in this chapter shall be as defined in 17—Chapter 1 unless the context of the rule indicates otherwise. The following definitions also apply to this chapter.

AGING, DEPARTMENT ON[17](cont'd)

*“Assessment of job skills”* means a process by which the senior internship program coordinator develops a written history of the work experience and related qualities that an individual possesses that would make the individual marketable as an employee.

*“Authorized position”* means an enrollment opportunity with the Community Service Employment Program, or Title V, allocated by the department during a program year.

*“Community service assignment”* means part-time, temporary training paid with grant funds in projects at host agencies through which eligible individuals are engaged in community service and receive work experience and job skills that can lead to unsubsidized employment.

*“Equitable distribution”* means the ratio of the total Title V authorized positions operated by the department and national sponsors compared to the number of authorized positions established on the basis of the eligible population.

*“Host agency”* means a public agency, private nonprofit organization, or private sector employer, other than a political party, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, which provides a training site and supervision for a participant.

*“Individual employment plan”* or *“IEP”* means the plan developed in partnership with a participant to reflect the participant’s needs as indicated by the assessment, as well as the expressed interests and desires of the participant.

*“Low income”* means any person or persons whose actual individual or family income is not more than 125 percent of the poverty guidelines issued annually by the Department of Health and Human Services (DHHS) in accordance with Section 507(2) of the Older Americans Act.

*“National sponsor”* means Experience Works, AARP, Senior Services of America, Inc., or any other national organization which is allocated positions by the U.S. Department of Labor.

*“One-stop delivery system”* means a workforce system connecting employment, education, and training services into a coherent network of resources at the local, state, and national levels.

*“Participant”* means an individual who is determined to be eligible for the SCSEP, is given a community service assignment, or is receiving any services funded by the program.

*“Physical examination”* means a medical examination performed by a physician or a medical professional under the supervision of a physician to determine if a participant is capable of fulfilling the duties of a training assignment.

*“Physical examination waiver”* means a signed statement by a participant or an applicant which verifies that the participant or applicant was offered the opportunity to take a physical examination but refused.

*“Quarterly progress report”* means the report on participant activity and characteristics submitted to the U.S. Department of Labor from information gathered from the subproject sponsors at the end of every three-month period during the fiscal year.

*“Senior Community Services Employment Program”* or *“SCSEP”* means the U.S. Department of Labor’s commonly referred to name for the Title V program.

*“Senior internship program”* or *“SIP”* means the program established under Iowa Code section 231.52.

*“Senior internship program coordinator”* means a person employed by the subproject sponsor whose responsibility is to develop jobs, advocate for the employment of eligible individuals, and provide employment services for eligible individuals, including Title V participants.

*“Subproject sponsor”* means a public or private nonprofit organization that provides program services on behalf of the grantee. Subproject sponsors are required to follow all applicable laws, rules, regulations and policy advisories.

*“Supportive services”* means services to enable a participant to successfully participate in the community services employment program which may include the payment of reasonable cost of transportation, health and medical services, special job-related or personal counseling, incidentals (such as work shoes, badges, uniforms, eyeglasses, and tools), child and adult care, temporary shelter, and follow-up services.

*“Termination”* means a separation from the program.

*“Title V”* means that portion of the federal Older Americans Act with that designation.

## AGING, DEPARTMENT ON[17](cont'd)

“*Training site*” means the actual location where participants perform their duties.

“*Unsubsidized employment*” means a position where wages, fringe benefits and other expenses for a terminated participant are not paid with SIP funds.

“*Workforce Investment Act of 1998*” means the law providing the framework for a national workforce preparation and employment system designed to meet both the needs of the nation’s businesses and the needs of job seekers and those who want to further their careers.

**17—10.3(231) Eligibility for service.**

**10.3(1)** To be eligible for the SIP Title V subsidized employment program, participants shall meet the following criteria:

- a. Be aged 55 or older;
- b. Be unemployed; and
- c. Meet income guidelines established annually by the U.S. Department of Health and Human Services (DHHS) relating to Title V eligibility.

**10.3(2)** Priority eligibility. A person who is eligible for Title V and who has priority status as defined in the Older Americans Act, Section 518, will be given first consideration for a Title V position.

**17—10.4(231) Funding.**

**10.4(1)** SIP shall be funded by:

- a. Title V of the Older Americans Act;
- b. SIP state appropriations; and
- c. Other nonfederal sources.

**10.4(2)** Title V funds and state funds shall be allotted among the SIP subproject sponsors according to the number of Title V slots designated for contracted projects.

**10.4(3)** If two or more subproject sponsors combine resources, the subproject sponsors shall be treated as one agency for funding purposes.

**10.4(4)** SIP state funds shall not be carried over.

**10.4(5)** Federal Title V funds and SIP state appropriations shall be allocated through a contractual agreement between the department and the subproject sponsor.

**17—10.5(231) Program requirements.**

**10.5(1) Participating agencies.** Public, private and not-for-profit organizations are eligible to respond to a request for proposal (RFP). Agencies will be selected to operate SIP through the request for proposal process, and the selected agencies will become subproject sponsors.

**10.5(2) Subproject sponsor responsibilities.** Subproject sponsor responsibilities for SIP shall include the following:

- a. Implementation of recruitment methods that ensure that the maximum number of eligible individuals have access to and participate in employment opportunities and the Title V program;
- b. Designation of a member of the sponsor’s staff as a senior internship program coordinator to ensure program performance;
- c. Establish procedures and rules in accordance with Title V of the Older Americans Act;
- d. List all vacant positions with the local workforce development center;
- e. Enroll individuals in the Title V program according to the priorities established by the U.S. Department of Labor;
- f. Ensure that recruitment and outreach efforts are targeted toward minority, limited-English-speaking eligible individuals and individuals with the greatest economic need;
- g. Meet the performance measures established in the request for proposal;
- h. Develop job opportunities for job-ready participants by the following methods:
  - (1) Coordinate with the local workforce development center in registering and placing older workers;

## AGING, DEPARTMENT ON[17](cont'd)

- (2) Contact and educate private employers concerning the resources older workers bring to the labor force and assist the employer in developing job sharing, job restructuring and other techniques to increase opportunities for older workers;
- (3) Encourage host agencies to employ the participant in their regular workforce; and
- (4) Coordinate with other local employment and training programs in identifying jobs or training opportunities for participants;
  - i.* Follow up with each participant according to the U.S. Department of Labor's Data Collection Handbook and effectuate reenrollment for those participants found to be unemployed;
  - j.* Assist participants in accessing approved training sessions;
  - k.* Provide participants and host agencies with orientation to program purposes, goals and requirements;
  - l.* Provide access to supportive services to the participant during participation in the SIP and in the first 12 months of unsubsidized employment;
  - m.* Provide written training assignment descriptions to participants before the participants' assignment to a host agency;
  - n.* Provide each participant with a copy of the host agency grievance procedures, the subproject sponsor's grievance procedures, and the SIP's grievance procedures as outlined in this chapter;
  - o.* Complete an individual employment plan (IEP) for each participant based on an assessment conducted by the subproject sponsor and update both documents with the participant no less than twice in a 12-month period for use as an ongoing employment plan;
  - p.* Maintain the authorized enrollment level;
  - q.* Perform monitoring and safety evaluations of each host agency at least annually;
  - r.* Coordinate and cooperate with national sponsors in the establishment of authorized positions in each county in accordance with equitable distribution requirements as appropriate;
  - s.* Maintain records and reports required by the U.S. Department of Labor and the department;
  - t.* Comply with maintenance of effort (MOE) requirements; and
  - u.* Follow U.S. Department of Labor policy on match and program income.

**10.5(3) *Failure to meet RFP performance measures.*** A subproject sponsor who fails to meet the performance standards outlined in the RFP shall be subject to the following:

- a.* The first year a subproject sponsor fails to meet required performance measures, technical assistance will be provided and a corrective action plan will be required.
- b.* After the second consecutive year of failure to meet required performance measures, the funds and Title V positions will be reallocated.

**10.5(4) *Program coordination with one-stop delivery system.***

- a.* Subproject sponsors shall coordinate the SIP with the one-stop delivery system as established under Section 134(c) of the Workforce Investment Act of 1998 (29 U.S.C. 2864(c)) to ensure opportunities for unsubsidized employment.
- b.* Subproject sponsors shall enter into a memorandum of understanding with the local workforce investment board in accordance with Section 121(c) of the Workforce Investment Act of 1998.
- c.* Subproject sponsors shall provide a copy of the current memorandum of understanding to the department upon request.

**10.5(5) *Department responsibilities.*** The department shall:

- a.* Issue a request for proposal for application for SIP funds;
- b.* Monitor subproject sponsors at least annually as required in this chapter;
- c.* Provide training and technical assistance to subproject sponsors;
- d.* Provide training workshops for SIP coordinators and other subproject sponsor employment staff, subject to availability of funding;
- e.* Coordinate the allocation of authorized positions with national sponsors according to equitable distribution requirements;
- f.* Report to the U.S. Department of Labor annually on the status of equitable distribution efforts;

## AGING, DEPARTMENT ON[17](cont'd)

*g.* When required by the U.S. Department of Labor, submit to the governor a state senior employment services coordination plan consistent with the provisions of the Older Americans Act, Title V;

*h.* Report to the U.S. Department of Labor as required by Title V of the Older Americans Act;

*i.* Coordinate the SIP with the department of workforce development, the department of education, the economic development authority, and other agencies which provide employment services to older Iowans; and

*j.* Maintain records as required by 17—subrule 5.13(1).

**10.5(6) *Grievance procedures.*** The department shall resolve grievances of applicants, participants, subproject sponsors and host agencies by following these procedures:

*a.* Any adverse action taken against a participant shall be issued to the participant in writing, stating the reasons for the determination, the participant's right to appeal, and the procedures to follow in the appeal process.

*b.* Subproject sponsors shall develop complaint procedures and an appeal process to resolve any issue arising between the sponsor and a participant or applicant. Procedures shall provide the following as a minimum:

(1) An opportunity for an informal conference and immediate resolution at the lowest level possible;

(2) Formal procedures for filing the complaint in writing for review by the subproject sponsor or the designee of the subproject sponsor; and

(3) The right of the participant to appeal the subproject sponsor's final decision in writing to the department within 15 days of the date of the decision.

*c.* All lower-level appeals provided by the subproject sponsor must be exhausted before appealing to the department.

*d.* The department shall determine whether the complaint is of a nature to initiate an informal review or a contested case proceeding as set forth in rule 17—2.9(231) and 17—Chapter 13.

*e.* Complaints may be appealed to the U.S. Department of Labor or the Office of Civil Rights at the U.S. Department of Labor according to the rules and policy established by the U.S. Department of Labor and procedures provided in 20 CFR Part 641.910.

**17—10.6(231) Selection process to determine SIP subproject sponsors.**

**10.6(1) *Request for proposal.*** SIP funding shall be allocated through a request for proposal (RFP) process as mandated by the Iowa department of administrative services. The subproject sponsor shall be a public, private or nonprofit organization with proven management or administrative capabilities to provide employment and training services to older workers.

**10.6(2) *Contract award.***

*a.* Contracts will be awarded following the request for proposal competition and may be renewed for a one-year budget period on a noncompetitive basis. Awards will be subject to availability of funds, satisfactory progress of the project, and a determination that continued funding is in the best interest of the department and the project.

*b.* At the department's discretion, approved positions and funds may be reallocated from one subproject sponsor to another during the program year to further achieve the required performance levels.

**10.6(3) *Appeal of decision.*** An adversely affected party may appeal the proposed contract award. The appeal shall be filed within 30 calendar days of receipt of notice of nonaward. The letter of appeal shall be in writing and shall be delivered to the Director, Iowa Department on Aging, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319.

**17—10.7(231) Monitoring and record keeping.**

**10.7(1) *Subproject sponsor duties.*** The subproject sponsor shall:

*a.* Submit performance, fiscal and program reports to the department in accordance with procedures established by the department;

AGING, DEPARTMENT ON[17](cont'd)

*b.* Maintain files on each Title V participant containing the following: Immigration and Naturalization Service I-9 (Proof of Citizenship), application, enrollment form, recertifications (if applicable), skills assessments, training record, terms of employment agreement, waiver of physical examination, individual employment plan (IEP), job description, performance evaluations, disciplinary actions, payroll records, and termination forms (if applicable); and

*c.* Maintain documentation for each host agency, which shall include:

(1) The host agency or training site agreement containing relevant program requirements;

(2) The 501(c)(3) documentation from the Internal Revenue Service, if the host agency is not an agency of government;

(3) Evidence that the host agency or training site participant supervisor has received orientation; and

(4) Host agency or training site annual monitoring and safety evaluation reports.

**10.7(2) Department duties.** The department shall:

*a.* Conduct annual evaluations of the SIP through desk or on-site monitoring;

*b.* Inform the subproject sponsor, in writing, of findings and recommended corrective actions. Assessment reports and responses shall be kept on file at the department and shall be open to inspection by authorized state and federal officials;

*c.* Maintain files on Title V participants that include applications, eligibility recertifications, physical examination waivers, and termination forms (if applicable); and

*d.* Maintain financial records as required by statute, regulation, administrative rule, or technical bulletin.

**17—10.8(231) Severability.** Should any rule, subrule, paragraph, phrase, sentence or clause of this chapter be declared invalid or unconstitutional for any reason, the remainder of this chapter shall not be affected thereby.

These rules are intended to implement Iowa Code section 231.52.

## ARC 9745B

### CAPITAL INVESTMENT BOARD, IOWA[123]

#### 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 15E.63, the Iowa Capital Investment Board hereby gives Notice of Intended Action to amend Chapter 1, “Iowa Capital Investment Board—Administration,” and Chapter 2, “Tax Credits for Investments in Qualifying Businesses and Community-Based Seed Capital Funds,” Iowa Administrative Code.

These amendments are proposed as a result of 2011 Iowa Acts, Senate File 517.

Items 1 and 2 amend rule 123—1.6(15E) to reflect the current duties of the Iowa Capital Investment Board.

Item 3 amends 123—Chapter 2 by adding new rule 123—2.11(15E) to provide that responsibilities for the tax credit for investments in qualifying businesses and community-based seed capital funds have been transferred from the Iowa Capital Investment Board to the Iowa Economic Development Authority.

Item 4 amends the implementation clause for 123—Chapter 2.

These amendments are being proposed by the Department of Revenue on behalf of the Iowa Capital Investment Board pursuant to an Administrative Services Agreement between the Department and the Board.

## CAPITAL INVESTMENT BOARD, IOWA[123](cont'd)

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 10, 2011, to the Iowa Capital Investment Board, in care of the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 27, 2011. Such written comments should be directed to the Iowa Capital Investment Board, in care of the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Iowa Capital Investment Board, in care of the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 27, 2011.

After analysis and review of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code section 15E.42 as amended by 2011 Iowa Acts, Senate File 517.

The following amendments are proposed.

ITEM 1. Amend rule 123—1.6(15E) as follows:

**123—1.6(15E) Duties of the board.** The primary duties of the board include the following:

~~1.6(1) To develop a system for issuance, registration and authorization of tax credits for investments in qualifying businesses and community-based seed capital funds as provided in 2002 Iowa Acts, House File 2271, section 3.~~

~~1.6(2) To establish the establishment of criteria and procedures for the issuance, transfer and redemption of contingent tax credits for investments made to the Iowa fund of funds as provided in 2002 Iowa Acts, House File 2078, section 6 Iowa Code section 15E.63.~~

~~1.6(3) To establish a system for the issuance and redemption of tax credits for investments in venture capital funds as provided in 2002 Iowa Acts, House File 2586, section 1.~~

~~1.6(4) On or before December 31 of the calendar year following the end of the immediately preceding fiscal year, to publish and present to the governor and the general assembly an annual report on the activities conducted pursuant to rule 123—2.1(15E). This report shall include a listing of eligible qualifying businesses and community-based seed capital funds and the number of tax credit certificates and the amount of tax credits issued.~~

ITEM 2. Amend **123—Chapter 1**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 15E as amended by 2002 Iowa Acts, House Files 2078, 2271 and 2586 section 15E.42 as amended by 2011 Iowa Acts, Senate File 517.

ITEM 3. Adopt the following **new** rule 123—2.11(15E):

**123—2.11(15E) Transfer of responsibilities for administration of the program.** Effective for tax years beginning and investments made on or after January 1, 2011, the responsibility for administering

CAPITAL INVESTMENT BOARD, IOWA[123](cont'd)

the tax credits for investments in qualifying businesses and community-based seed capital funds has been transferred from the Iowa capital investment board to the Iowa economic development authority.

ITEM 4. Amend **123—Chapter 2**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter 15E and 2007 Iowa Acts, House File 923~~ section 15E.42 as amended by 2011 Iowa Acts, Senate File 517.

**ARC 9748B**

## **ECONOMIC DEVELOPMENT AUTHORITY[261]**

### **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 2011 Iowa Acts, House File 590, section 7, the Economic Development Authority hereby gives Notice of Intended Action to amend Chapter 47, “Endow Iowa Tax Credits,” Iowa Administrative Code.

The proposed amendments update the rules to reflect a statutory increase in the amount of tax credits available and add new language specifying the amount and method for calculating the maximum amount of tax credits available to individual taxpayers.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on September 27, 2011. Interested persons may submit written or oral comments by contacting Julie Lunn, Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3082.

A public hearing to receive comments about the proposed amendments will be held on September 27, 2011, from 3:30 to 4:30 p.m. at the above address in the Southeast Conference Room on the First Floor.

The Authority Board approved the amendments on August 18, 2011.

After analysis and review of this rule making, no adverse impact on jobs has been found. The increased amount of tax credits may positively impact jobs and economic growth for businesses in the state of Iowa.

These amendments are intended to implement Iowa Code sections 15E.301 to 15E.306 as amended by 2011 Iowa Acts, Senate File 302.

The following amendments are proposed.

ITEM 1. Amend rule 261—47.1(15E,83GA,SF478) as follows:

**261—47.1(15E,83GA,SF478) Purpose.** The purpose of endow Iowa tax credits is to encourage individuals, businesses, and organizations to invest in community foundations and to enhance the quality of life for citizens of this state through increased philanthropic activity.

ITEM 2. Amend rule 261—47.2(15E,83GA,SF478) as follows:

**261—47.2(15E,83GA,SF478) Definitions.**

“*Act*” means Iowa Code sections 15E.301 to 15E.306 ~~as amended by 2009 Iowa Acts, Senate File 478.~~

“*Authority*” means the economic development authority.

“*Community affiliate organization*” means a group of five or more community leaders or advocates organized for the purpose of increasing philanthropic activity in an identified community or geographic area in the state with the intention of establishing a community affiliate endowment fund.

“*Department*” or “*IDED*” means the Iowa department of economic development.

“*Endow Iowa qualified community foundation*” means a community foundation organized or operating in this state that substantially complies with the national standards for U.S. community

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

foundations established by the National Council on Foundations as determined by the ~~department~~ authority in collaboration with the Iowa Council of Foundations.

“*Endowment gift*” means an irrevocable contribution to a permanent endowment held by an endow Iowa qualified community foundation.

“*Permanent endowment fund*” means a fund held in an endow Iowa qualifying community foundation to provide benefit to charitable causes in the state of Iowa. Endowed funds are intended to exist in perpetuity, and to implement an annual spend rate not to exceed 5 percent.

“*Tax credit*” means the amount ~~an individual~~ a taxpayer may claim against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.24.

ITEM 3. Amend rule 261—47.3(15E,83GA,SF478) as follows:

**261—47.3(15E,83GA,SF478) Allocation of funds Authorization of tax credits to taxpayers.** The ~~department~~ authority shall authorize tax credits to qualified ~~individuals~~ taxpayers who provide an endowment gift to an endow Iowa qualified community foundation or a community affiliate organization affiliated with an endow Iowa qualified community foundation for a permanent endowment fund within the state of Iowa in accordance with the following provisions:

**47.3(1) and 47.3(2)** No change.

**47.3(3)** ~~The amount of tax credits authorized pursuant to this rule shall not exceed a total of \$3 million annually, plus an additional amount pursuant to Iowa Code section 99F.11(3)“e”(3). The maximum amount of tax credits granted to a single taxpayer annually shall not exceed \$100,000. The aggregate amount of tax credits available under this rule is limited according to Iowa Code section 15E.305, subsection 2. The aggregate amount is determined by taking a base authorization amount specified in Iowa Code section 15E.305, subsection 2, paragraph “a,” and adding an additional amount to be determined annually by calculating a certain percentage of the state’s gambling revenues, as provided in Iowa Code section 99F.11, subsection 3, paragraph “d,” subparagraph (3), for the prior fiscal year. For calendar year 2011 and for all subsequent calendar years, the annual base authorization amount of available tax credits is \$3.5 million. The additional amount varies each year according to the amount of gambling revenues collected in the prior year. For 2011, the aggregate amount of available tax credits is \$4,551,813. The maximum amount of tax credit that an individual taxpayer may claim is limited to 5 percent of the aggregate amount available each year. For 2011, the maximum amount of tax credit available to a single taxpayer is \$227,590.65. If the ~~department~~ authority receives applications for tax credits in excess of the amount available, the applications shall be prioritized by the date the ~~department~~ authority received the applications. If the number of applications exceeds the amount of annual tax credits available, the ~~department~~ authority shall establish a wait list for the next year’s allocation of tax credits and applications shall first be funded in the order listed on the wait list.~~

**47.3(4) to 47.3(6)** No change.

ITEM 4. Amend rule 261—47.4(15E,83GA,SF478) as follows:

**261—47.4(15E,83GA,SF478) Distribution process and review criteria.** The ~~department~~ authority shall develop and make available a standardized application pertaining to the allocation of endow Iowa tax credits.

**47.4(1) and 47.4(2)** No change.

**47.4(3)** Applications will be accepted and awarded on an ongoing basis. The ~~department~~ authority will make public by June 1 and December 1 of each calendar year the total number of requests for tax credits and the total amount of requested tax credits that have been submitted and awarded.

ITEM 5. Amend rule 261—47.5(15E,83GA,SF478) as follows:

**261—47.5(15E,83GA,SF478) Reporting requirements.** By January 31 of each calendar year, the ~~department~~ authority shall publish an annual report of the activities conducted pursuant to these rules

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

during the previous calendar year and shall submit the report to the governor and general assembly. The annual report shall include the information required by Iowa Code section 15.104(9) "h."

ITEM 6. Amend **261—Chapter 47**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 15E.301 to 15E.306 as amended by ~~2009~~ 2011 Iowa Acts, Senate File ~~478~~ 302.

**ARC 9747B****ECONOMIC DEVELOPMENT AUTHORITY[261]****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 2011 Iowa Acts, House File 590, section 7, the Economic Development Authority gives Notice of Intended Action to amend Chapter 65, "Brownfield Redevelopment Program," Iowa Administrative Code.

The amendments incorporate changes to Iowa Code provisions that establish the Brownfield and Grayfield Redevelopment Tax Credit Program. The Legislature in 2011 Iowa Acts, Senate File 514, authorized the Authority to issue up to \$5 million in tax credits from the Authority's maximum aggregate tax credit limit in Iowa Code section 15.119.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on September 27, 2011. Interested persons may submit written or oral comments by contacting Matt Rasmussen, Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3126; or E-mail [matt.rasmussen@iowa.gov](mailto:matt.rasmussen@iowa.gov).

The Authority will hold a public hearing on Tuesday, September 27, 2011, from 10 to 11 a.m. to receive comments on these amendments. The public hearing will be held in the Southeast Conference Room, First Floor, Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9746B**. The content of that submission is incorporated by reference.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 15.291, 15.292, 15.293A and 15.293B as amended by 2011 Iowa Acts, Senate File 514.

**ARC 9744B****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 13, "Issuance of Teacher Licenses and Endorsements," Iowa Administrative Code.

This amendment addresses the issue of prospective interns who are unable to secure a paid intern position. In order for a person to teach on an intern license, the person must hold a paid position as an

## EDUCATIONAL EXAMINERS BOARD[282](cont'd)

intern. There has been an increase in interns who are unable to secure paid positions, most likely as a result of the slow economy.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, September 28, 2011, 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, September 30, 2011. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to [kim.cunningham@iowa.gov](mailto:kim.cunningham@iowa.gov), or by fax to (515)281-7669.

After analysis and review of this rule making, no adverse impact on jobs has been found. This rule promotes training for teachers and recruits high quality individuals to the education profession.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend subrule 13.9(7) as follows:

**13.9(7)** *Requirements to obtain the initial license if the teacher intern does not complete the internship year.*

*a.* An initial license shall be issued upon application provided that the teacher intern has met ~~all of the following requirements~~ one of the following options:

(1) Option #1:

~~a. 1.~~ Successful completion of the coursework and competencies in the teacher intern program approved by the state board of education; and

~~b. 2.~~ Verification by a college or university that the teacher intern successfully completed the college's or university's state-approved student teaching requirements; and

~~c. 3.~~ Recommendation by a college or university offering an approved teacher intern program that the individual is eligible for an initial license.

(2) Option #2:

1. Successful completion of the coursework and competencies in the teacher intern program approved by the state board of education; and

2. Verification by the approved teacher intern program that the teacher intern successfully completed 40 days of paid substitute teaching of which at least 60 percent of the time shall be in the intern's endorsement area; and

3. Verification by the teacher intern program that the teacher intern successfully completed 40 days of co-teaching; and

4. Recommendation by the approved teacher intern program that the individual is eligible for an initial license.

~~a. b.~~ At the board's request, the teacher intern shall provide to the board information including, but not limited to, the teacher intern selection and preparation program, institutional support, local school district mentor, and local school district support.

**ARC 9736B**

**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 22, “Controlling Pollution,” 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 this rule making is to ensure that certain stationary sources of carbon dioxide (CO<sub>2</sub>) emissions in Iowa are regulated in the same manner as specified in recently amended federal regulations.

The U.S. Environmental Protection Agency (EPA) recently finalized regulations deferring for a three-year period the counting of CO<sub>2</sub> emissions from biogenic sources toward PSD and Title V applicability. EPA defines biogenic CO<sub>2</sub> emissions as emissions of CO<sub>2</sub> from a stationary source that directly result from the combustion or decomposition of biologically based materials other than fossil fuels and mineral sources of carbon. Biogenic emissions of CO<sub>2</sub> include fermentation processes at ethanol plants and combustion of biomass such as wood or other vegetative matter at power plants or industrial facilities.

During this three-year deferral period, EPA states that it “will conduct a detailed examination of the science associated with biogenic CO<sub>2</sub> emissions from stationary sources. This study will consider technical issues that [EPA] must resolve in order to account for biogenic CO<sub>2</sub> emissions in ways that are scientifically sound and also manageable in practice.” At the end of the deferral period, EPA either may decide to exempt CO<sub>2</sub> emissions from biogenic sources or may instead decide to include these emissions. If EPA decides to include CO<sub>2</sub> emissions from biogenic sources, it has indicated in the preamble to the federal regulations that it will not conduct a “look-back” at facilities that, during the deferral period, did not count CO<sub>2</sub> emissions from biogenic sources toward PSD applicability.

More information on EPA’s planned study, the signed, final amendments and fact sheet for the three-year deferral, and the background information on the federal regulations are available on EPA’s Web site at <http://www.epa.gov/NSR/actions.html#2011>. More information about the state rules for greenhouse gases (GHGs) is available on the Department’s Web site at <http://www.iowadnr.gov/InsideDNR/RegulatoryAir/GreenhouseGasEmissions/TailoringRule.aspx>.

If the Department does not proceed at this time, state rules for the PSD and Title V programs will be inconsistent with federal regulations, and will be more stringent than federal regulations, which is prohibited by state law (Iowa Code section 455B.133(4)).

The Department has seven permitting projects in-house that are potentially affected by this rule making. If biogenic emissions are not deferred, at least six of these projects would very likely need to go through PSD review for greenhouse gas emissions.

Item 1 amends rule 567—22.100(455B), the definitions for the Title V program.

Title V requires that an affected facility obtain a Title V operating permit. The Title V operating permit, which is renewed every five years, contains all air emission control requirements that apply to the facility, including the requirements established through construction permitting.

Specifically, Item 1 revises the definition of “subject to regulation.” The amendment to this definition is identical to the federal amendments (see 40 CFR 70.2, definition of “subject to regulation,” as amended on July 20, 2011). The amendment states that CO<sub>2</sub> emissions from biogenic sources (explained in the amendment) are deferred from counting toward Title V program applicability for a period of three years, until July 21, 2014.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Item 2 amends the introductory paragraph of rule 567—33.1(455B) to update the date of the new federal PSD amendments being implemented through this rule making.

Item 3 amends subrule 33.3(1), the definitions for the PSD program.

New source review (NSR) is a federal term for review and preconstruction permitting of new or modified stationary sources of air pollution. The PSD program is a component of NSR that includes procedures to ensure that air quality standards are maintained. In general, the PSD program requires that an affected facility obtain a PSD permit specifying how the facility will control emissions. The permit requires the facility to apply Best Available Control Technology (BACT), which is determined on a case-by-case basis taking into account, among other factors, the cost and effectiveness of the control. The specific nature of the project determines whether it is subject to PSD requirements for GHGs.

Specifically, Item 3 amends the definition of “subject to regulation” for the PSD program. The definition includes the definition for “tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e).” The amendment to this definition is identical to the federal amendment for the Tailoring Rule (see 40 CFR 52.21(b)(49) as amended on July 20, 2011). The amendment states that CO<sub>2</sub> emissions from biogenic sources (explained in the amendment) are deferred from counting toward PSD program applicability for a period of three years, until July 21, 2014.

Because of the urgent need expressed by stakeholders to expedite this rule making, the Department is proposing that these amendments be Adopted and Filed Emergency After Notice so that they would become effective upon the date of filing with the Administrative Rules Coordinator. The amendments would confer a benefit or remove a restriction on a segment of the public, according to the provisions of Iowa Code section 17A.5(2)“b”(2). Under this schedule, the Department will accept comments following publication of this Notice of Intended Action through October 11, 2011. The Department plans to present the final amendments for adoption to the Environmental Protection Commission on November 15, 2011, which will allow the Department to file the Adopted and Filed Emergency After Notice rule making no later than November 16, 2011, at which time the amendments would become effective.

Any person may make written suggestions or comments on the proposed amendments on or before October 11, 2011. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324; fax (515)242-5094; or by E-mail to [christine.paulson@dnr.iowa.gov](mailto:christine.paulson@dnr.iowa.gov).

A public hearing will be held on Tuesday, October 11, 2011, at 2 p.m. in the conference rooms at the Department’s Air Quality Bureau office located at 7900 Hickman Road, Windsor Heights, Iowa. All comments must be received no later than 4:30 p.m. on Tuesday, October 11, 2011.

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, or by E-mail at [christine.paulson@dnr.iowa.gov](mailto:christine.paulson@dnr.iowa.gov) to advise of any specific needs.

The jobs impact of this rule making cannot be determined. Insufficient information exists to determine what impact the proposed amendments will have on private sector jobs and employment opportunities in the state. The Department requested stakeholder input and did not receive any information regarding jobs impact in the state because of this rule making. However, the Department estimates that affected facilities will experience reduced regulatory burden as a result of this rule making because they will not be subject to the PSD or Title V programs during the deferral period. Therefore, facilities affected by this rule making should experience a positive impact on jobs.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Amend rule **567—22.100(455B)**, definition of “Subject to regulation,” numbered paragraph “2,” as follows:

2. The term “tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)” shall represent an amount of GHGs emitted and shall be computed by multiplying the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended on October 30, 2009) and summing the resultant value for each to compute a tpy CO<sub>2</sub>e. For purposes of this definition, prior to

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

ITEM 2. Amend rule 567—33.1(455B), introductory paragraph, as follows:

**567—33.1(455B) Purpose.** This chapter implements the major New Source Review (NSR) program contained in Part C of Title I of the federal Clean Air Act as amended on November 15, 1990, and as promulgated under 40 CFR 51.166 and 52.21 as amended through ~~November 29, 2005~~ July 20, 2011. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part C of the Clean Air Act as amended on November 15, 1990. In areas that do not meet the national ambient air quality standards (NAAQS), the nonattainment NSR program applies. The requirements for the nonattainment NSR program are set forth in 567—22.5(455B) and 567—22.6(455B). In areas that meet the NAAQS, the PSD program applies. Collectively, the nonattainment NSR and PSD programs are referred to as the major NSR program.

ITEM 3. Amend subrule **33.3(1)**, definition of “Subject to regulation,” numbered paragraph “2,” as follows:

2. For purposes of paragraphs “3,” “4,” and “5,” the term “tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)” shall represent an amount of GHGs emitted and shall be computed as follows:

(a) Multiply the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, “Global Warming Potentials,” (as amended on October 30, 2009), ~~and~~. For purposes of this definition, prior to July 21, 2014, the mass of the greenhouse gas carbon dioxide shall not include carbon dioxide emissions resulting from the combustion or decomposition of non-fossilized and biodegradable organic material originating from plants, animals, or micro-organisms (including products, by-products, residues and waste from agriculture, forestry and related industries as well as the non-fossilized and biodegradable organic fractions of industrial and municipal wastes, including gases and liquids recovered from the decomposition of non-fossilized and biodegradable organic material).

(b) Sum the resultant value from paragraph (a) for each gas to compute a tpy CO<sub>2</sub>e.

**ARC 9737B**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 455B.105, 455B.113 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 40, “Scope of Division—Definitions—Forms—Rules of Practice,” Chapter 41, “Water Supplies,” Chapter 42, “Public Notification, Public Education, Consumer Confidence Reports, Reporting, and Record Maintenance,” Chapter 43, “Water Supplies—Design and Operation,” and Chapter 83, “Laboratory Certification,” Iowa Administrative Code.

In January 2006, the U.S. Environmental Protection Agency (EPA) promulgated two new significant federal rules pertaining to drinking water: the Stage 2 Disinfectants and Disinfection Byproducts Rule (Stage 2 DBPR) and the Long-Term 2 Enhanced Surface Water Treatment Rule (LT2 ESWTR).

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In addition, other changes, primarily in analytical methods, were made between January 2004 and March 2007 to existing federal drinking water rules. States are expected to incorporate these federal rule provisions into state program rules in order to maintain primacy in the drinking water program. These proposed amendments, if adopted, will accomplish that end. In addition, other changes to the Department's drinking water rules are being proposed.

Proposed changes are summarized below by chapter.

Chapter 40: The amendments add a reference to Chapter 38 and remove a reference to Chapter 47 from the rule pertaining to the scope of the division (Chapters 38 and 40 contain private and public drinking water supply rules); add definitions for the following: bag filters, bank filtration, cartridge filters, combined distribution system, finished water, flowing stream, GAC20, lake/reservoir, locational running annual average (LRAA), membrane filtration, plant intake, presedimentation, significant deficiency, two-stage lime softening, uncovered finished water storage facility, and wholesale system; amend definitions of consecutive public water supply, GAC10, nontransient noncommunity water system, and Ten States Standards; correct the name of the University Hygienic Laboratory to State Hygienic Laboratory; and correct a typographic error.

Chapter 41: The amendments require systems collecting at least six routine total coliform samples to do so on separate days to meet the federal rule; amend analytical methods; adopt Stage 2 DBPR and rescind parts of the existing Stage 1 disinfectants/disinfection byproducts rule that are no longer applicable; update the uranium detection limit; and make other minor corrections.

Chapter 42: The amendments include the public notification and consumer confidence report requirements for the new LT2 ESWTR and Stage 2 DBPR.

Chapter 43: The amendments include the requirement of the Department to maintain a list of certified operators; update the construction standards to the 2007 edition of Ten States Standards and 2010 American Water Works Standards; clarify the duration of a construction permit; update the best available technology for disinfection byproducts; require at least 0.5 log inactivation of *Giardia lamblia* cysts in treatment of surface or influenced groundwater sources; clarify CT ratio requirements; include the requirements for the new LT2 ESWTR and Stage 2 DBPR; remove outdated Stage 1 DBPR requirements; adopt the optimization goals for turbidity; adopt new CT tables for *Cryptosporidium* treatment; and correct rule citations.

Chapter 83: The amendments rescind a reference to Chapter 47; correct the name of the University Hygienic Laboratory to State Hygienic Laboratory; correct certification of SHL to be acceptable to EPA; update the drinking water disinfection byproduct certification requirements from Stage 1 DBPR to Stage 2 DBPR.

These chapters and their amendments were reviewed by the water supply technical advisory group at a meeting held on January 27, 2011. The group is comprised of individuals representing a wide variety of water supply stakeholders, including professional drinking water organizations, certified operators, certified environmental laboratories, environmental interests, public water supplies, consulting engineers, and other state agencies. A second meeting with the group was held on June 21, 2011, to review the jobs impact statement, fiscal impact statement, and Governor's preclearance form.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 29, 2011. Such written materials should be directed to Diane Moles, Water Supply Engineering Section, Department of Natural Resources, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309-4611; telephone (515)725-0281; fax (515)725-0348; or E-mail [diane.moles@dnr.iowa.gov](mailto:diane.moles@dnr.iowa.gov). Persons who wish to convey their views orally should contact the Water Supply Section at (515)725-0281 or at the Water Supply Section offices at 401 SW 7th Street, Suite M, Des Moines, Iowa.

Oral or written comments will also be accepted at a public hearing that will be held September 28, 2011, at 11 a.m. in the conference rooms of the Water Supply Section office at 401 SW 7th Street, Suite I, 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 amendments. All comments must be received no later than 4:30 p.m. on September 29, 2011.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 17A.3(1)“b,” 455B.113 to 455B.115, 455B.171 to 455B.188, and 455B.190 to 455B.192.

The following amendments are proposed.

ITEM 1. Amend rule 567—40.1(455B) as follows:

**567—40.1(455B) Scope of division.** The department conducts the public water supply program; ~~provides grants to counties,~~ and establishes minimum standards for the construction of private water supply systems. The public water supply program includes the following: the establishment of drinking water standards, including maximum contaminant levels, treatment techniques, maximum residual disinfectant levels, action levels, monitoring, viability assessment, consumer confidence reporting, public notice requirements, public water supply system operator certification standards, environmental drinking water laboratory certification program, and a state revolving loan program consistent with the federal Safe Drinking Water Act, and the establishment of construction standards. The construction, modification and operation of any public water supply system requires a specific permit from the department. Certain construction permits are issued upon certification by a licensed professional engineer that a project meets standards, and, in certain instances, permits are issued by local authorities pursuant to 567—Chapter 9. Private water supplies are regulated by local boards of health.

Chapter 38 contains requirements for private water well construction permits, including test wells and monitoring wells.

Chapter 39 contains requirements for the proper closure or abandonment of wells.

Chapter 40 includes rules of practice, including designation of forms, applicable to the public in the department’s administration of the subject matter of this division.

Chapter 41 contains the drinking water standards and specific monitoring requirements for the public water supply program.

Chapter 42 contains the public notification, public education, consumer confidence reporting, and record-keeping requirements for the public water supply program.

Chapter 43 contains specific design, construction, fee, operating, and operation permit requirements for the public water supply program.

Chapter 44 contains the drinking water state revolving fund program for the public water supply program.

~~Chapter 47 contains provisions for county grants for creating programs for (1) the testing of private water supply wells, (2) rehabilitation of private wells, and (3) the proper closure of private, abandoned wells within the jurisdiction of the county.~~

Chapter 49 contains the nonpublic water supply well requirements.

Chapters 50 to 52 contain the provisions for water withdrawal and allocation.

Chapter 55 contains the provisions for public water supply aquifer storage and recovery.

Chapter 81 contains the provisions for the certification of public water supply system operators.

Chapter 82 contains the provisions for the certification of water well contractors.

Chapter 83 contains the provisions for the certification of laboratories to provide environmental testing of drinking water supplies.

ITEM 2. Amend rule **567—40.2(455B)**, definitions of “Consecutive public water supply,” “GAC10,” “Nontransient noncommunity water system” and “Ten States Standards,” as follows:

“Consecutive public water supply” means an active public water supply which purchases or obtains all or a portion of its water from another, separate public water supply, also called a wholesale system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*"GAC10"* means granular activated carbon filter beds with an empty-bed contact time of ten minutes based on average daily flow and a carbon reactivation frequency of every 180 days, except that the reactivation frequency for GAC10 is 120 days when used as a best available technology for compliance with the maximum contaminant level locational running annual average for total trihalomethanes and haloacetic acids.

*"Nontransient noncommunity water system"* or *"NTNC"* means a public water system other than a community water system which regularly serves at least 25 of the same persons four hours or more per day, for four or more days per week, for 26 or more weeks per year. Examples of NTNCs are schools, day-care centers, factories, offices and other public water systems which provide water to a fixed population of 25 or more people. In addition, other service areas, such as hotels, resorts, hospitals and restaurants, are considered as NTNCs if they employ 25 or more people and are open regularly serve at least 25 or more of the same persons for four or more hours per day, for four or more days per week, for 26 or more weeks of the year.

*"Ten States Standards"* means the "Recommended Standards for Water Works," 2003 2007 edition as adopted by the Great Lakes—Upper Mississippi River Board of State Sanitary Engineers and Provincial Public Health and Environmental Managers.

ITEM 3. Adopt the following **new** definitions in rule **567—40.2(455B)**:

*"Bag filters"* means pressure-driven separation devices that remove particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to the outside.

*"Bank filtration"* means a water treatment process that uses a well to recover surface water that has naturally infiltrated into groundwater through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s).

*"Cartridge filters"* means pressure-driven separation devices that remove particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

*"Combined distribution system (CDS)"* means the interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.

*"Finished water"* means water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as treatment necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of corrosion chemicals).

*"Flowing stream"* means a course of running water flowing in a definite channel.

*"GAC20"* means granular activated carbon filter beds with an empty-bed contact time of 20 minutes based on average daily flow and a carbon reactivation frequency of every 240 days.

*"Lake or reservoir"* means a natural or man-made basin or hollow on the Earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

*"Locational running annual average (LRAA)"* means the average of the analytical results for samples taken at a particular monitoring location during the previous four calendar quarters.

*"Membrane filtration"* means a pressure- or vacuum-driven separation process in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes the common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

*"Plant intake"* means the works or structures at the head of a conduit through which water is diverted from a surface water source (e.g., river, reservoir, or lake) into the treatment plant.

*"Presedimentation"* means a preliminary treatment process used to remove gravel, sand, and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

“*Significant deficiency*” includes a defect in design, operation, or maintenance, or a failure or malfunction of the sources, treatment, storage, or distribution system that the department determines to be causing, or has the potential for causing the introduction of contamination into the water delivered to consumers.

“*Two-stage lime softening*” means a process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

“*Uncovered finished water storage facility*” means a tank, reservoir, or other facility used to store water that will undergo no further treatment to reduce microbial pathogens except residual disinfection and is directly open to the atmosphere. Such facilities are prohibited.

“*Wholesale system*” means a public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

ITEM 4. Amend rule 567—40.3(17A,455B), introductory paragraph, as follows:

**567—40.3(17A,455B) Forms.** The following forms are used by the public to apply for department approvals and to report on activities related to the public water supply program of the department. All forms may be obtained from the Environmental Services Division, Administrative Support Station, Department of Natural Resources, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034. Properly completed application forms shall be submitted to the Water Supply Section, Environmental Services Division. Water Supply System Monthly and Other Operation Reporting forms shall be submitted to the appropriate field office (see 567—subrule 42.4(3)). Properly completed laboratory forms (reference 567—Chapter 83) shall be submitted to the University State Hygienic Laboratory or as otherwise designated by the department.

ITEM 5. Amend subrule **40.3(1)**, Schedule No. “2c,” as follows:

Schedule No.	Name of Form	Form Number
“2c”	<del>Notification</del> <u>Notification of Minor Water Main Construction</u>	542-3152

ITEM 6. Amend numbered paragraph **41.2(1)“c”(1)“2”** as follows:

2. The public water supply system must collect samples at regular time intervals throughout the month, except that a system which uses only groundwater (~~except groundwater under the direct influence of surface water, as defined in 567—paragraph 43.5(1)“b”~~) and serves 4,900 persons or fewer, that is not under the direct influence of surface water and which is required to collect five or fewer routine coliform bacteria samples per month may collect all required samples on a single day if they are taken from different sites. A system that uses only groundwater and adds a chemical disinfectant or provides water with a disinfectant must measure the residual disinfectant concentration at the same points in the distribution system and at the same time as total coliform bacteria samples are collected. A system that uses surface water or IGW must comply with the requirements specified in 567—paragraph 43.5(4)“b”(2)“2.” The system shall report the residual disinfectant concentration to the laboratory with the bacteria sample, and comply with the applicable reporting requirements of 567—subrule 42.4(3).

ITEM 7. Amend subparagraph **41.2(1)“e”(3)** as follows:

(3) Total coliform bacteria analytical methodology. Public water supply systems must conduct total coliform analyses in accordance with one of the analytical methods in the following table:

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Organism	Methodology <sup>12</sup>	Citation <sup>1</sup>
Total Coliforms <sup>2</sup>	Total Coliform Fermentation Technique <sup>3,4,5</sup>	9221A, B
	Total Coliform Membrane Filter Technique <sup>6</sup>	9222A, B, C
	Presence-Absence (P-A) Coliform Test <sup>5,7</sup>	9221D
	ONPG-MUG Test <sup>8</sup>	9223
	Colisure Test <sup>9</sup>	
	E*Colite Test <sup>10</sup>	
	m-ColiBlue24 Test <sup>11</sup>	
	Readycult Coliforms 100 Presence/Absence Test <sup>13</sup>	
	Membrane Filter Technique Using Chromocult Coliform Agar <sup>14</sup>	
	Colitag Test <sup>15</sup>	

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes 1, 6, 8, 9, 10, 11, 13, and 14, and 15 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at (800)426-4791. Documents may be inspected at EPA's Drinking Water Docket, EPA West, 1301 Constitution Avenue NW, Room B102, Washington, DC 20460, telephone (202)566-2426; or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC 20408.

<sup>1</sup> to <sup>14</sup> No change.

<sup>15</sup>Colitag product for the determination of the presence/absence of total coliforms and *E. coli* is described in "Colitag Product as a Test for Detection and Identification of Coliforms and *E. coli* Bacteria in Drinking Water and Source Water as Required in National Primary Drinking Water Regulations," August 2001, available from CPI International, Inc., 5580 Skylane Blvd., Santa Rosa, CA 95403, telephone: (800)878-7654, Internet address: [www.cpiinternational.com](http://www.cpiinternational.com).

ITEM 8. Adopt the following **new** numbered paragraph **41.2(1)“e”(6)“10”**:

10. Colitag, as described in footnote 15 of the Total Coliform Methodology Table in 41.2(1)“e”(3).

ITEM 9. Amend subparagraph **41.3(1)“b”(1)** as follows:

(1) IOC MCLs. The following table specifies the MCLs for IOCs:

Contaminant	EPA Contaminant Code	Maximum Contaminant Level (mg/L)
Antimony	1074	0.006
Arsenic*	1005	0.05 (until January 23, 2006) 0.010 (beginning January 23, 2006)
Asbestos	1094	7 million fibers/liter (longer than 10 micrometers in length)
Barium	1010	2
Beryllium	1075	0.004
Cadmium	1015	0.005
Chromium	1020	0.1
Cyanide (as free Cyanide)	1024	0.2
Fluoride**	1025	4.0
Mercury	1035	0.002
Nitrate	1040	10 (as nitrogen)
Nitrite	1041	1.0 (as nitrogen)
Total Nitrate and Nitrite	1038	10 (as nitrogen)
Selenium	1045	0.05
Thallium	1085	0.002

\*The arsenic MCL changed from 0.05 mg/L to 0.010 mg/L on January 23, 2006.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

\*\*The recommended fluoride level is 1.1 milligrams per liter or the level as calculated from "Water Fluoridation, a Manual for Engineers and Technicians" Table 2-4 published by the U.S. Department of Health and Human Services, Public Health Service (September 1986). At this optimum level in drinking water, fluoride has been shown to have beneficial effects in reducing the occurrence of tooth decay.

ITEM 10. Amend subrule 41.5(1), introductory paragraph, as follows:

**41.5(1) MCLs and other requirements for organic chemicals.** Maximum contaminant levels for ~~three~~ two classes of organic chemical contaminants specified in 41.5(1) "b" apply to community water systems and nontransient noncommunity water systems as specified herein. The ~~three~~ two referenced organic chemical classes are volatile organic chemicals (VOCs); and synthetic organic chemicals (SOCs); ~~and trihalomethanes.~~

ITEM 11. Amend paragraph **41.5(1)"a"** as follows:

*a. Applicability.* The maximum contaminant levels for volatile and synthetic organic contaminants apply to community and nontransient noncommunity water systems. Compliance with the volatile and synthetic organic contaminant maximum contaminant level is calculated pursuant to 41.5(1) "b." The maximum contaminant level of 0.10 mg/L for total trihalomethanes (the sum of the concentrations of bromodichloromethane, tribromomethane (bromoform), dibromochloromethane, and trichloromethane (chloroform)) applies to all surface water community public water systems (CWS) serving 10,000 or more persons and all IGW CWS serving 10,000 or more persons until December 31, 2001, after which time the systems must comply with 41.6(455B). This 0.10 mg/L MCL also applies to all groundwater CWS serving 10,000 or more persons until December 31, 2003, after which time the systems must comply with 41.6(455B). Compliance with the maximum contaminant level for total trihalomethanes is calculated pursuant to 41.5(1) "e"(4).

ITEM 12. Amend paragraph **41.5(1)"b"** as follows:

*b. Maximum contaminant levels (MCLs) and analytical methodology for organic compounds.* The maximum contaminant levels for organic chemicals are listed in the following table in subparagraph 41.5(1) "b"(1). Analyses for the contaminants in this subrule shall be conducted using the following methods, or their equivalent as approved by EPA.

(1) Table:

ORGANIC CHEMICAL CONTAMINANTS, CODES, MCLS, ANALYTICAL METHODS,  
AND DETECTION LIMITS

Contaminant	EPA Contaminant Code	MCL (mg/L)	Methodology <sup>1</sup>	Detection Limit (mg/L)
Volatile Organic Chemicals (VOCs):				
Benzene	2990	0.005	502.2, 524.2	0.0005
Carbon tetrachloride	2982	0.005	502.2, 524.2, 551.1	0.0005
Chlorobenzene (mono)	2989	0.1	502.2, 524.2	0.0005
1,2-Dichlorobenzene (ortho)	2968	0.6	502.2, 524.2	0.0005
1,4-Dichlorobenzene (para)	2969	0.075	502.2, 524.2	0.0005
1,2-Dichloroethane	2980	0.005	502.2, 524.2	0.0005
1,1-Dichloroethylene	2977	0.007	502.2, 524.2	0.0005
cis-1,2-Dichloroethylene	2380	0.07	502.2, 524.2	0.0005
trans-1,2-Dichloroethylene	2979	0.1	502.2, 524.2	0.0005
Dichloromethane	2964	0.005	502.2, 524.2	0.0005
1,2-Dichloropropane	2983*	0.005	502.2, 524.2	0.0005
Ethylbenzene	2992	0.7	502.2, 524.2	0.0005
Styrene	2996	0.1	502.2, 524.2	0.0005
Tetrachloroethylene	2987	0.005	502.2, 524.2, 551.1	0.0005

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Contaminant	EPA Contaminant Code	MCL (mg/L)	Methodology <sup>1</sup>	Detection Limit (mg/L)
Toluene	2991	1	502.2, 524.2	0.0005
1,1,1-Trichloroethane	2981	0.2	502.2, 524.2, 551.1	0.0005
Trichloroethylene	2984	0.005	502.2, 524.2, 551.1	0.0005
1,2,4-Trichlorobenzene	2378	0.07	502.2, 524.2	0.0005
1,1,2-Trichloroethane	2985	0.005	502.2, 524.2, 551.1	0.0005
Vinyl chloride	2976	0.002	502.2, 524.2	0.0005
Xylenes (total)	2955*	10	502.2, 524.2	0.0005
Synthetic Organic Chemicals (SOCs):				
Alachlor <sup>3</sup>	2051	0.002	505, 507, 508.1, 525.2, 551.1	0.0002
Aldicarb	2047	0.003	531.1, 6610	0.0005
Aldicarb sulfone	2044	0.002	531.1, 6610	0.0008
Aldicarb sulfoxide	2043	0.004	531.1, 6610	0.0005
Atrazine <sup>3</sup>	2050	0.003	505, 507, 508.1, 525.2, 551.1, Syngenta AG-625	0.0001
Benzo(a)pyrene	2306	0.0002	525.2, 550, 550.1	0.00002
Carbofuran	2046	0.04	531.1, 531.2, 6610	0.0009
Chlordane <sup>3</sup>	2959	0.002	505, 508, 508.1, 525.2	0.0002
2,4-D <sup>6</sup> (as acids, salts, and esters)	2105	0.07	515.1, 515.2, 515.3, 515.4, 555, D5317-93	0.0001
Dalapon	2031	0.2	515.1, 515.3, 515.4, 552.1, 552.2	0.001
1,2-Dibromo-3-chloropropane (DBCP)	2931	0.0002	504.1, 551.1	0.00002
Di(2-ethylhexyl)adipate	2035	0.4	506, 525.2	0.0006
Di(2-ethylhexyl)phthalate	2039	0.006	506, 525.2	0.0006
Dinoseb <sup>6</sup>	2041	0.007	515.1, 515.2, 515.3, 515.4, 555	0.0002
Diquat	2032	0.02	549.2	0.0004
Endothall	2033	0.1	548.1	0.009
Endrin <sup>3</sup>	2005	0.002	505, 508, 508.1, 525.2, 551.1	0.00001
Ethylene dibromide (EDB)	2946	0.00005	504.1, 551.1	0.00001
Glyphosate	2034	0.7	547, 6651	0.006
Heptachlor <sup>3</sup>	2065	0.0004	505, 508, 508.1, 525.2, 551.1	0.00004
Heptachlor epoxide <sup>3</sup>	2067	0.0002	505, 508, 508.1, 525.2, 551.1	0.00002
Hexachlorobenzene <sup>3</sup>	2274	0.001	505, 508, 508.1, 525.2, 551.1	0.0001
Hexachlorocyclopentadiene <sup>3</sup>	2042	0.05	505, 508, 508.1, 525.2, 551.1	0.0001
Lindane (gamma BHC) <sup>3</sup>	2010	0.0002	505, 508, 508.1, 525.2, 551.1	0.00002
Methoxychlor <sup>3</sup>	2015	0.04	505, 508, 508.1, 525.2, 551.1	0.0001
Oxamyl	2036	0.2	531.1, 531.2, 6610	0.002
Pentachlorophenol	2326	0.001	515.1, 515.2, 515.3, 515.4, 525.2, 555, D5317-93	0.00004
Picloram <sup>3,6</sup>	2040	0.5	515.1, 515.2, 515.3, 515.4, 555, D5317-93	0.0001

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Contaminant	EPA Contaminant Code	MCL (mg/L)	Methodology <sup>1</sup>	Detection Limit (mg/L)
Polychlorinated biphenyls <sup>4</sup> (as decachlorobiphenyl) (as Arochlors) <sup>3</sup>	2383	0.0005	508A 505, 508, 508.1, 525.2	0.0001
Simazine <sup>3</sup>	2037	0.004	505, 507, 508.1, 525.2, 551.1	0.00007
2,3,7,8-TCDD (dioxin)	2063	3x10 <sup>-8</sup>	1613	5x10 <sup>-9</sup>
2,4,5-TP <sup>6</sup> (Silvex)	2110	0.05	515.1, 515.2, 515.3, 515.4, 555, D5317-93	0.0002
Toxaphene <sup>3</sup>	2020	0.003	505, 508, 508.1, 525.2	0.001
<b>Total Trihalomethanes (TTHMs)<sup>5</sup>:</b>				
Total Trihalomethanes (the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromofom), and trichloromethane (chloroform))	2950	0.10	502.2, 524.2, 551.1	

\*As of January 1, 1999, the contaminant codes for the following compounds were changed from the Iowa Contaminant Code to the EPA Contaminant Code:

Contaminant	Iowa Contaminant Code (Old)	EPA Contaminant Code (New)
1,2 Dichloropropane	2325	2983
Xylenes (total)	2974	2955

<sup>1</sup> to <sup>4</sup> No change.

<sup>5</sup>The TTHM MCL for surface water or influenced groundwater CWS and NTNC systems serving over 10,000 persons was changed to 0.080 mg/L on January 1, 2002. All remaining CWS and NTNC will be required to comply with the 0.080 mg/L MCL on January 1, 2004. See rule 41.6(455B) for additional requirements. Reserved.

<sup>6</sup>No change.

(2) Organic chemical compliance calculations (~~other than total trihalomethanes~~). Compliance with 41.5(1) "b"(1) shall be determined based on the analytical results obtained at each sampling point. If one sampling point is in violation of an MCL listed in 41.5(1) "b"(1), the system is in violation of the MCL. If a system fails to collect the required number of samples, compliance will be based on the total number of samples collected. If a sample result is less than the detection limit, zero will be used when calculating the running annual average. If the system is in violation of an MCL, the water supplier is required to give notice to the department in accordance with 567—subrule 42.4(1) and to notify the public as required by 567—42.1(455B).

1. to 3. No change.

(3) No change.

ITEM 13. Amend subrule 41.6(1), catchwords, as follows:

**41.6(1)** ~~Disinfection byproducts~~ *Stage 1 disinfection byproducts requirements.*

ITEM 14. Amend paragraph **41.6(1)"a"** as follows:

a. *Applicability.*

(1) and (2) No change.

(3) Compliance dates for this rule are based upon the source water type and the population served. Systems are required to comply with this rule as follows, unless otherwise noted. The department may assign an earlier monitoring period as part of the operation permit, but compliance with the maximum contaminant level is not required until the dates stated below.

1. ~~Surface water and IGW CWS and NTNC. CWS and NTNC systems using surface water or groundwater under the direct influence of surface water in whole or in part and which serve 10,000 or~~

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more persons must comply with this rule beginning January 1, 2002. CWS and NTNC systems serving fewer than 10,000 persons must comply with this rule beginning January 1, 2004.

2. ~~Groundwater CWS and NTNC.~~

~~• Community water systems which use a groundwater source, which serve a population of 10,000 or more individuals, and which add a disinfectant or oxidant to the water in any part of the drinking water treatment process shall monitor for only total trihalomethanes in accordance with 41.6(1)“e”(1) and (4), 41.6(1)“d,” 41.6(1)“e”(1) and (4), and 41.6(1)“f,” until December 31, 2003. The MCL for these systems is 0.010 mg/L until December 31, 2003.~~

~~• Beginning January 1, 2004, all CWS and NTNC systems using only groundwater not under the direct influence of surface water must comply with this rule.~~

~~1. CWS and NTNC systems which use surface water or groundwater under the direct influence of surface water in whole or in part and which serve 10,000 or more persons must comply with this rule beginning January 1, 2002.~~

~~2. All other CWS and NTNC systems covered by 41.6(1)“a”(1) must comply with this rule by January 1, 2004.~~

~~3. Rescinded IAB 1/7/04, effective 2/11/04.~~

(4) Consecutive systems. Consecutive systems that provide water containing a disinfectant or oxidant are required to comply with this rule. A consecutive system may be incorporated into the sampling plan of the supply that produces the water (the primary water supplier), provided:

1. There is a mutual signed agreement between the primary and consecutive system supplied by that primary system that states the primary system will be responsible for the compliance of its consecutive system with this rule, regardless of additional treatment by the consecutive system.

2. Beginning with the primary water supply, each successive consecutive system must also be included in the primary supply's sampling plan, so that there is no system with its own sampling plan between the primary supply and the consecutive supply covered by the primary supply's plan.

3. It is understood by the primary and all consecutive systems that, even if only one system in the sampling plan has a violation, all systems in the sampling plan will receive the violation and be required to conduct public notification.

4. The department receives a copy of the signed agreement and approves the sampling plan prior to the beginning of the compliance period.

If a mutual agreement is not possible, each system (the primary system and each consecutive system) is responsible for compliance with this rule for its specific system.

(5) No change.

ITEM 15. Amend paragraph 41.6(1)“b” as follows:

b. Maximum contaminant levels for disinfection byproducts.

(1) The maximum contaminant levels (MCLs) for disinfection byproducts are as follows:

Disinfection byproduct	MCL (mg/L)
Bromate	0.010
Chlorite	1.0
Haloacetic acids (HAA5)	0.060
Total trihalomethanes (TTHM)*	0.080 0.10 until December 31, 2003*

\*The MCL of 0.10 mg/L only applies to a CWS using groundwater sources that serves at least 10,000 people. Beginning January 1, 2004, the TTHM MCL for all CWS and NTNC systems regardless of source type and system size is 0.080 mg/L. The TTHM MCL changed from 0.10 mg/L to 0.080 mg/L effective January 1, 2002, for CWS serving at least 10,000 people and effective January 1, 2004, for all other CWS and NTNC systems which are subject to this rule.

(2) Beginning on the date listed in the following table, a system must comply with the total trihalomethanes MCL and the haloacetic acid MCL as a locational running annual average at each monitoring location.

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<u>System Size (number of people served)</u>	<u>Date system must comply with MCL at each sampling location*</u>
<u>Systems that are not part of a combined distribution system and systems that serve the largest population in the combined distribution system</u>	
<u>System serving at least 100,000 people</u>	<u>April 1, 2012</u>
<u>System serving 50,000-99,999 people</u>	<u>October 1, 2012</u>
<u>System serving 10,000-49,999 people</u>	<u>October 1, 2013</u>
<u>System serving fewer than 10,000 people</u>	<ul style="list-style-type: none"> <li>• <u>October 1, 2013, for all groundwater systems and for SW/IGW systems that did not collect <i>Cryptosporidium</i> source water samples</u></li> <li>• <u>October 1, 2014, for SW/IGW systems that collected <i>Cryptosporidium</i> source water samples.</u></li> </ul>
<u>Other systems that are part of a combined distribution system</u>	
<u>Consecutive or wholesale system</u>	<u>At the same time as the system with the earliest compliance date in the combined distribution system</u>

\*The department may grant up to an additional 24 months for compliance with the MCLs and operational evaluation levels if the system requires capital improvements to comply with an MCL.

ITEM 16. Amend subparagraph **41.6(1)“c”(1)** as follows:

(1) General requirements.

1. to 5. No change.

6. Each system required to monitor under the provisions of this rule or 567—43.6(455B) must develop and implement a monitoring plan. The system must maintain the plan and make it available for inspection by the department and the general public no later than 30 days following the applicable compliance dates in 41.6(1)“a”(3). All systems using surface water or groundwater under the direct influence of surface water and serving more than 3,300 people must submit a copy of the monitoring plan to the department by the applicable date in 41.6(1)“a”(3)“1.” The department may also require the plan to be submitted by any other system. After review, the department may require changes in any plan elements. The plan must include at least the following elements:

- Specific locations and schedules for collecting samples for any parameters included in this rule.
- How the system will calculate compliance with MCLs, MRDLs, and treatment techniques.
- ~~If providing water to one or more consecutive systems, and the consecutive systems have agreed to the sampling plan by the primary supplier of the water pursuant to 41.6(1)“a”(4), the sampling plan of the primary water supplier must reflect the entire distribution system.~~

7. No change.

ITEM 17. Amend subparagraph **41.6(1)“c”(2)** as follows:

(2) Bromate. Community and nontransient noncommunity systems using ozone for disinfection or oxidation must conduct monitoring for bromate.

1. No change.

2. Reduced monitoring. ~~The department may allow systems required to analyze for bromate to reduce monitoring from monthly to once per quarter if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for one year. The system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is greater than or equal to 0.05 mg/L based upon representative monthly measurements. If the running annual average source water bromide concentration is greater than or equal to 0.05 mg/L, the system must resume routine monitoring required by 41.6(1)“e”(2)“1.” A system may reduce monitoring from monthly to quarterly, if the system’s running annual average bromate concentration is less than or equal to 0.0025 mg/L based on monthly bromate measurements for the most recent four quarters. If the system previously qualified for reduced bromate monitoring and is on quarterly sampling frequency, it may remain on reduced monitoring as long as the running annual average of the bromate samples is less than or equal to 0.0025~~

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mg/L. If the running annual average of quarterly bromate samples exceeds 0.0025 mg/L, the system must resume routine bromate monitoring. Only three analytical methods may be used for bromate samples under reduced monitoring: EPA Method 317.0 Revision 2.0, Method 326.0, or Method 321.8.

ITEM 18. Amend subparagraph **41.6(1)“c”(4)** as follows:

(4) Total trihalomethanes (TTHM) and haloacetic acids (HAA5).

1. Routine monitoring. Systems must monitor at the frequency indicated in the following table. Both the TTHM and HAA5 samples must be collected as paired samples during the same time period in order for each parameter to have the same annual average period for result comparison. A paired sample is one that is collected at the same location and time and is analyzed for both TTHM and HAA5 parameters.

Routine Monitoring Frequency for TTHM and HAA5

Type of System (source water type and population served)	Minimum Monitoring Frequency	Sample Location in the Distribution System
SW/IGW <sup>3</sup> system serving ≥10,000 persons	Four water samples per quarter per treatment plant	At least 25 percent of all samples collected each quarter at locations representing maximum residence time. Remaining samples taken at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account number of persons served, different sources of water, and different treatment methods. <sup>1</sup>
SW/IGW <sup>3</sup> system serving 500-9,999 persons	One water sample per quarter per treatment plant	Locations representing maximum residence time. <sup>1</sup>
SW/IGW <sup>3</sup> system serving <500 persons	One sample per year per treatment plant during month of warmest water temperature	Locations representing maximum residence time. <sup>1</sup> If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets reduced monitoring criteria in 41.6(1)“c”(4)“2,” <del>fourth unnumbered second bulleted paragraph.</del>
System using only non-IGW groundwater using chemical disinfectant and serving ≥10,000 persons	One water sample per quarter per treatment plant <sup>2</sup>	Locations representing maximum residence time. <sup>1</sup>
System using only non-IGW groundwater using chemical disinfectant and serving <10,000 persons	One sample per year per treatment plant during month of warmest water temperature	Locations representing maximum residence time. <sup>1</sup> If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets reduced monitoring criteria in 41.6(1)“c”(4)“2,” <del>fourth unnumbered second bulleted paragraph.</del>

<sup>1</sup> If a system chooses to sample more frequently than the minimum required, at least 25 percent of all samples collected each quarter (including those taken in excess of the required frequency) must be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

<sup>2</sup>Multiple wells drawing water from a single aquifer may be considered one treatment plant for determining the minimum number of samples required, with department approval.

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<sup>3</sup>SW/IGW indicates those systems that use either surface water (SW) or groundwater under the direct influence of surface water (IGW), in whole or in part.

2. Reduced monitoring. The department may allow systems a reduced monitoring frequency, except as otherwise provided, in accordance with the following table. Source water total organic carbon (TOC) levels must be determined in accordance with 567—subparagraph 43.6(2)“c”(1).

Reduced Monitoring Frequency for TTHM and HAA5

If you are a ...	And you have monitored at least one year and your ...	You may reduce monitoring to this level
SW/IGW <sup>1</sup> system serving $\geq 10,000$ persons which has a source water annual average TOC level, before any treatment, of $\leq 4.0$ mg/L.	TTHM annual average $\leq 0.040$ mg/L and HAA5 annual average $\leq 0.030$ mg/L	One sample per treatment plant per quarter at distribution system location reflecting maximum residence time.
SW/IGW <sup>1</sup> system serving 500 - 9,999 persons that has a source water annual average TOC level, before any treatment, of $\leq 4.0$ mg/L.	TTHM annual average $\leq 0.040$ mg/L and HAA5 annual average $\leq 0.030$ mg/L	One sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature.
SW/IGW <sup>1</sup> system serving $< 500$ persons	Any SW/IGW <sup>1</sup> system serving $< 500$ persons may not reduce its monitoring to less than one sample per treatment plant per year.	
System using only non-IGW groundwater using chemical disinfectant and serving $\geq 10,000$ persons	TTHM annual average $\leq 0.040$ mg/L and HAA5 annual average $\leq 0.030$ mg/L	One sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature.
System using only non-IGW groundwater using chemical disinfectant and serving $< 10,000$ persons	TTHM annual average $\leq 0.040$ mg/L and HAA5 annual average $\leq 0.030$ mg/L for two consecutive years; or, TTHM annual average $\leq 0.020$ mg/L and HAA5 annual average $\leq 0.015$ mg/L for one year.	One sample per treatment plant per three-year monitoring cycle at distribution system location reflecting maximum residence time during month of warmest water temperature, with the three-year cycle beginning on January 1 following quarter in which system qualifies for reduced monitoring.

<sup>1</sup> SW/IGW indicates those systems that use either surface water (SW) or groundwater under the direct influence of surface water (IGW), in whole or in part.

- Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for systems which must monitor quarterly) or the result of the sample (for systems which must monitor no more frequently than annually) is less than or equal to 0.060 mg/L for TTHMs and is less than or equal to 0.045 mg/L for HAA5. Systems that do not meet these levels must resume monitoring at the frequency identified in 41.6(1)“c”(4)“1” in the quarter immediately following the quarter in which the system exceeds 0.060 mg/L for TTHMs and 0.045 mg/L for HAA5. For systems using only groundwater not under the direct influence of surface water and serving fewer than 10,000 persons, if either the TTHM annual average is  $> 0.080$  mg/L or the HAA5 annual average is  $> 0.060$  mg/L, the system must go to increased monitoring identified in 41.6(1)“c”(4)“1.” in the quarter immediately following the monitoring period in which the system exceeds 0.080 mg/L for TTHMs or 0.060 mg/L for HAA5.

- The department may allow systems on increased monitoring to return to routine monitoring if, after one year of monitoring, TTHM annual average is less than or equal to 0.060 mg/L and HAA5 annual average is less than or equal to 0.045 mg/L.

- The department may return a system to routine monitoring at the department’s discretion.

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ITEM 19. Rescind subparagraph **41.6(1)“d”(2)** and adopt the following **new** subparagraph in lieu thereof:

(2) Systems must measure disinfection byproducts by the methods (as modified by the footnotes) listed in the following table:

Approved Methods for Disinfection Byproduct Compliance Monitoring

Contaminant and Methodology	EPA Method <sup>1</sup>	Standard Method <sup>2</sup>	ASTM Method <sup>3</sup>
TTHM			
P&T/GC/EICD & PID	502.2 <sup>4</sup>		
P&T/GC/MS	524.2		
LLE/GC/ECD	551.1		
HAA5			
LLE (diazomethane)/GC/ECD		6251 B <sup>5</sup>	
SPE (acidic methanol)/GC/ECD	552.1 <sup>5</sup>		
LLE (acidic methanol)/GC/ECD	552.2, 552.3		
Bromate			
Ion chromatography	300.1		D 6581-00
Ion chromatography & postcolumn reaction <sup>9</sup>	317.0 Rev. 2.0 <sup>6</sup> , 326.0 <sup>6</sup>		
IC/ICP-MS <sup>9</sup>	321.8 <sup>6, 7</sup>		
Chlorite			
Amperometric titration		4500-ClO <sub>2</sub> E <sup>8</sup>	
Spectrophotometry	327.0 Rev. 1.1 <sup>8</sup>		
Ion chromatography	300.0, 300.1, 317.0 Rev. 2, 326.0		

ECD = electron capture detector

IC = ion chromatography

P&T= purge and trap

EICD = electrolytic conductivity detector

LLE = liquid/liquid extraction

PID = photoionization detector

GC = gas chromatography

MS = mass spectrometer

SPE = solid phase extractor

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register on February 16, 1999, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at (800)426-4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460 (telephone: (202)260-3027); or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC 20408.

<sup>1</sup>EPA: The following methods are available from the National Technical Information Service (NTIS), U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161 (telephone: (800)553-6847):

Methods 300.0 and 321.8: Methods for the Determination of Organic and Inorganic Compounds in Drinking Water, Volume 1, USEPA, August 2000, EPA 815-R-00-014 (available through NTIS, PB2000-106981).

Method 300.1: "Determination of Inorganic Anions in Drinking Water by Ion Chromatography, Revision 1.0," EPA-600/R-98/118, 1997 (available through NTIS, PB98-169196).

Method 317.0: "Determination of Inorganic Oxyhalide Disinfection By-Products in Drinking Water Using Ion Chromatography with the Addition of a Postcolumn Reagent for Trace Bromate Analysis, Revision 2.0," USEPA, July 2001, EPA 815-B-01-001.

Method 326.0: "Determination of Inorganic Oxyhalide Disinfection By-Products in Drinking Water Using Ion Chromatography Incorporating the Addition of a Suppressor Acidified Postcolumn Reagent for Trace Bromate Analysis, Revision 1.0" USEPA, June 2002, EPA 815-R-03-007.

Method 327.0: "Determination of Chlorine Dioxide and Chlorite Ion in Drinking Water Using Lissamine Green B and Horseradish Peroxidase with Detection by Visible Spectrophotometry, Revision 1.1," USEPA, May 2005, EPA 815-R-05-008.

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Methods 502.2, 524.2, 551.1, and 552.2: Methods for the Determination of Organic Compounds in Drinking Water—Supplement III, EPA-600/R-95-131, August 1995 (NTIS PB95-261616).

Method 552.1: Methods for the Determination of Organic Compounds in Drinking Water—Supplement II, EPA-600/R-92-129, August 1992 (NTIS PB92-207703).

Method 552.3: “Determination of Haloacetic Acids and Dalapon in Drinking Water by Liquid-liquid Microextraction, Derivatization, and Gas Chromatography with Electron Capture Detection, Revision 1.0,” USEPA, July 2003, EPA-815-B-03-002.

<sup>2</sup>4500-CIO2 E: Standard Methods for the Examination of Water and Wastewater, 19th and 20th editions, American Public Health Association, 1995 and 1998, respectively, which is available from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

<sup>3</sup>Method D 6581-00: American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428: Annual Book of ASTM Standards, Volume 11.01, American Society for Testing and Materials, 2001 (or any year containing the cited version).

<sup>4</sup>If TTHMs are the only analytes being measured in the sample, then a PID is not required.

<sup>5</sup>The samples must be extracted within 14 days of sample collection.

<sup>6</sup>Ion chromatography and postcolumn reaction or IC/ICP-MS must be used for bromate analysis for purposes of demonstrating eligibility of reduced monitoring.

<sup>7</sup>Samples must be preserved at sample collection with 50 mg ethylenediamine (EDA)/L of sample and must be analyzed within 28 days.

<sup>8</sup>Amperometric titration or spectrophotometry may be used for routine daily monitoring of chlorite at the entrance to the distribution system, as prescribed in 41.6(1) “c”(3)“1.” Ion chromatography must be used for routine monthly monitoring of chlorite and additional monitoring of chlorite in the distribution system, as prescribed in 41.6(1) “c”(3)“2” and “3.”

<sup>9</sup>These are the only methods approved for reduced bromate monitoring under 41.6(1) “c”(2)“2.”

ITEM 20. Amend subparagraph **41.6(1)“d”(3)** as follows:

(3) Certified laboratory requirements. Analyses under this rule for disinfection byproducts shall only be conducted by laboratories that have been certified by the department and are in compliance with the requirements of 567—Chapter 83, except as specified under 41.6(1) “d”(4). The performance evaluation sample acceptance limits and minimum reporting levels are listed in 567—subparagraph 83.6(7) “a”(6).

ITEM 21. Adopt the following **new** subrule 41.6(2):

**41.6(2) Stage 2 initial distribution system evaluation.** The department is adopting by reference the requirements for the Stage 2 initial distribution system evaluation (IDSE) listed in 40 CFR 141.600-605 as adopted on January 4, 2006. This regulation establishes monitoring and other requirements for identifying compliance monitoring locations that will be used to determine compliance with maximum contaminant levels for total trihalomethanes and haloacetic acids. All CWS required to comply with 41.6(1) and all NTNC serving at least 10,000 people that are required to comply with 41.6(1) are required to comply with this subrule. The requirements in this subrule constitute national primary drinking water regulations. Only the analytical methods specified in 41.6(1) “d” may be used to demonstrate compliance with this subrule.

ITEM 22. Adopt the following **new** subrule 41.6(3):

**41.6(3) Stage 2 disinfection byproducts requirements.** The requirements of this subrule constitute national primary drinking water regulations. This subrule establishes monitoring and other requirements for achieving compliance with MCLs based on locational running annual averages (LRAA) for TTHM and HAA5.

*a. Applicability.* All CWS and NTNC systems that use a primary or residual disinfectant other than ultraviolet light or deliver water that has been treated with a primary or residual disinfectant other than ultraviolet light must comply with the requirements in this subrule.

(1) Schedule. Systems must comply with the dates listed in the appropriate schedule. For the purposes of this subrule, the combined distribution system (CDS) as defined in 567—40.2(455B) only includes active connections; emergency connections are excluded. Any CWS or NTNC that purchases or sells water on a routine basis through an active connection to another CWS or NTNC is part of a combined distribution system. All systems included in a CDS must adhere to the schedule of the system that serves the largest population in that CDS. The system must comply with the requirements on the

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schedule for systems that are not a part of a CDS and for systems that serve the largest population in the CDS. The schedule for the other systems that are a part of a CDS, either wholesale or consecutive, is the same schedule as that of the system with the earliest compliance date in the CDS.

Schedule	System Population	Date by which system must begin Stage 2 compliance monitoring
1	At least 100,000	April 1, 2012
2	50,000-99,999	October 1, 2012
3	10,000-49,999	October 1, 2013
4	Fewer than 10,000	<ul style="list-style-type: none"> <li>• October 1, 2013, for all GW systems and any SW/IGW systems that did not conduct <i>Cryptosporidium</i> sampling under 567—43.11(3)“b”(2)“4”</li> <li>• October 1, 2014, for SW/IGW systems that conducted <i>Cryptosporidium</i> sampling under 567—43.11(3)“b”(2)“4”</li> </ul>

(2) Initiation of compliance monitoring under Stage 2. Systems shall switch from Stage 1 compliance monitoring (41.6(1)) to Stage 2 monitoring as follows:

1. Systems required to conduct quarterly monitoring must start monitoring in the first full calendar quarter that includes the compliance date in the preceding table.

2. Systems that conducted IDSE monitoring and have an approved report and that are required to conduct monitoring at a frequency less than quarterly must start monitoring in the calendar month recommended in the approved IDSE report.

3. Systems that were not required to prepare an IDSE report under 41.6(2) must update their Stage 1 monitoring plan to meet the Stage 2 requirements and submit it to the department for approval six months prior to the compliance date in the preceding table.

(3) Timing of initial determination of compliance under Stage 2.

1. Systems required to conduct quarterly monitoring must make compliance calculations at the end of the fourth calendar quarter that follows the compliance date or earlier if the LRAA calculated based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the results of subsequent sampling. Compliance determination must continue at the end of each subsequent quarter.

2. Systems required to conduct monitoring at a frequency that is less than quarterly must make compliance calculations beginning with the first compliance sample taken after the compliance date.

(4) Monitoring and compliance.

1. Systems required to monitor quarterly must calculate LRAAs for TTHM and HAA5 using the monitoring results collected under this subrule and determine that each LRAA does not exceed the MCL. If the system does not complete the four consecutive quarters of monitoring, the system must calculate the compliance with the MCL based on the average of the available data from the most recent four quarters. If the system collects more than one sample per quarter at a monitoring location, all samples taken in the quarter at that location must be averaged to determine a quarterly average to be used for the LRAA calculation. If a system fails to monitor, it is in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA.

2. Systems required to monitoring yearly or triennially must determine that each sample collected is less than the MCL. If any sample exceeds the MCL, the system must comply with the requirements of 41.6(3)“e.” If no sample exceeds the MCL, the sample result for each monitoring location is considered to be the LRAA for that monitoring location. If a system fails to monitor, it is in violation of the monitoring requirements for each quarter that a monitoring result would be used in calculating an LRAA.

3. The department may grant up to an additional 24 months for compliance with MCLs and operational evaluation levels if the system is required to make capital improvements in order to comply with an MCL.

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(5) Any CWS or NTNC system that begins using water to which a disinfectant has been added, other than ultraviolet light, after the initial compliance dates for IDSE or Stage 2 compliance monitoring must comply with this subrule.

*b. Monitoring plan.* All systems must develop and implement a disinfection byproduct monitoring plan, which shall be kept on file at the system for review by the department and the public. The monitoring plan must contain the monitoring locations, monitoring dates, and compliance calculation procedures.

(1) If the system has an approved IDSE-standard monitoring plan (IDSE-SMP) report, that report contains all of the plan elements and meets this requirement.

(2) If the system does not have an approved IDSE-SMP report and does not have sufficient monitoring locations from its initial disinfection byproduct sampling plan, the system must identify additional locations by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of compliance monitoring locations have been identified. The system must provide the rationale for identifying locations as having high levels of TTHM or HAA5.

(3) If the system does not have an approved IDSE-SMP report and has more monitoring locations from its initial Stage 1 disinfection byproduct sampling plan than the number of locations required under the Stage 2 compliance monitoring, the system must identify which locations it will use for compliance monitoring by alternating selection of locations representing high TTHM levels and high HAA5 levels until the required number of compliance monitoring locations have been identified.

(4) All plans must be reviewed by the system every three years and updated as system conditions change (such as changes in water quality or hydraulics, etc.).

1. A system may revise its monitoring plan to reflect changes in treatment, distribution system operations, and layout (including new service areas), to reflect other factors that may affect TTHM or HAA5 formation, or for department-approved reasons.

2. The system must consult with the department regarding the need for changes and the appropriateness of changes. The system must replace existing compliance monitoring locations that have the lowest LRAA with new locations that reflect the current distribution system locations with expected high TTHM or HAA5 levels.

3. The department may require modifications in the system's monitoring plan.

(5) Systems are also required to maintain the disinfectant and MRDL elements of the Stage 1 monitoring plan pursuant to 567—paragraphs 43.6(1)“c”(1)“5” and 41.6(1)“c”(1)“6.”

(6) All systems are required to have a valid disinfection byproducts monitoring plan prior to the start of compliance monitoring in 41.6(3)“a”(1).

*c. Routine monitoring.* Systems are required to start monitoring at the locations specified in the approved disinfection byproducts monitoring plan and on the schedule specified in 41.6(3)“a”(1). Each system must monitor the disinfection byproducts at the minimum number of locations identified in the Routine Monitoring table.

Routine Monitoring

Source water type	Population size category	Monitoring frequency	Total number of distribution system monitoring location sites per monitoring period
SW/IGW	<500	per year	2
	500-3,300	per quarter	2
	3,301-9,999	per quarter	2
	10,000-49,999	per quarter	4
	50,000-249,999	per quarter	8
Groundwater	<500	per year	2
	500-9,999	per year	2
	10,000-99,999	per quarter	4
	100,000-499,999	per quarter	6

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(1) All systems must monitor during the month of highest disinfection byproduct concentrations.

(2) Systems on a quarterly monitoring frequency must collect samples for TTHM and HAA5 every 90 days at each monitoring location, except that SW/IGW systems serving 500 to 3,300 people may collect at one location as provided in 41.6(3)“c”(3). Each sample collected at each location must be analyzed for both TTHM and HAA5 components.

(3) Systems on an annual monitoring frequency and SW/IGW systems serving 500 to 3,300 people are required to collect TTHM and HAA5 samples at the locations with the highest TTHM and HAA5 concentrations, respectively. Each sample must be analyzed for both TTHM and HAA5 components. Sample collection is required from only one location if the highest TTHM concentration and the highest HAA5 concentration occur at the same location.

(4) Analytical methods. Systems must use an approved method listed in 41.6(1)“d”(2) for TTHM and HAA5 analyses pursuant to this subrule. Analyses must be conducted by laboratories certified for disinfection byproducts analyses in accordance with 567—Chapter 83.

*d. Reduced monitoring.* A system may reduce monitoring to the level specified in the Reduced Monitoring table anytime the locational running annual average is less than or equal to half the MCL for TTHM and HAA5 at all monitoring locations (i.e., less than or equal to 0.040 mg/L for TTHM and 0.030 mg/L for HAA5). Only data collected under the provisions of this rule may be used to qualify for reduced monitoring.

## Reduced Monitoring

Source water type	Population size category	Monitoring frequency <sup>1</sup>	Distribution system monitoring location sites per monitoring period <sup>2</sup>
SW/IGW	<500	per year	Monitoring may not be reduced
	500-3,300	per year	1 sample per year at the same location if the highest TTHM and HAA5 measurements occurred at the same location and in the same quarter, analyzed for both TTHM and HAA5
	3,301-9,999	per year	2 samples: one at the location and during the quarter with the highest TTHM single measurement; one at the location and during the quarter with the highest HAA5 single measurement
	10,000-49,999	per quarter	2 samples: one at the highest TTHM LRAA location and one at the highest HAA5 LRAA location
	50,000-249,999	per quarter	4 samples: one sample each at the highest two TTHM LRAA locations and one sample each at the highest two HAA5 LRAA locations
Groundwater	<500	every third year	1 sample per year at the same location if the highest TTHM and HAA5 measurements occurred at the same location and in the same quarter, analyzed for both TTHM and HAA5
	500-9,999	per year	1 sample per year at the same location if the highest TTHM and HAA5 measurements occurred at the same location and in the same quarter, analyzed for both TTHM and HAA5
	10,000-99,999	per year	2 samples: one at the location and during the quarter with the highest TTHM single measurement; one at the location and during the quarter with the highest HAA5 single measurement
	100,000-499,999	per quarter	2 samples: one at the highest TTHM LRAA location and one at the highest HAA5 LRAA location

<sup>1</sup>Systems on a quarterly monitoring frequency must collect the sample(s) every 90 days.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

<sup>2</sup>Each sample must be analyzed for all TTHM and HAA5 components.

(1) Additional source water TOC requirement for SW/IGW systems. For SW/IGW systems, the source water running annual average TOC level, before any treatment, must be less than or equal to 4.0 mg/L at each treatment plant treating surface water or influenced groundwater, based on the monitoring conducted under 567—paragraph 43.6(2) “b,” in order to qualify for reduced monitoring.

(2) Continued reduced monitoring frequency. Systems may remain on a reduced monitoring frequency as long as they meet the following criteria. For SW/IGW systems, the source water annual average TOC level requirement in 41.6(3) “d”(1) must continue to be met.

1. A system with a quarterly reduced monitoring frequency may remain on reduced monitoring as long as the TTHM LRAA is less than or equal to 0.040 mg/L and the HAA5 LRAA is less than or equal to 0.030 mg/L at each monitoring location.

2. A system with an annual or triennial monitoring frequency may remain on reduced monitoring as long as each TTHM sample is less than or equal to 0.060 mg/L and each HAA5 sample is less than or equal to 0.045 mg/L.

(3) Return to routine monitoring frequency. Systems that cannot meet the requirements for reduced monitoring must resume routine monitoring according to 41.6(3) “c” or begin increased monitoring according to 41.6(3) “e.”

1. A system with a quarterly reduced monitoring frequency must resume routine monitoring if the LRAA from any location exceeds either 0.040 mg/L for TTHM or 0.030 mg/L for HAA5.

2. A system with an annual or triennial monitoring frequency must resume routine monitoring if the annual sample at any location exceeds either 0.060 mg/L for TTHM or 0.045 mg/L for HAA5.

3. Any SW/IGW system must resume routine monitoring if the running annual average source water TOC level, prior to any treatment, is more than 4.0 mg/L.

4. In addition, the department may require any system to resume routine monitoring at the department’s discretion.

(4) Remaining on reduced monitoring from Stage 1 to Stage 2 transition. A system may remain on reduced monitoring after the dates listed in 41.6(3) “a”(1) if all of the following three criteria are met. If the three criteria are not met, the system must return to routine monitoring.

1. Under the IDSE, the system qualified for a 40/30 certification or received a very small system waiver;

2. The system meets the reduced monitoring criteria of this paragraph; and

3. The system has not changed or added locations for disinfection byproduct monitoring from those used under the Stage 1 requirements in 41.6(1).

*e. Increased monitoring.*

(1) Systems that are monitoring annually or triennially must increase their monitoring frequency to quarterly if the following conditions are met.

1. Single result exceeds the TTHM or HAA5 MCL. A system that is monitoring annually or triennially must increase monitoring to quarterly at all locations if a single TTHM sample is greater than 0.080 mg/L or a single HAA5 sample is greater than 0.060 mg/L. The quarterly samples must be analyzed for both TTHM and HAA5 components.

2. Systems with a TTHM or HAA5 MCL violation. A system that is monitoring annually or triennially that is in violation of the MCL for TTHM or HAA5, based upon the LRAA, must increase monitoring to quarterly at all locations. The quarterly samples must be analyzed for both TTHM and HAA5 components. The LRAA is calculated based on four consecutive quarters of monitoring or based on fewer quarters of data if the MCL would be exceeded regardless of the monitoring results of subsequent quarters.

(2) Systems on a quarterly monitoring frequency during Stage 1 to Stage 2 transition. A system that was on increased monitoring under Stage 1 must remain on increased monitoring until the system qualifies for a return to routine monitoring under 41.6(3) “e”(3). The system must conduct the increased monitoring at the monitoring locations in the monitoring plan developed under 41.6(3) “b,” beginning on the date identified in 41.6(3) “a”(1).

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(3) Return to routine monitoring frequency. A system may return to routine monitoring once the system has conducted increased monitoring for at least four consecutive quarters and the LRAA for every monitoring location is less than or equal to 0.060 mg/L for TTHM and less than or equal to 0.045 mg/L for HAA5. The system may not have any monitoring violations during the most recent four consecutive quarters.

*f. Operational evaluation level (OEL).*

(1) TTHM operational evaluation level. The TTHM operational evaluation level is determined by the sum of the two previous quarters' TTHM results plus twice the current quarter's TTHM result, divided by 4 to determine an average. If that average exceeds 0.080 mg/L, the system has exceeded the TTHM operational evaluation level.

(2) HAA5 operational evaluation level. The HAA5 operational evaluation level is determined by the sum of the two previous quarters' HAA5 results plus twice the current quarter's HAA5 result, divided by 4 to determine an average. If that average exceeds 0.060 mg/L, the system has exceeded the HAA5 operational evaluation level.

(3) A system must calculate the operational evaluation level at any monitoring location that has a single analytical result in excess of the TTHM or HAA5 MCL in the analytical data used to calculate the current 12-month LRAA. A system must determine compliance with the OEL every quarter.

(4) Requirements when the operational evaluation level is exceeded. The system must conduct an operational evaluation and submit a written report of the evaluation to the department within 90 days after the system is notified of the analytical result that caused the system to exceed the operational evaluation level. The written report must be made available to the public upon request. The report must include an examination of system treatment and distribution operational practices, including storage tank operations, excess storage capacity, distribution system flushing, changes in source water or source water quality, and treatment changes or problems that may contribute to disinfection byproduct formation, and what steps could be considered to minimize future exceedances.

1. The system may make a request to the department to limit the scope of the examination if the system is able to identify the cause of the operational evaluation level exceedance. The 90-day deadline for submitting the written report cannot be extended.

2. The system must have department approval to limit the scope of the examination. The approval must be in writing and kept with the completed report.

*g. Reporting.* All systems required to comply with this rule must meet the reporting requirements pursuant to 567—paragraph 42.4(3)“d.”

*h. Record keeping.* All systems required to comply with this rule must retain the monitoring plans and analytical results as required by 567—paragraph 42.5(1)“h.”

ITEM 23. Amend numbered paragraph **41.8(1)“c”(1)“2”** as follows:

2. To determine compliance with 41.8(1)“b”(1), the detection limit shall not exceed the following concentrations:

Detection Limits for Gross Alpha Particle Activity,  
Radium-226, Radium-228, and Uranium

Contaminant	Detection Limit
Gross alpha particle activity	3 pCi/L
Radium-226	1 pCi/L
Radium-228	1 pCi/L
Uranium	Reserve <u>1 µg/L</u>

ITEM 24. Amend numbered paragraph **41.8(1)“e”(4)“2”** as follows:

2. Six-year frequency. If the average of the initial monitoring results for gross alpha particle activity, uranium, and combined radium-226 and radium-228 is at or above the detection limit and at or below half the MCL for that contaminant, the system must collect and analyze for that contaminant

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

using at least one sample at that source/entry point every six years. The analytical results for radium-226 and radium-228 must be added together to yield the combined result.

ITEM 25. Amend numbered paragraph **41.8(1)“f”(3)“2”** as follows:

2. Reduced monitoring. If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity at a sampling point has a running annual average (computed quarterly) less than or equal to 15 pCi/L (screening level), the department may reduce the frequency of monitoring at that sampling point to every three years. Systems must collect all samples required in 41.8(1)“f”(3) during the reduced monitoring period.

ITEM 26. Amend subparagraph **41.8(1)“f”(6)** as follows:

(6) If the gross beta particle activity minus the naturally occurring potassium-40 beta particle activity exceeds the appropriate screening level, an analysis of the sample must be performed to identify the major radioactive constituents present in the sample, and the appropriate doses must be calculated and summed to determine compliance with 41.8(1)“b”(2)“1,” using the formula in 41.8(1)“b”(2)“2.” Doses must also be calculated and combined for measured levels of tritium and strontium to determine compliance.

ITEM 27. Amend subparagraph **41.8(1)“f”(7)** as follows:

(7) Monitoring after an MCL violation. Systems must monitor monthly at the sampling point(s) which exceed the maximum contaminant level in 41.8(1)“b”(2) beginning the month after the exceedance occurs. Systems must continue monthly monitoring until the system has established, by a rolling average of three monthly samples, that the MCL is being met. Systems that establish that the MCL is being met must return to quarterly monitoring until they meet the requirements set forth in ~~41.8(1)“f”(2)“3” 41.8(1)“f”(2) or 41.8(1)“f”(3)“1,” first bulleted paragraph.~~ 41.8(1)“f”(3)“2.”

ITEM 28. Adopt the following **new** paragraph **42.1(7)“d”**:

*d. Repeated failure to conduct monitoring of the source water for Cryptosporidium.*

(1) Applicability. The owner or operator of any public water system that is required to monitor source water under 567—43.11(455B) must notify persons served by the water system that monitoring has not been completed as specified no later than 30 days after the system has failed to collect samples in any three months of monitoring as specified in 567—paragraph 43.11(3)“a.” The notice must be repeated as specified in 42.1(3).

(2) Form and manner of notice. The form and manner of the special notice must follow the Tier 2 public notice requirements in 42.1(3) and be presented as required in 42.1(5)“b.”

(3) Mandatory language. The special notice must contain the following language, including the language necessary to fill in the brackets.

“We are required to monitor the source of your drinking water for *Cryptosporidium*. Results of the monitoring are to be used to determine whether water treatment at the [treatment plant name] is sufficient to adequately remove *Cryptosporidium* from your drinking water. We are required to complete this monitoring and make this determination by [required bin determination date]. We [“did not monitor or test” or “did not complete all monitoring or testing”] on schedule and, therefore, we may not be able to determine by the required date what treatment modifications, if any, must be made to ensure adequate *Cryptosporidium* removal. Missing this deadline may, in turn, jeopardize our ability to have the required treatment modifications, if any, completed by the required deadline of [date]. For more information, please call [name of water system contact] of [name of water system] at [telephone number].”

(4) Each special notice must also include a description of what the system is doing to correct the violation and when the system expects to return to compliance or resolve the situation.

ITEM 29. Adopt the following **new** paragraph **42.1(7)“e”**:

*e. Failure to determine bin classification or mean Cryptosporidium level.*

(1) Applicability. The owner or operator of a public water system that is required to determine a bin classification under 567—subrule 43.11(5) must notify persons served by the water system that the determination has not been made as required no later than 30 days after the system has failed to report the determination as specified in 567—paragraph 43.11(5)“c.” The notice must be repeated as specified in

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42.1(3). The notice is not required if the system is in compliance with a department-approved schedule to address the violation.

(2) Form and manner of notice. The form and manner of the special notice must follow the Tier 2 public notice requirements in 42.1(3) and be presented as required in 42.1(5)“b.”

(3) Mandatory language. The special notice must contain the following language, including the language necessary to fill in the brackets.

“We are required to monitor the source of your drinking water for *Cryptosporidium* in order to determine by [date] whether water treatment at the [treatment plant name] is sufficient to adequately remove *Cryptosporidium* from your drinking water. We have not made this determination by the required date. Our failure to do this may jeopardize our ability to have the required treatment modifications, if any, completed by the required deadline of [date]. For more information, please call [name of water system contact] of [name of water system] at [telephone number].”

(4) Each special notice must also include a description of what the system is doing to correct the violation and when the system expects to return to compliance or resolve the situation.

ITEM 30. Amend paragraph **42.3(3)“c,”** introductory paragraph, as follows:

*c. Information on detected contaminants.* This paragraph specifies the requirements for information to be included in each report for contaminants subject to mandatory monitoring (except *Cryptosporidium*, which is listed in 42.3(3)“c”(2)) as follows: contaminants subject to an MCL, action level, MRDL, or treatment technique (regulated contaminants); contaminants for which monitoring is required by CFR Title 40, Part 141.40 (unregulated contaminants), 567—subrule 41.11(1) (sodium monitoring), and 567—41.15(455B) (other contaminants); and disinfection byproducts or microbial contaminants for which monitoring is required by 567—Chapters 40 to 43, except as provided under 42.3(3)“e”(1), and which are detected in the finished water. The ammonia monitoring conducted pursuant to 567—subrule 41.11(2) is not subject to this paragraph. For the purposes of this subrule, “detected” means at or above the levels prescribed by the following: inorganic contaminants in 567—subparagraph 41.3(1)“e”(1); volatile organic contaminants in 567—paragraph 41.5(1)“b”; synthetic organic contaminants in 567—paragraph 41.5(1)“b”; radionuclide contaminants in 567—paragraph 41.9(1)“e” 41.8(1)“c”; disinfection byproducts in 567—paragraph 83.6(7)“a”(6)“3”; and other contaminants with health advisory levels, as assigned by the department.

ITEM 31. Amend numbered paragraph **42.3(3)“c”(1)“3”** as follows:

3. For contaminants subject to an MCL, except turbidity and total coliforms, the table must contain the highest contaminant level used to determine compliance with a primary drinking water standard and the range of detected levels, as follows:

- When compliance with the MCL is determined annually or less frequently: the highest detected level at any sampling point and the range of detected levels expressed in the same units as the MCL (such as inorganic compounds).

- When compliance with the MCL is determined by calculating a running annual average of all samples taken at a sampling point: the highest average of any of the sampling points and the range of all sampling points expressed in the same units as the MCL (such as organic compounds and radionuclides). For TTHM and HAA5 MCLs, systems must include the highest locational running annual average for TTHM and HAA5 and the range of individual sample results for all monitoring locations expressed in the same units as the MCL. If more than one location exceeds the TTHM or HAA5 MCL, the system must include the locational running annual averages for all locations that exceed the MCL.

- When compliance with an MCL is determined on a systemwide basis by calculating a running annual average of all samples at all sampling points: the average and range of detection expressed in the same units as the MCL (~~such as total trihalomethane compounds~~).

NOTE: When rounding of results to determine compliance with the MCL is allowed by the regulations, rounding should be done prior to multiplying the results by the factor listed in Appendix C.

ITEM 32. Amend subparagraph **42.4(3)“d”(2)** as follows:

(2) Disinfection byproducts. Systems must report the information specified in the following table:

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Disinfection Byproducts Reporting Table

If you are a ...	You must report ...
System monitoring for TTHMs and HAA5 under the requirements of 567—subparagraph 41.6(1) “c”(4) on a quarterly or more frequent basis	<ol style="list-style-type: none"> <li>1. The number of samples taken during the last quarter.</li> <li>2. The location, date, and result of each sample taken during the last quarter.</li> <li>3. The arithmetic average of all samples taken in the last quarter.</li> <li>4. The annual arithmetic average of the quarterly arithmetic averages for the last four quarters.*</li> <li>5. Whether the MCL was exceeded.</li> <li>6. Under Stage 2, any operational evaluation levels that were exceeded during the quarter, including the location and date and the calculated TTHM and HAA5 levels.</li> </ol>
System monitoring for TTHMs and HAA5 under the requirements of 567—subparagraph 41.6(1) “c”(4) less frequently than quarterly, but at least annually	<ol style="list-style-type: none"> <li>1. The number of samples taken during the last year.</li> <li>2. The location, date, and result of each sample taken during the last monitoring period.</li> <li>3. The arithmetic average of all samples taken over the last year.*</li> <li>4. Whether the MCL was exceeded.</li> </ol>
System monitoring for TTHMs and HAA5 under the requirements of 567—subparagraph 41.6(1) “c”(4) less frequently than annually	<ol style="list-style-type: none"> <li>1. The location, date, and result of the last sample taken.</li> <li>2. Whether the MCL was exceeded.</li> </ol>
System monitoring for chlorite under the requirements of 567—subparagraph 41.6(1) “c”(3)	<ol style="list-style-type: none"> <li>1. The number of samples taken each month for the last 3 months.</li> <li>2. The location, date, and result of each sample taken during the last quarter.</li> <li>3. For each month in the reporting period, the arithmetic average of all samples taken in each three sample set taken in the month.</li> <li>4. Whether the MCL was exceeded, and in which month it was exceeded.</li> </ol>
System monitoring for bromate under the requirements of 567—subparagraph 41.6(1) “c”(2)	<ol style="list-style-type: none"> <li>1. The number of samples taken during the last quarter.</li> <li>2. The location, date, and result of each sample taken during the last quarter.</li> <li>3. The arithmetic average of the monthly arithmetic averages of all samples taken in the last year.</li> <li>4. Whether the MCL was exceeded.</li> </ol>

\*The calculation of the running annual average will transition from a system-wide RAA calculation under Stage 1 to a locational running annual average (LRAA) under Stage 2. The transition will commence according to the system schedule listed in 567—paragraph 41.6(1) “b.” Beginning at the end of the fourth calendar quarter that follows the compliance date, and at the end of each subsequent quarter, the system must report the arithmetic average of quarterly results for the last four quarters of each monitoring location. If the calculated LRAA, based on fewer than four quarters of data would cause the MCL to be exceeded regardless of the monitoring results of subsequent quarters, the system must report this information to the department no later than the due date of the next compliance report.

ITEM 33. Amend subparagraph 42.4(3) “d”(4) as follows:

(4) Disinfection byproduct precursors and enhanced coagulation or enhanced softening. Systems must report the information specified in the following table:

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Disinfection Byproduct Precursors and Enhanced Coagulation or Enhanced Softening Reporting Table

If you are a ...	You must report ...
<p>System monitoring monthly or quarterly for TOC under the requirements of 567—subparagraph 43.6(1)“c”(2) and required to meet the enhanced coagulation or enhanced softening requirements in 567—subparagraph 43.6(3)“b”(2) or (3).</p>	<ol style="list-style-type: none"> <li>1. The number of paired (source water and treated water, prior to continuous disinfection) samples taken during the last quarter.</li> <li>2. The location, date, and result of each paired sample and associated alkalinity taken during the last quarter.</li> <li>3. For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal.</li> <li>4. Calculations for determining compliance with the TOC percent removal requirements, as provided in 567—subparagraph 43.6(3)“c”(1).</li> <li>5. Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in 567—paragraph 43.6(3)“b” for the last four quarters.</li> </ol>
<p>System monitoring monthly or quarterly for TOC under the requirements of 567—subparagraph 43.6(1)“c”(2) and meeting one or more of the alternative compliance criteria in 567—subparagraph 43.6(3)“a”(2) or (3).</p>	<ol style="list-style-type: none"> <li>1. The alternative compliance criterion that the system is using.</li> <li>2. The number of paired samples taken during the last quarter.</li> <li>3. The location, date, and result of each paired sample and associated alkalinity taken during the last quarter.</li> <li>4. The running annual arithmetic average based on monthly averages (or quarterly samples) of source water TOC for systems meeting a criterion in 567—<del>numbered</del> paragraph 43.6(3)“a”(2)“1” or “3” or of treated water TOC for systems meeting the criterion in 567—<del>numbered</del> paragraph 43.6(3)“a”(2)“2.”</li> <li>5. The running annual arithmetic average based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in 567—<del>numbered</del> paragraph 43.6(3)“a”(2)“5” or of treated water SUVA for systems meeting the criterion in 567—<del>paragraph</del> 43.6(3)“a”(2)“6.”</li> <li>6. The running annual average of source water alkalinity for systems meeting the criterion in 567—<del>numbered</del> paragraph 43.6(3)“a”(2)“3” and of treated water alkalinity for systems meeting the criterion in 567—<del>paragraph</del> 43.6(3)“a”(3)“1.”</li> <li>7. The running annual average for both TTHM and HAA5 for systems meeting the criterion in 567—<del>numbered</del> paragraph 43.6(3)“a”(2)“3” or “4.”</li> <li>8. The running annual average for the amount of magnesium hardness removal (as CaCO<sub>3</sub>, in mg/L) for systems meeting the criterion in 567—<del>numbered</del> paragraph 43.6(3)“a”(3)“2.”</li> <li>9. Whether the system is in compliance with the particular alternative compliance criterion in 567—subparagraph 43.6(3)“a”(2) or (3).</li> </ol>
<p><u>SW/IGW system on reduced monitoring for TTHM/HAA5 under the requirements of 567—paragraph 41.6(3)“d.”</u></p>	<p><u>For each treatment plant that treats surface or IGW source water, report the following:</u></p> <ol style="list-style-type: none"> <li>1. <u>The number of source water TOC samples taken each month during the last quarter.</u></li> <li>2. <u>The date and result of each sample taken during the last quarter.</u></li> <li>3. <u>The quarterly average of monthly samples taken during the last quarter or the result of the quarterly sample.</u></li> <li>4. <u>The running annual average (RAA) of quarterly averages from the past four quarters.</u></li> <li>5. <u>Whether the TOC RAA exceeded 4.0 mg/L.</u></li> </ol>

ITEM 34. Amend numbered paragraph **42.5(1)“a”(2)“1”** as follow:

1. ~~Bacteria. Records of bacteriological analyses made pursuant to this subrule shall be kept for not less than five years.~~ Microbiological and turbidity: Records of microbiological analyses and turbidity analyses made pursuant to 567—Chapters 41 and 43 shall be kept for not less than five years.

ITEM 35. Adopt the following **new** paragraph **42.5(1)“h”**:

*h. Monitoring plans.* Copies of monitoring plans developed pursuant to 567—Chapters 41, 42, and 43 shall be kept for the same period of time as the records of analyses taken under the plans are required to be kept, unless otherwise specified.

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ITEM 36. Amend **567—Chapter 42**, Appendix C, “Regulated Contaminants Table for Consumer Confidence Report,” “Synthetic Organic Contaminants” section, entry for “Haloacetic Acids,” as follows:

Contaminant (CCR units)	MCL, in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG in CCR units	Major sources in drinking water	Health effects language
Haloacetic Acids (HAA) (ppb)	0.060	1000	60	n/a (footnote 4)	Byproduct of drinking water disinfection	Some people who drink water containing haloacetic acids in excess of the MCL over many years may have an increased risk of getting cancer.

ITEM 37. Amend **567—Chapter 42**, Appendix C, “Regulated Contaminants Table for Consumer Confidence Report,” “Volatile Organic Contaminants” section, entry for “TTHMs,” as follows:

Contaminant (CCR units)	MCL, in mg/L	To convert for CCR, multiply by	MCL in CCR units	MCLG in CCR units	Major sources in drinking water	Health effects language
TTHMs <del>[total trihalomethanes]</del> Total trihalomethanes (TTHM) (ppb)	0.10 or 0.080 (footnote 4)	1000	100 or 80	n/a (footnote 4)	Byproduct of drinking water disinfection	Some people who drink water containing trihalomethanes in excess of the MCL over many years may experience problems with their liver, kidneys, or central nervous system, and may have an increased risk of getting cancer.

ITEM 38. Amend **567—Chapter 42**, Appendix C, footnote “4,” as follows:

<sup>4</sup>Beginning on January 1, 2002, for surface water and influenced groundwater systems serving at least 10,000 persons, the TTHM MCL is 0.080 mg/L. For all other systems, the TTHM MCL is 0.10 mg/L until January 1, 2004, at which time the TTHM MCL is 0.080 mg/L for all systems required to monitor under 567—41.6(455B). The MCLGs for total trihalomethanes and haloacetic acids:

<u>Disinfection Byproduct</u>	<u>MCLG, mg/L</u>	<u>MCLG in CCR units</u>
Bromodichloromethane	<u>0</u>	<u>0</u>
Bromoform	<u>0</u>	<u>0</u>
Chloroform	<u>0.07</u>	<u>70</u>
Dibromochloromethane	<u>0.06</u>	<u>60</u>
Dichloroacetic acid	<u>0</u>	<u>0</u>
Monochloroacetic acid	<u>0.07</u>	<u>70</u>
Trichloroacetic acid	<u>0.02</u>	<u>20</u>

ITEM 39. Amend subrule 43.1(5), introductory paragraph, as follows:

**43.1(5) Requirement for certified operator.** The department maintains a list of operators who are certified in accordance with 567—Chapter 81. The list includes the operator’s name, certification classification (Water Treatment, Water Distribution, or Grade A Water System), and grade (A, I, II, III, or IV), and is periodically updated during the year.

ITEM 40. Amend paragraph **43.3(2)“a”** as follows:

a. The standards for a project are the Ten States Standards as adopted through 2007 and the American Water Works Association (AWWA) Standards as adopted through ~~2003~~ 2010 and 43.3(7) to 43.3(9). To the extent of any conflict between the Ten States Standards and the American Water Works Association Standards and 43.3(7) to 43.3(9), the Ten States Standards, 43.3(2), and 43.3(7) to 43.3(9) shall prevail. Additional standards include the following:

(1) Polyvinyl chloride (PVC) pipe manufactured in accordance with ASTM D2241, AWWA C900, AWWA C905, ASTM F1483, or AWWA C909 may be used for water main construction. The maximum

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allowable pressure for PVC or polyethylene (PE) pipe shall be determined based on a safety factor of ~~2.5~~ 2.0 and a surge allowance of no less than two feet per second (2 fps).

(2) and (3) No change.

ITEM 41. Amend paragraph **43.3(3)“a”** as follows:

*a. Construction permit issuance conditions.* A permit to construct shall be issued by the director if the director concludes from the application and specifications submitted pursuant to 43.3(4) and 567—40.4(455B) that the project will comply with the rules of the department. The construction of the project must begin within one year from the date the permit was issued; if it is not, the permit is no longer valid. If construction is ongoing and continuous (excepting winter delays) and the permitted project cannot be completed within one year, the permit shall remain valid until the project is completed. The department may grant an extension of the permit for segmented projects, for a maximum two additional years, provided the department’s design and construction standards have not changed during the intervening period.

ITEM 42. Amend subparagraph **43.3(10)“b”(1)** as follows:

(1) Inorganic compounds. The department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for the inorganic contaminants listed in 567—paragraph 41.3(1) “b,” except arsenic and fluoride.

INORGANIC CHEMICAL	BAT(s)
Antimony	2, 7
Arsenic <sup>d</sup>	1, 2, 5, 6, 7, 9, 11 <sup>e</sup>
Asbestos	2, 3, 8
Barium	5, 6, 7, 9
Beryllium	1, 2, 5, 6, 7
Cadmium	2, 5, 6, 7
Chromium	2, 5, 6 <sup>b</sup> , 7
Cyanide	5, 7, <del>10</del> <u>12</u>
Mercury	2 <sup>a</sup> , 4, 6 <sup>a</sup> , 7 <sup>a</sup>
Nickel	5, 6, 7
Nitrate	5, 7, 9
Nitrite	5, 7
Selenium	1, 2 <sup>c</sup> , 6, 7, 9
Thallium	1, 5

Key to BATs

1=Activated Alumina	5=Ion Exchange	9=Electrodialysis
2=Coagulation/Filtration*	6=Lime Softening*	10=Chlorine
3=Direct and Diatomite Filtration	7=Reverse Osmosis	11=Oxidation/Filtration
4=Granular Activated Carbon	8=Corrosion Control	<u>12=Alkaline Chlorination (pH greater than or equal to 8.5)</u>

\*not BAT for systems with less than 500 service connections

<sup>a</sup>BAT only if influent Hg concentrations are less than or equal to 10 micrograms/liter.

<sup>b</sup>BAT for Chromium III only.

<sup>c</sup>BAT for Selenium IV only.

<sup>d</sup>BAT for Arsenic V. Preoxidation may be required to convert Arsenic III to Arsenic V.

<sup>e</sup>To obtain high removals, iron to arsenic ratio must be at least 20:1.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 43. Amend paragraph **43.3(10)“c”** as follows:

*c. BATs for disinfection byproducts and disinfectants.* The department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant levels for the disinfection byproducts listed in 567—paragraph 41.5(2)“b,” and the maximum residual disinfectant levels listed in 567—paragraph 41.5(2)“c.”

DBP MCL or MRDL	Best Available Technology
Bromate MCL	Control of ozone treatment process to reduce production of bromate
Chlorite MCL	Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels
HAA5 and TTHM MCL <u>running annual average</u>	Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant
HAA5 and TTHM MCL LRAA	<ul style="list-style-type: none"> <li>• <u>Non-consecutive system: Enhanced coagulation or enhanced softening, plus GAC10; or nanofiltration with a molecular weight cutoff that is less than or equal to 1000 Daltons; or GAC20</u></li> <li>• <u>Consecutive system serving at least 10,000 persons*: Improved distribution system and storage tank management to reduce residence time, plus the use of chloramines for disinfectant residual maintenance</u></li> <li>• <u>Consecutive system serving fewer than 10,000 persons*: Improved distribution system and storage tank management to reduce residence time</u></li> </ul>
TTHM MCL	<del>Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant</del>
MRDL	Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels

\* Applies only to the disinfected water that consecutive systems buy or otherwise receive.

ITEM 44. Amend paragraph **43.5(2)“a”** as follows:

*a. Disinfection treatment criteria.* The disinfection treatment must be sufficient to ensure that the total treatment processes of that system achieve at least 99.9 percent (3-log) inactivation or removal of *Giardia lamblia* cysts and at least 99.99 percent (4-log) inactivation or removal of viruses, acceptable to the department. At least 0.5 log inactivation of *Giardia lamblia* cysts must be achieved through disinfection treatment even if the required inactivation or removal is met or exceeded through physical treatment processes. Each system is required to calculate the total inactivation ratio ( $CT_{\text{calculated}}/CT_{\text{required}}$ ) each day the treatment plant is in operation. The system’s total inactivation ratio must be equal to or greater than 1.0 in order to ensure that the minimum inactivation and removal requirements have been achieved.

ITEM 45. Amend subparagraph **43.6(1)“a”(5)** as follows:

(5) Consecutive systems. Consecutive systems that provide water containing a disinfectant or oxidant are required to comply with this rule. ~~A consecutive system may be incorporated into the sampling plan of the supply that produces the water (the primary water supplier), provided:~~

1. ~~There is a mutual signed agreement between the primary and consecutive system supplied by that primary system that states the primary system will be responsible for the compliance of its consecutive system with this rule, regardless of additional treatment by the consecutive system.~~

2. ~~Beginning with the primary water supply, each successive consecutive system must also be included in the primary supply’s sampling plan, so that there is no system with its own sampling plan between the primary supply and the consecutive supply covered by the primary supply’s plan.~~

3. ~~It is understood by the primary and all consecutive systems that even if only one system in the sampling plan has a violation, all systems in the sampling plan will receive the violation and be required to conduct public notification.~~

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4. ~~The department receives a copy of the signed agreement and approves the sampling plan prior to the beginning of the compliance period.~~

~~If a mutual agreement is not possible, each system (the primary system and each consecutive system) is responsible for compliance with this rule for its specific system.~~

ITEM 46. Amend subparagraph **43.6(1)“d”(1)** as follows:

(1) Analytical methods. Systems must measure residual disinfectant concentrations for free chlorine, combined chlorine (chloramines), and chlorine dioxide by the methods listed in the following table:

Approved Methods for Residual Disinfectant Compliance Monitoring

Methodology	Standard Methods	ASTM Other Method	Residual measured <sup>1</sup>			
			Free Chlorine	Combined Chlorine	Total Chlorine	Chlorine Dioxide
Amperometric Titration	4500-Cl D	ASTM: D 1253-86 (96), 03	X	X	X	
Low Level Amperometric Titration	4500-Cl E				X	
DPD Ferrous Titrimetric	4500-Cl F		X	X	X	
DPD Colorimetric	4500-Cl G		X	X	X	
Syringaldazine (FACTS)	4500-Cl H		X			
Iodometric Electrode	4500-Cl I				X	
DPD	4500-ClO <sub>2</sub> D					X
Amperometric Method II	4500-ClO <sub>2</sub> E					X
<u>Lissamine Green Spectrophotometric</u>		<u>EPA: 327.0 Rev. 1.1</u>				<u>X</u>

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register on February 16, 1999, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at (800)426-4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460 (telephone: (202)260-3027); or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC 20408.

The following method is available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428:

Annual Book of ASTM Standards, Volume 11.01, American Society for Testing and Materials, 1996: Method D 1253-86.

The following methods are available from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005:

Standard Methods for the Examination of Water and Wastewater, 19th ~~edition~~ and 20th editions, American Public Health Association, 1995 and 1998, respectively (both editions are acceptable): Methods: 4500-Cl D, 4500-Cl E, 4500-Cl F, 4500-Cl G, 4500-Cl H, 4500-Cl I, 4500-ClO<sub>2</sub> D, 4500-ClO<sub>2</sub> E.

The following methods are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161 (telephone: (800)553-6847):

“Determination of Chlorine Dioxide and Chlorite Ion in Drinking Water Using Lissamine Green B and Horseradish Peroxidase with Detection by Visible Spectrophotometry, Revision 1.1,” USEPA, May 2005, EPA 815-R-05-008.

<sup>1</sup> X indicates method is approved for measuring specified residual disinfectant. Free chlorine or total chlorine may be measured for demonstrating compliance with the chlorine MRDL, and combined chlorine or total chlorine may be measured for demonstrating compliance with the chloramine MRDL.

ITEM 47. Amend subparagraph **43.6(2)“b”(1)** as follows:

(1) Routine monitoring for total organic carbon (TOC).

1. Surface water and groundwater under the direct influence of surface water systems which use conventional filtration treatment must monitor each treatment plant for total organic carbon (TOC) no later than at the point of combined filter effluent turbidity monitoring and representative of the treated

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water. ~~All systems required to monitor under this paragraph~~ The systems must also monitor for TOC in the source water prior to any treatment at the same time as monitoring for TOC in the treated water. These samples (source water and treated water) are referred to as paired samples. At the same time the source water sample is taken, all systems must monitor for alkalinity in the source water prior to any treatment. Systems must take one paired set of source water and treated water samples and one source water alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

2. Surface water and groundwater under the direct influence of surface water systems which do not use conventional filtration treatment must conduct the TOC monitoring under 43.6(2) "b"(1)"1" in order to qualify for reduced disinfection byproduct monitoring for TTHM and HAA5 under 567—paragraph 41.6(1) "c"(4)"2." The source water TOC running annual average must be less than or equal to 4.0 mg/L based on the most recent four quarters of monitoring on a continuing basis at each treatment plant to reduce or remain on reduced monitoring for TTHM and HAA5. Once qualified for reduced monitoring for TTHM and HAA5, a system may reduce source water TOC monitoring to quarterly TOC samples taken every 90 days at a location prior to any treatment.

ITEM 48. Amend subparagraph **43.6(2)"c"(1)** as follows:

(1) Analytical methods. Systems required to monitor disinfectant byproduct precursors must use the following methods, which must be conducted by a certified laboratory pursuant to 567—Chapter 83, unless otherwise specified.

Approved Methods for Disinfection Byproduct Precursor Monitoring<sup>1</sup>

Analyte	Methodology	EPA	Standard Methods	ASTM	Other
Alkalinity <sup>6</sup>	Titrimetric		2320B	D 1067-92B	
	Electrometric titration				I-1030-85
Bromide	Ion chromatography	300.0			
		300.1			
		<u>317.0</u> Rev. <u>2.0</u>			
		<u>326.0</u>			
				D 6581-00	
Dissolved Organic Carbon <sup>2</sup>	High temperature combustion		5310B or 5310B-00		
	Persulfate-UV or heated-persulfate oxidation		5310C or 5310C-00		
	Wet oxidation		5310D or 5310D-00		
		<u>415.3</u> Rev. <u>1.1</u>			
pH <sup>3</sup>	Electrometric	150.1	4500-H <sup>+</sup> -B	D 1293-84	
		150.2			

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Analyte	Methodology	EPA	Standard Methods	ASTM	Other
Total Organic Carbon <sup>4</sup>	High temperature combustion		5310B or <u>5310B-00</u>		
	Persulfate-UV or heated-persulfate oxidation		5310C or <u>5310C-00</u>		
	Wet oxidation		5310D or <u>5310D-00</u>		
		<u>415.3</u> Rev. <u>1.1</u>			
Ultraviolet Absorption at 254 nm <sup>5</sup>	UV absorption		5910B or <u>5910B-00</u>		
		<u>415.3</u> Rev. <u>1.1</u>			

<sup>4</sup>The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register on February 16, 1999, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at (800)426-4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460 (telephone: (202)260-3027); or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC 20408.

The following methods are available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428:

Annual Book of ASTM Standards, Volume 11.01, American Society for Testing and Materials, 1996: Method D 1067-92B and Method D1293-84.

Annual Book of ASTM Standards, Volume 11.01, American Society for Testing and Materials, 2001 (or any year containing the cited version): Method D 6581-00.

The following methods are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161 (telephone: (800)553-6847):

"Determination of Inorganic Anions in Drinking Water by Ion Chromatography, Revision 1.0," EPA-600/R-98/118, 1997 (NTIS, PB98-169196): Method 300.1.

Methods for Chemical Analysis of Water and Wastes, EPA-600/4-79-020, March 1983, (NTIS PB84-128677): Methods 150.1 and 150.2.

Methods for the Determination of Inorganic Substances in Environmental Samples, EPA-600/R-93/100, August 1993, (NTIS PB94-121811): Method 300.0.

"Determination of Inorganic Oxyhalide Disinfection By-Products in Drinking Water Using Ion Chromatography with the Addition of a Postcolumn Reagent for Trace Bromate Analysis, Revision 2.0," USEPA, July 2001, EPA 815-B-01-001: Method 317.0.

"Determination of Inorganic Oxyhalide Disinfection By-Products in Drinking Water Using Ion Chromatography Incorporating the Addition of a Suppressor Acidified Postcolumn Reagent for Trace Bromate Analysis, Revision 1.0" USEPA, June 2002, EPA 815-R-03-007: Method 326.0.

"Determination of Total Organic Carbon and Specific UV Absorbance at 254 nm in Source Water and Drinking Water, Revision 1.1," USEPA, February 2005, EPA/600/R-05/055: Method 415.3 Revision 1.1.

The following methods are available from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005:

Standard Methods for the Examination of Water and Wastewater, 19th edition, American Public Health Association, 1995: Methods: 2320B (20th edition, 1998, is also accepted for this method), 4500-H<sup>+</sup>-B, and 5910B.

Standard Methods for the Examination of Water and Wastewater, Supplement to the 19th edition, American Public Health Association, 1996: Methods: 5310B, 5310C, and 5310D.

For method numbers ending "-00", the year in which each method was approved by the Standard Methods Committee is designated by the last two digits in the method number. The methods listed are the only online versions that are IBR-approved.

Method I-1030-85 is available from the Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225-0425.

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<sup>2</sup>Dissolved Organic Carbon (DOC). DOC and UV<sub>254</sub> samples used to determine a SUVA value must be taken at the same time and at the same location, prior to the addition of any disinfectant or oxidant by the system. Prior to analysis, DOC samples must be filtered through a 0.45 µ pore-diameter filter, as soon as practical after sampling, not to exceed 48 hours. After filtration, DOC samples must be acidified to achieve pH less than or equal to 2 with minimal addition of the acid specified in the method or by the instrument manufacturer. Acidified DOC samples must be analyzed within 28 days. Inorganic carbon must be removed from the samples prior to analysis. Water passed through the filter prior to filtration of the sample must serve as the filtered blank. This filtered blank must be analyzed using procedures identical to those used for analysis of the samples and must meet a DOC concentration of <0.5 mg/L. ~~DOC samples must be filtered through the 0.45 µ pore-diameter filter prior to acidification. DOC samples must either be analyzed or must be acidified to achieve pH less than 2.0 by minimal addition of phosphoric or sulfuric acid as soon as practical after sampling, not to exceed 48 hours. Acidified DOC samples must be analyzed within 28 days.~~

<sup>3</sup>No change.

<sup>4</sup>Total Organic Carbon (TOC). Inorganic carbon must be removed from the samples prior to analysis. TOC samples may not be filtered prior to analysis. ~~TOC samples must either be analyzed or must be acidified to achieve pH less than 2.0 by minimal addition of phosphoric or sulfuric acid as soon as practical after sampling, not to exceed 24 hours. TOC samples must be acidified at the time of sample collection to achieve a pH less than or equal to 2 with minimal addition of the acid specified in the method or by the instrument manufacturer. Acidified TOC samples must be analyzed within 28 days.~~

<sup>5</sup> and <sup>6</sup>No change.

ITEM 49. Adopt the following **new** subparagraph **43.6(2)“c”(3)**:

(3) Magnesium. All methods approved for magnesium in 567—subparagraph 41.3(1)“e”(1) are approved for use in measuring magnesium under this rule.

ITEM 50. Amend subparagraph **43.7(4)“d”(1)** as follows:

(1) Notification of residents. At least 45 days prior to commencing with the partial replacement of a lead service line, the water system shall provide to the resident(s) of all buildings served by the line notice explaining that the resident(s) may experience a temporary increase of lead levels in their drinking water, along with guidance on measures consumers may take to minimize their exposure to lead. The department may allow the water system to provide this notice less than 45 days prior to commencing partial lead service line replacement where such replacement is in conjunction with emergency repairs. In addition, the water system shall inform the resident(s) served by the line that the system will, at the system's expense, collect from each partially replaced lead service line a sample that is representative of the water in the service line for analysis of lead content, as prescribed under 567—~~subparagraph 41.4(1)“b”(3),~~ paragraph 41.4(1)“c”(2)“3,” within 72 hours after the completion of the partial replacement of the service line. The system shall collect the sample and report the results of the analysis to the owner and the resident(s) served by the line within three business days of receiving the results. Mailed notices postmarked within three business days of receiving the results shall be considered “on time.”

ITEM 51. Amend paragraph **43.9(1)“c”** as follows:

*c. Prohibition of new construction of uncovered intermediate or finished water reservoirs ~~new construction storage facilities.~~ Systems are not permitted to begin construction of uncovered intermediate or finished water storage facilities. Systems that are required to comply with this rule may construct only covered intermediate or finished water storage facilities. For the purposes of this rule, an intermediate storage facility is defined as a storage facility or reservoir after the clarification treatment process.*

ITEM 52. Amend paragraph **43.10(1)“b”** as follows:

*b. Prohibition of new construction of uncovered intermediate or finished water reservoirs storage facilities. Systems that are required to comply with this rule may construct only covered intermediate or finished water storage facilities. For the purposes of this rule, an intermediate storage facility is defined as a storage facility or reservoir after the clarification treatment process.*

ITEM 53. Amend numbered paragraph **43.10(2)“b”(2)“1”** as follows:

1. If the system uses only one point of disinfectant application, it must determine:

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- One inactivation ratio (CT calc/CT<sub>99.9</sub>) before or at the first customer during peak hourly flow, or
- Successive (CT calc/CT<sub>99.9</sub>) values, representing sequential inactivation ratios, between the point of disinfection application and a point before or at the first customer during peak hourly flow. Under this alternative, the system must calculate the total inactivation ratio by determining (CT calc/CT<sub>99.9</sub>) for each sequence and then adding the (CT calc/CT<sub>99.9</sub>) values together to determine ( $\sum$  CT calc/CT<sub>99.9</sub>).

ITEM 54. Adopt the following new rule 567—43.11(455B):

**567—43.11(455B) Enhanced treatment for *Cryptosporidium*.**

**43.11(1) *Applicability.*** The requirements of this rule are national primary drinking water regulations and establish or extend treatment technique requirements in lieu of maximum contaminant levels for *Cryptosporidium*. These requirements are in addition to the filtration and disinfection requirements of 567—43.5(455B), 567—43.9(455B) and 567—43.10(455B) and apply to all Iowa public water systems supplied by surface water or influenced groundwater sources.

*a. Wholesale systems.* Wholesale systems must comply with the requirements based on the population of the largest system in the combined distribution system.

*b. Filtered systems.* The requirements of this rule for filtered systems apply to systems that are required to provide filtration treatment pursuant to 567—43.5(455B), whether or not the system is currently operating a filtration system.

**43.11(2) *General requirements.*** Systems subject to this rule must comply with the following requirements:

*a. Source water monitoring.* Systems must conduct two rounds of source water monitoring for each plant that treats a surface water or influenced groundwater source. This monitoring may include sampling for *Cryptosporidium*, *E. coli*, and turbidity, as described in 43.11(3), to determine what level, if any, of additional *Cryptosporidium* treatment the systems must provide.

*b. Disinfection profiles and benchmarks.* Systems that plan to make a significant change to their disinfection practice must develop disinfection profiles and calculate disinfection benchmarks, as described in 43.11(4).

*c. Cryptosporidium treatment bin determination.* Systems must determine their *Cryptosporidium* treatment bin classification and provide additional treatment for *Cryptosporidium*, if required, according to the prescribed schedule.

*d. Additional treatment for Cryptosporidium.* Systems required to provide additional treatment for *Cryptosporidium* must implement microbial toolbox options that are designed and operated as described in 43.11(8) through 43.11(13).

*e. Record keeping and reporting.* Systems must comply with the applicable record-keeping and reporting requirements described in 43.11(14) and 43.11(15).

*f. Significant deficiencies.* Systems must address significant deficiencies identified during sanitary surveys as described in 43.1(7).

**43.11(3) *Source water monitoring.***

*a. Schedule.* Systems must conduct the source water monitoring no later than the month and year listed in Table 1. A system may avoid the source water monitoring if the system provides a total of at least 5.5-log treatment for *Cryptosporidium*, equivalent to meeting the treatment requirements of Bin 4 in 43.11(6). The system must install and operate technologies to provide this level of treatment by the applicable treatment compliance date specified in 43.11(7).

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Table 1: Source Water Monitoring Schedule

System	First round of monitoring	Second round of monitoring
Serves at least 100,000 people	October 2006	April 2015
Serves 50,000-99,999 people	April 2007	October 2015
Serves 10,000-49,999 people	April 2008	October 2016
Serves fewer than 10,000 people and only conducts <i>E. coli</i> monitoring	October 2008	October 2017
Serves fewer than 10,000 people and conducts <i>Cryptosporidium</i> monitoring	April 2010	April 2019

*b. Monitoring requirements.* The minimum monitoring requirements are listed below. Systems may sample more frequently, provided the sampling frequency is evenly spaced throughout the monitoring period.

(1) Systems serving at least 10,000 people. Systems serving at least 10,000 people must sample their source water for *Cryptosporidium*, *E. coli*, and turbidity at least monthly for 24 months.

(2) Systems serving fewer than 10,000 people. Systems serving fewer than 10,000 people are allowed to first conduct *E. coli* monitoring to determine if further monitoring for *Cryptosporidium* is required.

1. Systems must sample their source water for *E. coli* at least once every two weeks for 12 months. If the annual mean *E. coli* concentration is at or below 100 *E. coli* per 100 mL, the system can avoid further *Cryptosporidium* monitoring in that sampling round.

2. A system may avoid *E. coli* monitoring if the system notifies the department no later than three months prior to the *E. coli* monitoring start date that the system will conduct *Cryptosporidium* monitoring.

3. Systems that fail to conduct the required *E. coli* monitoring or that cannot meet the *E. coli* annual mean limit are required to conduct *Cryptosporidium* monitoring. The system must sample its source water for *Cryptosporidium* either at least twice per month for 12 months or at least monthly for 24 months.

4. A system that begins monitoring for *E. coli* and determines during the sampling period that the system mathematically cannot meet the applicable *E. coli* annual mean limit may discontinue the *E. coli* sampling. The system is then required to start *Cryptosporidium* monitoring according to the schedule in Table 1.

(3) Plants operating only part of the year. Systems with surface water or influenced groundwater treatment plants that operate for only part of the year must conduct source water monitoring in accordance with this rule, but with the following modifications.

1. Systems must sample their source water only during the months that the plant operates unless the department specifies another monitoring period based on plant operating practices.

2. Systems with plants that operate less than six months per year and that monitor for *Cryptosporidium* must collect at least six samples per year for two years.

(4) New sources. A system that begins using a new surface water or influenced groundwater source after the dates in Table 1 must monitor according to a schedule approved by the department and meet the requirements of this subrule. The system must also meet the requirements of the bin classification and *Cryptosporidium* treatment for the new source on a schedule approved by the department. The system must conduct the second round of source water monitoring no later than six years following the initial bin classification or determination of the mean *Cryptosporidium* level, as applicable.

(5) Monitoring violation determination. Failure to collect any source water sample required under this subrule in accordance with the sampling plan, location, analytical method, approved laboratory, or reporting requirements of 43.11(3)“c” through 43.11(3)“e” is a monitoring violation.

(6) Grandfathered monitoring data. Systems were allowed to use source water monitoring *Cryptosporidium* data collected prior to the applicable start date in Table 1 to meet the requirements of the first round of monitoring, a process referred to as grandfathering data. This grandfathered data

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substituted for an equivalent number of months at the end of the monitoring period and had to meet the requirements of 40 CFR 141.707 as adopted on January 5, 2006, which the department hereby adopts by reference. Department approval of the grandfathered data application is required.

*c. Sampling plan.* Systems must submit a sampling plan that specifies the sampling locations in relation to the sources and treatment processes and the calendar dates when the system will collect each required sample. The specific treatment process locations that must be included in the plan are pretreatment, points of chemical treatment, and filter backwash recycle.

(1) The sampling plan must be submitted no later than three months prior to the applicable monitoring date in Table 1. If the department does not respond to a system regarding the submitted sampling plan prior to the start of the monitoring period, the system must sample according to the submitted sampling plan.

(2) The plan must be submitted in a form acceptable to the department.

(3) The system must monitor within two days of the date specified in the plan, unless one of the following conditions occurs.

1. If an extreme condition or situation exists that may pose danger to the sample collector, or that cannot be avoided, and causes the system to be unable to sample in the scheduled five-day period, the system must sample as close to the scheduled date as is feasible unless the department approves an alternative sampling date. The system must submit an explanation for the delayed sampling date to the department within one week of the missed sampling period. A replacement sample must be collected.

2. If a system is unable to report a valid analytical result for a scheduled sampling date due to equipment failure, loss of or damage to the sample, failure to comply with the analytical method or quality control requirements, or failure of the laboratory to analyze the sample, the system must notify the department of the cause of the delay and collect a replacement sample.

3. A replacement sample must be collected within 21 days of the scheduled sampling period or on the resampling date approved by the department.

(4) Missed sampling dates. Systems that fail to meet the dates in their sampling plan for any source water sample must revise their sampling plan to add dates for collecting all missed samples. The revised schedule must be submitted to the department for approval prior to the collection of the missed samples.

*d. Sampling locations.* Systems must collect samples for each treatment plant that treats a surface water or influenced groundwater source.

(1) Chemical treatment location. Systems must collect source water samples prior to chemical treatment. If the system cannot feasibly collect a sample prior to chemical treatment, the department may grant approval for the system to collect the sample after chemical treatment. This approval would only be granted if the department determines in writing that collecting the samples prior to chemical treatment is not feasible for the system and that the chemical treatment is unlikely to have a significant adverse effect on the analysis of the sample.

(2) Filter backwash recycle return location. Systems that recycle filter backwash water must collect the source water samples prior to the point of filter backwash water addition.

(3) Bank filtration credit sampling location.

1. Systems that receive *Cryptosporidium* treatment credit for bank filtration under 43.9(3) "b" or 43.10(4) "c" must collect source water samples in the surface water source prior to bank filtration.

2. Systems that use bank filtration as pretreatment to a filtration plant must collect source water samples from the well, which is after bank filtration has occurred. Use of bank filtration during monitoring must be consistent with routine operational practice. Systems collecting samples after a bank filtration process may not receive treatment credit for the bank filtration under 43.11(10) "c."

(4) Multiple sources. Systems with plants that use multiple water sources, including multiple surface water sources and blended surface water and groundwater sources, must collect samples as follows:

1. The use of multiple sources during monitoring must be consistent with routine operational practice.

2. If a sampling tap is available where the sources are combined prior to treatment, the system must collect samples from that tap.

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3. If a sampling tap where the sources are combined prior to treatment is not available, the system must collect samples at each source near the intake on the same day and must use either of the following options for sample analysis.

- Physically composite the source samples into a single sample for analysis. Systems may composite the sample from each source into one sample prior to analysis. The volume of the sample from each source must be weighted according to the proportion of the source in the total plant flow at the time the sample is collected.

- Analyze the samples separately and mathematically composite the results. Systems may analyze samples from each source separately and calculate a weighted average of the analytical results for each sampling date. The weighted average must be calculated by multiplying the analytical result for each source by the fraction that source contributed to the total plant flow at the time the sample was collected and then summing the weighted analytical results.

*e. Analytical methodology, laboratory certification, and data reporting requirements.* Systems must have samples analyzed pursuant to the specifications listed in this paragraph. The system must report, in a format acceptable to the department, the analytical results from the source water monitoring no later than ten days after the end of the first month following the month when the sample is collected.

(1) *Cryptosporidium*. Systems must have *Cryptosporidium* samples analyzed by a laboratory that is approved under EPA's Laboratory Quality Assurance Evaluation Program for Analysis of *Cryptosporidium* in Water.

1. There are two approved analytical methods for *Cryptosporidium*: "Method 1623: *Cryptosporidium* and *Giardia* in Water by Filtration/IMS/FA," 2005, US EPA, EPA-815-R-05-002; and, "Method 1622: *Cryptosporidium* in Water by Filtration/IMS/FA," 2005, US EPA, EPA-815-R-05-001.

2. Using one of the two approved methods, the laboratory must analyze at least a 10 L sample or a packed pellet volume of at least 2 mL.

3. A matrix spike (MS) sample must be spiked and filtered by the laboratory according to the approved method. If the volume of the MS sample is greater than 10 L, the system may filter all but 10 L of the MS sample in the field and ship the filtered sample and the remaining 10 L of source water to the laboratory. In this case, the laboratory must spike the remaining 10 L of water and filter it through the filter used to collect the balance of the sample in the field.

4. Flow cytometer-counted spiking suspensions must be used for the matrix spike samples and the ongoing precision and recovery samples.

5. The following data elements must be reported for each *Cryptosporidium* analysis:

- PWSID.
- Facility ID.
- Sample collection date.
- Sample type (i.e., field or matrix spike).
- Sample volume filtered (L), to the nearest 0.25 L.
- Whether 100 percent of the filtered volume was examined by the laboratory.
- Number of oocysts counted.
- For matrix spike samples: sample volume spiked and estimated number of oocysts spiked.
- For samples in which less than 10 L is filtered or less than 100 percent of the sample volume is examined: the number of filters used and the packed pellet volume.

- For samples in which less than 100 percent of sample volume is examined: the volume of resuspended concentrate and the volume of this resuspension processed through immunomagnetic separation.

(2) *E. coli*. Systems must have the *E. coli* samples analyzed by a laboratory certified by EPA, the National Environmental Laboratory Accreditation Conference, or the department for total coliform or fecal coliform analysis in drinking water samples using the same approved *E. coli* method for the analysis of source water.

1. The approved analytical methods for the enumeration of *E. coli* in source water are shown in Table 2.

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Table 2: *E. coli* Analytical Methods

Method	EPA	Standard Methods: 18th, 19th, and 20th editions	Other
Most probable number with multiple tube or multiple well <sup>1,2</sup>		9223 B <sup>3</sup>	991.15 <sup>4</sup> Colilert <sup>3,5</sup> Colilert-18 <sup>3,5,6</sup>
Membrane filtration single step <sup>1,7,8</sup>	1603 <sup>9</sup>		mColiBlue-24 <sup>10</sup>

<sup>1</sup>Tests must be conducted to provide organism enumeration (i.e., density). Select the appropriate configuration of tubes/filtrations and dilutions/volumes to account for the quality, consistency, and anticipated organism density in the water sample.

<sup>2</sup>Samples shall be enumerated by the multiple-tube or multiple-well procedure. Using multiple-tube procedures, employ an appropriate tube and dilution configuration of the sample as needed and report the Most Probable Number (MPN). Samples tested with Colilert® may be enumerated with the multiple-well procedures, Quanti-Tray®, Quanti-Tray® 2000, and the MPN calculated from the table provided by the manufacturer.

<sup>3</sup>These tests are collectively known as defined enzyme substrate tests, where, for example, a substrate is used to detect the enzyme beta-glucuronidase produced by *E. coli*.

<sup>4</sup>Association of Official Analytical Chemists, International. "Official Methods of Analysis of AOAC International, 16th Ed., Volume 1, Chapter 17, 1995. AOAC, 481 N. Frederick Ave., Suite 500, Gaithersburg, MD 20877-2417.

<sup>5</sup>Descriptions of the Colilert®, Colilert-18®, Quanti-Tray®, and Quanti-Tray® 2000 may be obtained from IDEXX Laboratories, Inc., 1 IDEXX Drive, Westbrook, ME 04092.

<sup>6</sup>Colilert-18® is an optimized formulation of the Colilert® for the determination of total coliforms and *E. coli* that provides results within 18 hours of incubation at 35 degrees C rather than the 24 hours required for the Colilert® test.

<sup>7</sup>The filter must be a 0.45 micron membrane filter or a membrane filter with another pore size certified by the manufacturer to fully retain organisms to be cultivated and to be free of extractables which could interfere with organism growth.

<sup>8</sup>When the membrane filter method has been used previously to test waters with high turbidity or large numbers of noncoliform bacteria, a parallel test should be conducted with a multiple-tube technique to demonstrate applicability and comparability of results.

<sup>9</sup>"Method 1603: *Escherichia coli* (*E. coli*) in Water by Membrane Filtration Using Modified Membrane-Thermotolerant *Escherichia coli* Agar (modified mTEC), USEPA, July 2006." US EPA, Office of Water, Washington, DC EPA 821-R-06-011.

<sup>10</sup>A description of the mColiBlue24® test, Total Coliforms and *E. coli*, is available from Hach Company, 100 Dayton Ave., Ames, IA 50010.

2. The holding time (the time period from sample collection to initiation of analysis) shall not exceed 30 hours. The department may approve on a case-by-case basis an extension of the holding time to 48 hours, if the 30-hour holding time is not feasible. If the extension is allowed, the laboratory must use the Colilert® reagent version of the Standard Methods 9223B to conduct the analysis.

3. The samples must be maintained between 0 and 10 degrees C during storage and transit to the laboratory.

4. The following data elements must be reported for each *E. coli* analysis:

- PWSID.
- Facility ID.
- Sample collection date.
- Analytical method number.
- Method type.
- Source type (flowing stream or river; lake or reservoir; or influenced groundwater).
- Number of *E. coli* per 100 mL.
- Turbidity in NTU.

(3) Turbidity. The approved analytical methods for turbidity are listed in 43.5(4) "a"(1). Measurements of turbidity must be made by a party approved by the department, and reported on the laboratory data sheet with the corresponding *E. coli* sample.

**43.11(4) Disinfection profiling and benchmarking.**

a. *General requirements.* Following completion of the first round of source water monitoring, a system that plans to make a significant change to its disinfection practice must develop disinfection profiles and calculate disinfection benchmarks for *Giardia lamblia* and viruses.

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(1) Notification to the department. The system must notify the department prior to changing its disinfection practice and must include in the notice the completed disinfection profile and disinfection benchmark for *Giardia lamblia* and viruses, a description of the proposed change in disinfection practice, and an analysis of how the proposed change will affect the current level of disinfection.

(2) Definition of “significant change.” A significant change to the disinfection practice is defined as follows:

1. Any change to the point of disinfection;
2. Any change to the disinfectant(s) used in the treatment plant;
3. Any change to the disinfection process; or
4. Any other modification identified by the department as a significant change to disinfection practice.

*b. Developing the disinfection profile.* In order to develop a disinfection profile, a system must monitor at least weekly for a period of 12 consecutive months to determine the total log inactivation for *Giardia lamblia* and viruses. If a system monitors more frequently, the monitoring frequency must be evenly spaced. A system that operates for fewer than 12 months per year must monitor weekly during the period of operation. A system must determine log inactivation for *Giardia lamblia* through the entire plant, based on CT<sub>99.9</sub> values in Appendix A, Tables 1 through 6, as applicable. Systems must determine log inactivation for viruses through the entire treatment plant based on a protocol approved by the department.

(1) Monitoring requirements. Systems with a single point of disinfectant application prior to the entrance to the distribution system must conduct the monitoring listed in this subparagraph. Systems with multiple points of disinfectant application must conduct the same monitoring for each disinfection segment. Systems must monitor the parameters necessary to determine the total inactivation ratio. The analytical methods for the parameters are listed in 43.5(4) “a.” All measurements must be taken during peak hourly flow.

1. For systems using a disinfectant other than UV, the temperature of the disinfected water must be measured in degrees Celsius at each residual disinfectant concentration sampling point or at an alternative location approved by the department.

2. For systems using chlorine, the pH of the disinfected water must be measured at each chlorine residual disinfectant concentration sampling point or at an alternative location approved by the department.

3. The disinfectant contact time must be determined in minutes.

4. The residual disinfectant concentrations of the water must be determined in mg/L before or at the first customer and prior to each additional point of disinfectant application.

5. A system may use existing data to meet the monitoring requirements if the data are substantially equivalent to the required data, the system has not made any significant change to its treatment practice, and the system has the same source water as it had when the data were collected. Systems may develop disinfection profiles using up to three years of existing data.

6. A system may use disinfection profiles developed under 43.9(2) or 43.10(2) if the system has not made a significant change to its treatment practice and has the same source water as it had when the profile was developed. The virus profile must be developed using the same data on which the *Giardia lamblia* profile is based.

(2) Calculation of the total inactivation ratio for *Giardia lamblia*.

1. Systems using only one point of disinfectant application may determine the total inactivation ratio ( $CT_{\text{calc}}/CT_{99.9}$ ) for the disinfection segment using either of the following methods.

- Determine one inactivation ratio before or at the first customer during peak hourly flow.
- Determine successive sequential inactivation ratios between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Calculate the total inactivation ratio by determining the inactivation ratio for each sequence ( $CT_{\text{calc}}/CT_{99.9}$ ) and adding the values together.

2. Systems using more than one point of disinfectant application before the first customer must determine the CT value of each disinfection segment immediately prior to the next point of disinfectant

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application, or for the final segment, before or at the first customer, during peak hourly flow. Calculate the  $(CT_{calc}/CT_{99.9})$  value of each segment and add the values together to determine the total inactivation ratio.

3. Systems must then determine the total logs of inactivation by multiplying the total inactivation ratio by 3.0.

(3) Calculation of the total inactivation ratio for viruses. The system must calculate the log of inactivation for viruses using a protocol approved by the department.

*c. Calculation of the disinfection benchmark.*

(1) For each year of profiling data collected and calculated under this subrule, systems must determine the lowest mean monthly level of both *Giardia lamblia* and virus inactivation. Systems must determine the mean *Giardia lamblia* and virus inactivation for each calendar month for each year of profiling data by dividing the sum of daily or weekly *Giardia lamblia* and virus log inactivation by the number of values calculated for that month.

(2) For a system with one year of profiling data, the disinfection benchmark is the lowest monthly mean value. For a system with more than one year of profiling data, the disinfection benchmark is the mean of the lowest monthly mean values of *Giardia lamblia* and virus log inactivation in each year of profiling data.

**43.11(5) Bin classification.** Upon completion of the first round of source water monitoring, systems must calculate an initial *Cryptosporidium* bin concentration for each plant for which monitoring was required. Calculation of the bin concentration must use the *Cryptosporidium* results reported under 43.11(3)“a.”

*a. Calculation of mean Cryptosporidium or bin concentration value.*

(1) Systems that collect at least 48 samples. For systems that collect a total of at least 48 samples, the bin concentration is equal to the arithmetic mean of all sample concentrations.

(2) Systems that collect 24 to 47 samples. For systems that collect at least 24 samples but not more than 47 samples, the bin concentration is equal to the highest arithmetic mean of all sample concentrations in any 12 consecutive months during which *Cryptosporidium* samples were collected.

(3) Systems serving fewer than 10,000 people and monitoring for only one year. For systems that serve fewer than 10,000 people and monitor *Cryptosporidium* for only one year (i.e., 24 samples in 12 months), the bin concentration is equal to the arithmetic mean of all sample concentrations.

(4) Systems with plants operating on a part-time basis. For systems with plants operating only part of the year that monitor fewer than 12 months per year, the bin concentration is equal to the highest arithmetic mean of all sample concentrations during any year of *Cryptosporidium* monitoring.

(5) If the monthly *Cryptosporidium* sampling frequency varies, systems must first calculate a monthly average for each month of monitoring. Systems must then use these monthly average concentrations, rather than individual sample concentrations, in the applicable calculation for bin classification.

*b. Determination of bin classification.*

(1) First monitoring round. A system must determine the bin classification from Table 3, using its calculated bin concentration from 43.11(5)“a.”

Table 3: Bin Classification Table

System Type	<i>Cryptosporidium</i> Concentration, in oocysts/L	Bin Classification
Systems required to monitor for <i>Cryptosporidium</i> under 43.11(3)“b”(1) or 43.11(3)“b”(2)“3”	Fewer than 0.075 oocysts/L	Bin 1
	Between 0.075 and fewer than 1.0 oocysts/L	Bin 2
	Between 1.0 and fewer than 3.0 oocysts/L	Bin 3
	3.0 oocysts/L or greater	Bin 4
Systems serving fewer than 10,000 and not required to monitor for <i>Cryptosporidium</i> , pursuant to 43.11(3)“b”(2)“1”	Not applicable	Bin 1

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(2) Second monitoring round. Following completion of the second round of source water monitoring, a system must recalculate its bin concentration and determine its new bin classification, using the same protocols outlined in 43.11(5)“a” and “b.”

*c. Reporting bin classification to the department.* Within six months of the end of the sampling period, the system must report its bin classification to the department for approval. The report must also include a summary of the source water monitoring data and the calculation procedure used to determine the bin classification.

*d. Treatment technique violation.* Failure to comply with 43.11(5)“b” and “c” is a violation of the treatment technique requirement.

**43.11(6) Additional *Cryptosporidium* treatment requirements.** A system must provide the level of additional treatment for *Cryptosporidium* specified in Table 4 based on its bin classification determined in 43.11(5) and according to the schedule in 43.11(7).

*a. Determination of additional *Cryptosporidium* treatment requirements.* Using Table 4, a system must determine any additional treatment requirements based upon its bin classification. The Bin 1 classification does not require any additional treatment. Bins 2 through 4 require additional *Cryptosporidium* treatment.

Table 4: Additional *Cryptosporidium* Treatment Requirements

Bin Classification	Treatment Used by the System for Compliance with 43.5, 43.9, and 43.10			
	Conventional filtration (including softening)	Direct filtration	Slow sand or diatomaceous earth filtration	Alternative filtration technologies
Bin 1	No additional treatment	No additional treatment	No additional treatment	No additional treatment
Bin 2	1-log treatment	1.5-log treatment	1-log treatment	At least 4.0-log <sup>1</sup>
Bin 3	2-log treatment	2.5-log treatment	2-log treatment	At least 5.0-log <sup>1</sup>
Bin 4	2.5-log treatment	3-log treatment	2.5-log treatment	At least 5.5-log <sup>1</sup>

<sup>1</sup>The total *Cryptosporidium* removal and inactivation must be at least this value, as determined by the department.

*b. Treatment requirements for Bins 2 through 4.* A system that is classified as Bin 2, 3, or 4 must use one or more of the treatment and management options listed in 43.11(8) to comply with the required additional *Cryptosporidium* treatment. Systems classified as Bins 3 and 4 must achieve at least 1-log of the additional *Cryptosporidium* treatment required by using either one or a combination of the following: bag filters, bank filtration, cartridge filters, chlorine dioxide, membranes, ozone, or UV, as listed in 43.11(9) through 43.11(13).

*c. Treatment technique violation.* Failure by a system in any month to achieve treatment credit by meeting criteria in 43.11(9) through 43.11(13) that is at least equal to the level of treatment required in 43.11(6)“a” is a violation of the treatment technique requirement.

*d. Significant changes to the watershed.* If, after the system’s completion of source water monitoring (either round), the department determines during a sanitary survey or an equivalent source water assessment that significant changes occurred in the system’s watershed that could lead to increased contamination of the source water by *Cryptosporidium*, the system must take actions specified by the department to address the contamination. These actions may include additional source water monitoring and implementing microbial toolbox options listed in 43.11(8).

**43.11(7) Schedule for compliance with *Cryptosporidium* treatment requirements.** Following the initial bin classification under 43.11(5), systems must provide the level of treatment for *Cryptosporidium* required in 43.11(6), according to the schedule in Table 5. If the bin classification of a system changes following the second round of source water monitoring, the system must provide the level of treatment for *Cryptosporidium* required in 43.11(6), on a schedule approved by the department.

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Table 5: *Cryptosporidium* Treatment Compliance Dates

Schedule	Population Served by System	Compliance Date for <i>Cryptosporidium</i> treatment requirements <sup>1</sup>
1	At least 100,000 people	April 1, 2012
2	From 50,000 to 99,999 people	October 1, 2012
3	From 10,000 to 49,999 people	October 1, 2013
4	Fewer than 10,000 people	October 1, 2014

<sup>1</sup>The department may allow up to an additional two years for compliance with the treatment requirement if the system must make capital improvements.

**43.11(8)** *Microbial toolbox options for meeting Cryptosporidium treatment requirements.* Systems receive the treatment credits listed in Table 6 by meeting the conditions for microbial toolbox options described in 43.11(9) through 43.11(13). Systems apply these treatment credits to meet the treatment requirements in 43.11(6). Table 6 summarizes options in the microbial toolbox.

Table 6: Microbial Toolbox Summary Table: Options, Treatment Credits, and Criteria

Toolbox Option	Specific Criteria Rule	<i>Cryptosporidium</i> treatment credit with design and implementation criteria
<b>Source Protection and Management Toolbox Options</b>		
Watershed control program	43.11(9)	0.5-log credit for department-approved program comprising required elements, annual program status report to department, and regular watershed survey.
Alternative source/intake management	43.11(9) "b"	No prescribed credit. Systems may conduct simultaneous monitoring for treatment bin classification at alternative intake locations or under alternative intake management strategies.
<b>Prefiltration Toolbox Options</b>		
Presedimentation basin with coagulation	43.11(10) "a"	0.5-log credit during any month that presedimentation basins achieve a monthly mean reduction of 0.5-log or greater in turbidity or alternative department-approved performance criteria. To be eligible, basins must be operated continuously with coagulant addition and all plant flow must pass through the basins.
Two-stage lime softening	43.11(10) "b"	0.5-log credit for two-stage softening where chemical addition and hardness precipitation occur in both stages. All plant flow must pass through both stages. Single-stage softening is credited as equivalent to conventional treatment.
Bank filtration	43.11(10) "c"	0.5-log credit for 25-foot setback; 1.0-log credit for 50-foot setback; aquifer must be unconsolidated sand containing at least 10 percent fines; average turbidity in wells must be less than 1 NTU. A system using a well followed by filtration when conducting source water monitoring must sample the well to determine bin classification and is not eligible for additional credit.
<b>Treatment Performance Toolbox Options</b>		
Combined filter performance	43.11(11) "a"	0.5-log credit for combined filter effluent turbidity less than or equal to 0.15 NTU in at least 95 percent of measurements each month.

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Toolbox Option	Specific Criteria Rule	<i>Cryptosporidium</i> treatment credit with design and implementation criteria
Individual filter performance	43.11(11)“b”	0.5-log credit (in addition to the 0.5-log combined filter performance credit) if individual filter effluent turbidity is less than or equal to 0.15 NTU in at least 95 percent of samples each month in each filter and is never greater than 0.3 NTU in two consecutive measurements in any filter.
Demonstration of performance	43.11(11)“c”	Credit awarded to unit process or treatment train based on a demonstration to the department with a department-approved protocol.
Additional Filtration Toolbox Options		
Bag or cartridge filters (individual filters)	43.11(12)“a”	Up to 2-log credit based on the removal efficiency demonstrated during challenge testing with a 1.0-log factor of safety.
Bag or cartridge filters (in series)	43.11(12)“a”	Up to 2.5-log credit based on the removal efficiency demonstrated during challenge testing with a 0.5-log factor of safety.
Membrane filtration	43.11(12)“b”	Log credit equivalent to removal efficiency demonstrated in challenge test for device if supported by direct integrity testing.
Second-stage filtration	43.11(12)“c”	0.5-log credit for second separate granular media filtration stage if treatment train includes coagulation prior to first filter.
Slow sand filtration	43.11(12)“d”	2.5-log credit as a secondary filtration step; 3.0-log credit as a primary filtration process. No prior chlorination for either option.
Inactivation Toolbox Options		
Chlorine dioxide	43.11(13)	Log credit based on measured CT in relation to CT table.
Ozone	43.11(13)	Log credit based on measured CT in relation to CT table.
Ultraviolet light (UV)	43.11(13)	Log credit based on validated UV dose in relation to UV dose table; reactor validation testing required to establish UV dose and associated operating conditions.

**43.11(9) Source toolbox components.**

a. *Watershed control program.* Systems receive 0.5-log *Cryptosporidium* treatment credit for implementing a watershed control program that meets the requirements of this paragraph.

(1) Notification. Systems that intend to apply for the watershed control program credit must notify the department of this intent no later than two years prior to the treatment compliance date in 43.11(7) applicable to the system.

(2) Proposed watershed control plan. Systems must submit to the department a proposed watershed control plan no later than one year before the applicable treatment compliance date in 43.11(7). The department must approve the watershed control plan for the system to receive watershed control program treatment credit. The watershed control plan must include the following elements:

1. Identification of an “area of influence” outside of which the likelihood of *Cryptosporidium* or fecal contamination affecting the treatment plant intake is not significant. This is the area to be evaluated in future watershed surveys under 43.11(9)“a”(5)“2.”

2. Identification of both potential and actual sources of *Cryptosporidium* contamination and an assessment of the relative impact of these sources on the system’s source water quality.

3. An analysis of the effectiveness and feasibility of control measures that could reduce *Cryptosporidium* loading from sources of contamination to the system’s source water.

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4. A statement of goals and specific actions the system will undertake to reduce source water *Cryptosporidium* levels. The plan must explain how the actions are expected to contribute to specific goals, identify watershed partners and their roles, identify resource requirements and commitments, and include a schedule for plan implementation with deadlines for completing specific actions identified in the plan.

(3) Existing watershed control programs. Systems with watershed control programs that were in place on January 5, 2006, are eligible to seek this credit. The systems' watershed control plans must meet the criteria in 43.11(9)“a”(2) and must specify ongoing and future actions that will reduce source water *Cryptosporidium* levels.

(4) Department response to submitted plan. If the department does not respond to a system regarding approval of a watershed control plan submitted under this subrule and the system meets the other requirements of this subrule, the watershed control program will be considered approved and 0.5-log *Cryptosporidium* treatment credit will be awarded unless and until the department subsequently withdraws such approval.

(5) System requirements to maintain 0.5-log credit. Systems must complete the following actions to maintain the 0.5-log credit.

1. Submit an annual watershed control program status report to the department. The annual watershed control program status report must describe the system's implementation of the approved plan and assess the adequacy of the plan to meet its goals. The plan must explain how the system is addressing any shortcomings in plan implementation, including those previously identified by the department or as a result of the watershed survey conducted under 43.11(9)“a”(5)“2.” It must also describe any significant changes that have occurred in the watershed since the last watershed sanitary survey. If a system determines during implementation that making a significant change to its approved watershed control program is necessary, the system must notify the department prior to making any such changes. If any change is likely to reduce the level of source water protection, the system must also list in its notification the actions the system will take to mitigate this effect.

2. Undergo a watershed sanitary survey every three years for community water systems and every five years for noncommunity water systems and submit the survey report to the department. The survey must be conducted according to department guidelines and by persons acceptable to the department.

- The watershed sanitary survey must meet the following criteria: encompass the region identified in the department-approved watershed control plan as the area of influence; assess the implementation of actions to reduce source water *Cryptosporidium* levels; and identify any significant new sources of *Cryptosporidium*.

- If the department determines that significant changes may have occurred in the watershed since the previous watershed sanitary survey, systems must undergo another watershed sanitary survey by the date specified by the department, which may be earlier than the regular schedule of a three- or five-year frequency.

3. The system must make the watershed control plan, annual status reports, and watershed sanitary survey reports available to the public upon request. These documents must be in a plain language style and include criteria by which to evaluate the success of the program in achieving plan goals. The department may approve systems to withhold portions of an annual status report, watershed control plan, and watershed sanitary survey from the public, based on water supply security considerations.

(6) Withdrawal of watershed control program treatment credit. If the department determines that a system is not carrying out the approved watershed control plan, the department may withdraw the watershed control program treatment credit.

*b. Alternative source.* A system may conduct source water monitoring that reflects a different intake location (either in the same source or for an alternate source) or a different procedure for the timing or level of withdrawal from the source (alternative source monitoring). If the department approves, a system may determine its bin classification under 43.11(5) based on alternative source monitoring results.

(1) Systems conducting alternative source monitoring must also monitor their current plan intake concurrently, as described in 43.11(3).

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(2) Alternative source monitoring must meet the requirements for source monitoring to determine bin classification, as described in 43.11(3). Systems must report to the department the alternative source monitoring results and provide supporting information documenting the operating conditions under which the samples were collected.

(3) If a system determines its bin classification under 43.11(5) using alternative source monitoring results that reflect a different intake location or a different procedure for managing the timing or level of withdrawal from the source, the system must relocate the intake or permanently adopt the withdrawal procedure, as applicable, no later than the applicable treatment compliance date in 43.11(7).

**43.11(10) Prefiltration treatment toolbox components.**

*a. Presedimentation.* Systems receive 0.5-log *Cryptosporidium* treatment credit for a presedimentation basin during any month the process meets the criteria in this paragraph.

(1) The presedimentation basin must be in continuous operation and must treat the entire plant flow taken from a surface water or influenced groundwater source.

(2) The system must continuously add a coagulant to the presedimentation basin.

(3) The presedimentation basin must achieve either of the following performance criteria:

1. Demonstrates at least 0.5-log mean reduction of influent turbidity. This reduction must be determined using daily turbidity measurements in the presedimentation process influent and effluent and must be calculated as follows:  $\text{LOG}_{10}(\text{monthly mean of daily influent turbidity}) - \text{LOG}_{10}(\text{monthly mean of daily effluent turbidity})$ .

2. Complies with department-approved performance criteria that demonstrate at least 0.5-log mean removal of micron-sized particulate material through the presedimentation process.

*b. Two-stage lime softening.* Systems receive an additional 0.5-log *Cryptosporidium* treatment credit for a two-stage lime softening plant if chemical addition and hardness precipitation occur in two separate and sequential softening stages prior to filtration. Both softening stages must treat the entire plant flow taken from a surface water or influenced groundwater source.

*c. Bank filtration.* Systems receive *Cryptosporidium* treatment credit for bank filtration that serves as pretreatment to a filtration plant by meeting the criteria in this paragraph. Systems using bank filtration when they begin source water monitoring under 43.11(3) "a" must collect samples as described in 43.11(3) "d"(3) and are not eligible for this credit.

(1) Treatment credit. Wells with a groundwater flow path of at least 25 feet receive 0.5-log treatment credit; wells with a groundwater flow path of at least 50 feet receive 1.0-log treatment credit. The groundwater flow path must be determined as specified in 43.11(10) "c"(4).

(2) Granular aquifers only. Only wells in granular aquifers are eligible for treatment credit. Granular aquifers are those comprised of sand, clay, silt, rock fragments, pebbles or larger particles, and minor cement. A system must characterize the aquifer at the well site to determine aquifer properties. Systems must extract a core from the aquifer and demonstrate that in at least 90 percent of the core length, grains less than 1.0 mm in diameter constitute at least 10 percent of the core material.

(3) Horizontal and vertical wells only. Only horizontal and vertical wells are eligible for treatment credit.

(4) Measurement of groundwater flow path. For vertical wells, the groundwater flow path is the measured distance from the edge of the surface water body under high flow conditions (determined by the 100-year floodplain elevation boundary or by the floodway, as defined in Federal Emergency Management Agency flood hazard maps) to the well screen. For horizontal wells, the groundwater flow path is the measured distance from the bed of the river under normal flow conditions to the closest horizontal well lateral screen.

(5) Turbidity monitoring at the wellhead. Systems must monitor each wellhead for turbidity at least once every four hours while the bank filtration process is in operation. If monthly average turbidity levels, based on daily maximum values in the well, exceed 1 NTU, the system must report this result to the department and conduct an assessment within 30 days to determine the cause of the high turbidity levels in the well. If the department determines that microbial removal has been compromised, the department may revoke treatment credit until the system implements corrective actions approved by the department to remediate the problem.

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**43.11(11) Treatment performance toolbox components.** This option pertains to physical treatment processes.

*a. Combined filter performance.* Systems using conventional filtration treatment or direct filtration treatment receive an additional 0.5-log *Cryptosporidium* treatment credit during any month the system meets the criteria in this paragraph. Combined filter effluent (CFE) turbidity must be less than or equal to 0.15 NTU in at least 95 percent of the measurements. Turbidity must be measured as described in 43.5(4) and, if applicable, 43.10(4).

*b. Individual filter performance.* Systems using conventional filtration treatment or direct filtration treatment receive 0.5-log *Cryptosporidium* treatment credit during any month the system meets the criteria in this paragraph, which can be in addition to the CFE 0.5-log credit from 43.11(11)“a.” Compliance with these criteria must be based on individual filter turbidity monitoring as described in 43.9(4) or 43.10(5), as appropriate.

(1) The filtered water turbidity for each individual filter must be less than or equal to 0.15 NTU in at least 95 percent of the measurements recorded each month.

(2) No individual filter may have a measured turbidity greater than 0.3 NTU in two consecutive measurements taken 15 minutes apart.

(3) Any system that has received treatment credit for individual filter performance and fails to meet the requirements of 43.11(11)“b”(2) and (3) during any month shall not receive a treatment technique violation under 43.11(6) if the department determines the following:

1. The failure was due to unusual and short-term circumstances that could not reasonably be prevented through optimizing the treatment plant design, operation, and maintenance.

2. The system has experienced no more than two such failures in any calendar year.

*c. Demonstration of performance.* The department may approve *Cryptosporidium* treatment credit for drinking water treatment processes based on a demonstration of performance study that meets the criteria in this paragraph. This treatment credit may be greater than or less than the prescribed treatment credits in 43.11(6) or 43.11(10) through 43.11(13) and may be awarded to treatment processes that do not meet the criteria for the prescribed credits.

(1) Systems cannot receive the prescribed treatment credit for any toolbox option in 43.11(10) through 43.11(13) if that toolbox option is included in a demonstration of performance study for which treatment credit is awarded under this paragraph.

(2) The demonstration of performance study must follow a department-approved protocol and must demonstrate the level of *Cryptosporidium* reduction the treatment process will achieve under the full range of expected operating conditions for the system.

(3) Approval by the department must be in writing and may include monitoring and treatment performance criteria that the system must demonstrate and report on an ongoing basis to remain eligible for the treatment credit. The department may designate such criteria where necessary to verify that the conditions under which the demonstration of performance credit was approved are maintained during routine operation.

**43.11(12) Additional filtration toolbox components.**

*a. Bag and cartridge filters.* By meeting the criteria in this paragraph, systems receive *Cryptosporidium* treatment credit of up to 2.0-log for the use of individual bag or cartridge filters and up to 2.5-log for the use of bag or cartridge filters operated in series. To be eligible for this credit, systems must report the results of challenge testing that meets the requirements of 43.11(12)“a”(2) through 43.11(12)“a”(9) to the department. The filters must treat the entire plant flow taken from a surface water or influenced groundwater source.

(1) The *Cryptosporidium* treatment credit awarded for use of bag or cartridge filters must be based on the removal efficiency demonstrated during challenge testing that is conducted in accordance with the criteria in 43.11(12)“a”(2) through 43.11(12)“a”(9). A safety factor equal to 1-log for individual bag or cartridge filters and 0.5-log for bag or cartridge filters in series must be applied to challenge testing results to determine removal credit. Systems may use results from challenge testing conducted prior to January 5, 2006, if the prior testing was consistent with the criteria specified in this paragraph.

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(2) Challenge testing must be performed on full-scale bag or cartridge filters, and the associated filter housing or pressure vessel, that are identical in material and construction to the filters and housings the system will use for removal of *Cryptosporidium*. Bag or cartridge filters must be challenge tested in the same configuration that the system will use, either as individual filters or as a series configuration of filters.

(3) Challenge testing must be conducted using *Cryptosporidium* or a surrogate that is removed no more efficiently than *Cryptosporidium*. The microorganism or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate must be determined using a method capable of discretely quantifying the specific microorganisms or surrogate used in the test; gross measurements such as turbidity shall not be used.

(4) The maximum feed water concentration that can be used during a challenge test must be based on the detection limit of the challenge particulate in the filtrate (i.e., filtrate detection limit) and must be calculated using this equation:

$$\text{Maximum Feed Water Concentration} = 10,000 \times \text{Filtrate Detection Limit}$$

(5) Challenge testing must be conducted at the maximum design flow rate for the filter as specified by the manufacturer.

(6) Each filter evaluated must be tested for a duration sufficient to reach 100 percent of the terminal pressure drop, which thereby establishes the maximum pressure drop under which the filter may be used to comply with the requirements of this paragraph.

(7) Removal efficiency of a filter must be determined from the results of the challenge test and expressed in terms of log removal values using the following equation:

$$\text{LRV} = \text{LOG}_{10}(C_f) - \text{LOG}_{10}(C_p)$$

Where:

LRV = log removal value demonstrated during challenge test;

$C_f$  = the feed concentration measured during the challenge test; and

$C_p$  = the filtrate concentration measured during the challenge test.

Equivalent units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, the term  $C_p$  must be set equal to the detection limit.

(8) Each filter tested must be challenged with the challenge particulate during three periods over the filtration cycle: within two hours of start-up of a new filter; when the pressure drop is between 45 and 55 percent of the terminal pressure drop; and at the end of the cycle after the pressure drop has reached 100 percent of the terminal pressure drop. An LRV must be calculated for each of these challenge periods for each filter tested. The LRV for the filter ( $\text{LRV}_{\text{filter}}$ ) must be assigned the value of the minimum LRV observed during the three challenge periods for that filter.

(9) If fewer than 20 filters are tested, the overall removal efficiency for the filter product line must be set equal to the lowest  $\text{LRV}_{\text{filter}}$  among the filters tested. If 20 or more filters are tested, the overall removal efficiency for the filter product line must be set equal to the tenth percentile of the set of  $\text{LRV}_{\text{filter}}$  values for the various filters tested. The percentile is defined by  $[i/(n+1)]$  where "i" is the rank of "n" individual data points ordered lowest to highest. If necessary, the tenth percentile may be calculated using linear interpolation.

(10) If a previously tested filter is modified in a manner that could change the removal efficiency of the filter product line, challenge testing to demonstrate the removal efficiency of the modified filter must be conducted and submitted to the department.

*b. Membrane filtration.*

(1) Systems receive *Cryptosporidium* treatment credit for using membrane filtration that meets the criteria of this paragraph. Systems using membrane cartridge filters that meet the definition of membrane filtration in 567—40.2(455B) are eligible for this credit. The level of treatment credit a system receives is equal to the lower of the values determined under the following two paragraphs:

1. The removal efficiency demonstrated during challenge testing conducted under the criteria in 43.11(12)“b”(2).

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2. The maximum removal efficiency that can be verified through direct integrity testing used with the membrane filtration process under the conditions in 43.11(12) "b"(3).

(2) Challenge testing. The membrane used by the system must undergo challenge testing to evaluate removal efficiency, and the system must report the results of challenge testing to the department. Challenge testing must be conducted according to the criteria listed in this subparagraph. Systems may use data from challenge testing conducted prior to January 5, 2006, if the prior testing was consistent with the criteria listed in this subparagraph.

1. Challenge testing must be conducted on either a full-scale membrane module, identical in material and construction to the membrane modules used in the system's treatment facility, or a smaller-scale membrane module, identical in material and similar in construction to the full-scale module. A module is defined as the smallest component of a membrane unit in which a specific membrane surface area is housed in a device with a filtrate outlet structure.

2. Challenge testing must be conducted using *Cryptosporidium* oocysts or a surrogate that is removed no more efficiently than *Cryptosporidium* oocysts. The organisms or surrogate used during challenge testing is referred to as the challenge particulate. The concentration of the challenge particulate, in both the feed and filtrate water, must be determined using a method capable of discretely quantifying the specific challenge particulate used in the test; gross measurements such as turbidity shall not be used.

3. The maximum feed water concentration that can be used during a challenge test is based on the detection limit of the challenge particulate in the filtrate and must be determined according to the following equation:

$$\text{Maximum Feed Water Concentration} = 3,160,000 \times \text{Filtrate Detection Limit}$$

4. Challenge testing must be conducted under representative hydraulic conditions at the maximum design flux and maximum design process recovery specified by the manufacturer for the membrane module. Flux is defined as the throughput of a pressure-driven membrane process expressed as flow per unit of membrane area. Recovery is defined as the volumetric percent of feed water that is converted to filtrate over the course of an operating cycle uninterrupted by events such as chemical cleaning or a solids removal process (i.e., backwashing).

5. Removal efficiency of a membrane module must be calculated from the challenge test results and expressed as a log removal value according to the following equation:

$$\text{LRV} = \text{LOG}_{10}(C_f) - \text{LOG}_{10}(C_p)$$

Where:

LRV = log removal value demonstrated during challenge test;

$C_f$  = the feed concentration measured during the challenge test; and

$C_p$  = the filtrate concentration measured during the challenge test.

Equivalent units must be used for the feed and filtrate concentrations. If the challenge particulate is not detected in the filtrate, the term  $C_p$  must be set equal to the detection limit for the purpose of calculating the LRV. An LRV must be calculated for each membrane module evaluated during the challenge test.

6. The removal efficiency of a membrane filtration process demonstrated during challenge testing must be expressed as a log removal value ( $\text{LRV}_{C\text{-Test}}$ ). If fewer than 20 modules are tested, then  $\text{LRV}_{C\text{-Test}}$  is equal to the lowest of the representative LRVs among the modules tested. If 20 or more modules are tested, then  $\text{LRV}_{C\text{-Test}}$  is equal to the tenth percentile of the representative LRVs among the modules tested. The percentile is defined by  $[i/(n+1)]$  where "i" is the rank of "n" individual data points ordered lowest to highest. If necessary, the tenth percentile may be calculated using linear interpolation.

7. The challenge test must establish a quality control release value (QCRV) for a nondestructive performance test that demonstrates the *Cryptosporidium* removal capability of the membrane filtration module. In order to verify *Cryptosporidium* removal capability, this performance test must be applied to each production membrane module that was not directly challenge tested but was used by the system. Production modules that do not meet the established QCRV are not eligible for the treatment credit demonstrated during the challenge test.

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8. If a previously tested membrane is modified in a manner that could change the removal efficiency of the membrane or the applicability of the nondestructive performance test and associated QCRV, additional challenge testing to demonstrate the removal efficiency of the modified membrane must be conducted and submitted to the department, along with determination of a new QCRV.

(3) Direct integrity testing. Systems must conduct direct integrity testing in a manner that demonstrates a removal efficiency equal to or greater than the removal credit awarded for the membrane filtration process and meets the requirements described in this subparagraph. A direct integrity test is defined as a physical test applied to a membrane unit in order to identify and isolate integrity breaches (i.e., one or more leaks that could result in contamination of the filtrate).

1. The direct integrity test must be independently applied to each membrane unit in service. A membrane unit is defined as a group of membrane modules that share common valving that allows the unit to be isolated from the rest of the system for the purpose of integrity testing or other maintenance.

2. The direct integrity method must have a resolution of 3 micrometers or less, where resolution is defined as the size of the smallest integrity breach that contributes to a response from the direct integrity test.

3. The direct integrity test must have a sensitivity sufficient to verify the log treatment credit awarded by the department for the membrane filtration process, where sensitivity is defined as the maximum log removal value that can be reliably verified by a direct integrity test. Sensitivity must be determined using the approach in either of the following paragraphs as applicable to the type of direct integrity test the system uses.

- For direct integrity tests using applied pressure or vacuum, the direct integrity test sensitivity must be calculated according to the following equation:

$$LRV_{DIT} = \text{LOG}_{10} [Q_p / (\text{VCF} \times Q_{\text{breach}})]$$

Where:

$LRV_{DIT}$  = the sensitivity of the direct integrity test;

$Q_p$  = total design filtrate flow from the membrane unit;

$Q_{\text{breach}}$  = flow of water from an integrity breach associated with the smallest integrity test response that can be reliably measured; and

VCF = volumetric concentration factor, which is the ratio of the suspended solids concentration on the high-pressure side of the membrane relative to that in the feed water.

- For direct integrity tests using a particulate or molecular marker, the direct integrity test sensitivity must be calculated according to the following equation:

$$LRV_{DIT} = \text{LOG}_{10} (C_f) - \text{LOG}_{10} (C_p)$$

Where:

$LRV_{DIT}$  = the sensitivity of the direct integrity test;

$C_f$  = the typical feed concentration of the marker used in the test; and

$C_p$  = the filtrate concentration of the marker from an integral membrane unit.

4. Systems must establish a control limit within the sensitivity limits of the direct integrity test that is indicative of an integral membrane unit capable of meeting the removal credit awarded by the department.

5. If the result of a direct integrity test exceeds the control limit established under 43.11(12)“b”(3)“4,” the system must remove the membrane unit from service. Systems must conduct a direct integrity test to verify any repairs and may return the membrane unit to service only if the direct integrity test is within the established control limit.

6. Systems must conduct direct integrity testing on each membrane unit at a frequency of not less than once each day that the membrane unit is in operation. The department may approve less frequent testing, based on demonstrated process reliability, the use of multiple barriers effective for *Cryptosporidium*, or reliable process safeguards.

(4) Indirect integrity monitoring. Systems must conduct continuous indirect integrity monitoring on each membrane unit according to the following criteria. Indirect integrity monitoring is defined as

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monitoring some aspect of filtrate water quality that is indicative of the removal of particulate matter. A system that implements continuous direct integrity testing of membrane units in accordance with the criteria in 43.11(12)“b”(3) is not subject to the requirements for continuous indirect integrity monitoring. Systems must submit a monthly report to the department summarizing all continuous indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken in each case.

1. Unless the department approves an alternative parameter, continuous indirect integrity monitoring must include continuous filtrate turbidity monitoring.

2. Continuous monitoring must be conducted at a frequency of no less than once every 15 minutes.

3. Continuous monitoring must be separately conducted on each membrane unit.

4. If indirect integrity monitoring includes turbidity and if the filtrate turbidity readings are above 0.15 NTU for a period greater than 15 minutes (i.e., two consecutive 15-minute readings above 0.15 NTU), direct integrity testing must immediately be performed on the associated membrane unit as specified in 43.11(12)“b”(3)“1” through 43.11(12)“b”(3)“5.”

5. If indirect integrity monitoring includes a department-approved alternative parameter and if the alternative parameter exceeds a department-approved control limit for a period greater than 15 minutes, direct integrity testing must immediately be performed on the associated membrane units as specified in 43.11(12)“b”(3)“1” through 43.11(12)“b”(3)“5.”

*c. Second-stage filtration.* Systems receive 0.5-log *Cryptosporidium* treatment credit for using a separate second stage of filtration that consists of sand, dual media, GAC, or other fine-grain media following granular media filtration if the department approves. To be eligible for this credit, the first stage of filtration must be preceded by a coagulation step and both filtration stages must treat the entire plant flow taken from a surface water or influenced groundwater source. A cap, such as GAC, on a single stage of filtration is not eligible for this credit. The department must approve the treatment credit based on an assessment of the design characteristics of the filtration process.

*d. Slow sand filtration (as secondary filter).* Systems are eligible to receive 2.5-log *Cryptosporidium* treatment credit for using a slow sand filtration process that follows a separate stage of filtration if both filtration stages treat entire plant flow taken from a surface water or influenced groundwater source and no disinfectant residual is present in the influent water to the slow sand filtration process. The department must base its approval of the treatment credit on an assessment of the design characteristics of the filtration process. This does not apply to treatment credit awarded for slow sand filtration used as a primary filtration process.

**43.11(13) Inactivation toolbox components.**

*a. Calculation of CT values.*

(1) CT is the product of the disinfectant contact time (T, in minutes) and disinfectant concentration (C, in milligrams per liter). Systems with treatment credit for chlorine dioxide or ozone under 43.11(13)“b” or “c” must calculate CT at least once each day, with both C and T measured during peak hourly flow as specified in 43.5(4).

(2) Systems with several disinfection segments in sequence may calculate CT for each segment, where a disinfection segment is defined as a treatment unit process with a measureable disinfectant residual level and a liquid volume. Under this approach, systems must add the *Cryptosporidium* CT values in each segment to determine the total CT for the treatment plant.

*b. CT values for chlorine dioxide and ozone.*

(1) As described in 43.11(13)“a,” systems receive the *Cryptosporidium* treatment credit listed in Table 1 of Appendix B by meeting the corresponding chlorine dioxide CT value for the applicable water temperature.

(2) As described in 43.11(13)“a,” systems receive the *Cryptosporidium* treatment credit listed in Table 2 of Appendix B by meeting the corresponding ozone CT value for the applicable water temperature.

*c. Site-specific study.* The department may approve alternative chlorine dioxide or ozone CT values to those listed in 43.11(13)“b” on a site-specific basis. The department must base its approval on a site-specific study conducted by the system. The study must follow a department-approved protocol.

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*d. Ultraviolet light.* Systems receive *Cryptosporidium*, *Giardia lamblia*, and virus treatment credits for ultraviolet (UV) light reactors by achieving the corresponding UV dose values shown in Table 3 of Appendix B. Systems must use the following procedures to validate and monitor UV reactors in order to demonstrate that the reactors are achieving a particular UV dose value for treatment credit.

(1) Reactor validation testing. Systems must use UV reactors that have undergone validation testing to determine the operating conditions under which the reactor delivers the required UV dose (i.e., validated operating conditions). These operating conditions must include flow rate, UV intensity as measured by a UV sensor, and UV lamp status.

1. When determining validated operating conditions, systems must account for the following factors: UV absorbance of the water; lamp fouling and aging; measurement uncertainty of on-line sensors; UV dose distributions arising from the velocity profiles through the reactor; failure of UV lamps or other critical system components; and inlet and outlet piping or channel configurations of the UV reactor.

2. Validation testing must include the following: full-scale testing of a reactor that conforms uniformly to the UV reactors used by the system and inactivation of a test microorganism whose dose response characteristics have been quantified with a low-pressure mercury vapor lamp.

3. The department may approve an alternative approach to validation testing.

(2) Reactor monitoring.

1. Systems must monitor their UV reactors to determine if the reactors are operating within validated conditions, as determined under 43.11(13)“d”(1). This monitoring must include UV sensor, flow rate, lamp status, and other parameters the department designates based on UV reactor operation. Systems must verify the calibration of UV sensors and must recalibrate sensors in accordance with a protocol approved by the department.

2. To receive treatment credit for UV light, systems must treat at least 95 percent of the water delivered to the public during each month by UV reactors operating within validated conditions for the required UV dose. Systems must demonstrate compliance with this condition by the monitoring required under 43.11(13)“d”(2)“1.”

**43.11(14) Reporting requirements.**

*a. Sampling schedules and monitoring results.* Systems must report source water sampling schedules and monitoring results under 43.11(3)“c” and 43.11(3)“e,” unless the systems notify the department that they will not conduct source water monitoring due to meeting the criteria of 5.5-log treatment for *Cryptosporidium* under 43.11(3)“a.”

*b. Cryptosporidium bin classification.* Systems must report their *Cryptosporidium* bin classification determined under 43.11(5).

*c. Disinfection profiles and benchmarks.* Systems must report disinfection profiles and benchmarks to the department as described in 43.11(4)“a” and 43.11(4)“b” prior to making a significant change in disinfection practice.

*d. Microbial toolbox options.* Systems must report to the department in accordance with Table 7 for any microbial toolbox options used to comply with treatment requirements under 43.11(6).

Table 7: Microbial Toolbox Reporting Requirements

Toolbox Option	Systems must submit this information	Information must be submitted on this schedule
1. Watershed control program	Notice of intention to develop a new or continue an existing watershed control program	No later than two years before the applicable treatment compliance date in 43.11(7)
	Watershed control plan	No later than one year before the applicable treatment compliance date in 43.11(7)
	Annual watershed control program status report	Every 12 months, beginning one year after the applicable treatment compliance date in 43.11(7)

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Toolbox Option	Systems must submit this information	Information must be submitted on this schedule
	Watershed sanitary survey report	<ul style="list-style-type: none"> <li>- For community water systems, every three years beginning three years after the applicable treatment compliance date in 43.11(7)</li> <li>- For noncommunity water systems, every five years beginning five years after the applicable treatment compliance date in 43.11(7)</li> </ul>
2. Alternative source/intake management	Verification that system has relocated the intake or adopted the intake withdrawal procedure reflected in monitoring results	No later than the applicable treatment compliance date in 43.11(7)
3. Presedimentation	Monthly verification of the following: <ul style="list-style-type: none"> <li>- Continuous basin operation</li> <li>- Treatment of 100 percent of the flow</li> <li>- Continuous addition of a coagulant</li> <li>- At least 0.5-log mean reduction of influent turbidity or compliance with alternative department-approved performance criteria</li> </ul>	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 43.11(7)
4. Two-stage lime softening	Monthly verification of the following: <ul style="list-style-type: none"> <li>- Chemical addition and hardness precipitation occurred in two separate and sequential softening stages prior to filtration</li> <li>- Both stages treated 100 percent of plant flow</li> </ul>	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 43.11(7)
5. Bank filtration	Initial demonstration of the following: <ul style="list-style-type: none"> <li>- Unconsolidated, predominantly sandy aquifer</li> <li>- Setback distance of at least 25 feet for 0.5-log credit or 50 feet for 1.0-log credit</li> </ul>	No later than the applicable treatment compliance date in 43.11(7)
	If monthly average of daily maximum turbidity is greater than 1 NTU, then system must report result and submit an assessment of the cause.	Report within 30 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 43.11(7)
6. Combined filter performance	Monthly verification of combined filter effluent (CFE) turbidity levels less than or equal to 0.15 NTU in at least 95 percent of the 4-hour CFE measurements taken each month	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 43.11(7)
7. Individual filter performance	Monthly verification of the following: <ul style="list-style-type: none"> <li>- Individual filter effluent (IFE) turbidity levels less than or equal to 0.15 NTU in at least 95 percent of samples each month in each filter</li> <li>- No individual filter effluent turbidity levels greater than 0.3 NTU in two consecutive readings 15 minutes apart</li> </ul>	Monthly reporting within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 43.11(7)
8. Demonstration of performance	Results from testing following a department-approved protocol  As required by the department, monthly verification of operation within conditions of department approval for demonstration of performance credit	No later than the applicable treatment compliance date in 43.11(7)  Within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 43.11(7)

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Toolbox Option	Systems must submit this information	Information must be submitted on this schedule
9. Bag filters and cartridge filters	Demonstration that the following criteria are met: - Process meets the definition of bag or cartridge filtration - Removal efficiency established through challenge testing that meets criteria in this subpart	No later than the applicable treatment compliance date in 43.11(7)
	Monthly verification that 100 percent of plant flow was filtered	Within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 43.11(7)
10. Membrane filtration	Results of verification testing demonstrating the following: - Removal efficiency established through challenge testing that meets criteria - Integrity test method and parameters, including resolution, sensitivity, test frequency, control limits, and associated baseline	No later than the applicable treatment compliance date in 43.11(7)
	Monthly report summarizing the following: - All direct integrity tests above the control limit - If applicable, any turbidity or alternative department-approved indirect integrity monitoring results triggering direct integrity testing and the corrective action that was taken	Within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 43.11(7)
11. Second-stage filtration	Monthly verification that 100 percent of flow was filtered through both stages and that first stage was preceded by coagulation step	Within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 43.11(7)
12. Slow sand filtration as a secondary filter	Monthly verification that both a slow sand filter and a preceding separate stage of filtration treated 100 percent of the flow from surface or influenced groundwater sources	Within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 43.11(7)
13. Chlorine dioxide	Summary of CT values for each day as described in 43.11(13)	Within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 43.11(7)
14. Ozone	Summary of CT values for each day as described in 43.11(13)	Within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 43.11(7)
15. Ultraviolet light (UV)	Validation test results demonstrating operating conditions that achieve required UV dose	No later than the applicable treatment compliance date in 43.11(7)
	Monthly report summarizing the percentage of water entering the distribution system that was not treated by UV reactors operating within validated conditions for the required dose as specified in 43.11(13) "d"	Within 10 days following the month in which the monitoring was conducted, beginning on the applicable treatment compliance date in 43.11(7)

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**43.11(15) Record-keeping requirements.**

*a. Source water monitoring records.* Systems must keep results from the initial round of source water monitoring under 43.11(3) "a" and the second round of source water monitoring under 43.11(3) "b" until three years after bin classification under 43.11(5) for the particular round of monitoring.

*b. Systems meeting 5.5-log treatment for Cryptosporidium.* Systems must keep for three years records of any notification to the department that the systems will meet the 5.5-log *Cryptosporidium* treatment requirements and avoid source water monitoring.

*c. Microbial toolbox treatment monitoring records.* Systems must keep the results of treatment monitoring associated with microbial toolbox options under 43.11(8) through 43.11(13) for three years.

ITEM 55. Adopt the following **new** rule 567—43.12(455B):

**567—43.12(455B) Optimization goals.**

**43.12(1) Turbidity optimization goals.** Surface water and IGW systems must meet the requirements listed in 567—43.5(455B), 567—43.9(455B), and 567—43.10(455B). To encourage operational optimization, the department has adopted the following goals for systems using surface water or influenced groundwater and that wish to pursue the optimization of their existing treatment processes. These goals are voluntary. Data collected for optimization purposes will not be used to determine compliance with the requirements in 567—43.5(455B), 567—43.9(455B), 567—43.10(455B), or 567—43.11(455B) unless the optimization data are identical to the compliance data.

*a. Sedimentation performance goals.* The sedimentation performance goals are based upon the average annual raw water turbidity levels.

(1) When the annual average raw water turbidity is less than or equal to 10 NTU over the course of the calendar year, the turbidity should be less than or equal to 1 NTU in at least 95 percent of measurements based on the maximum daily value of readings taken at least once every four hours from each sedimentation basin while the plant is operating.

(2) When the annual average raw water turbidity is more than 10 NTU over the course of the calendar year, the turbidity should be less than or equal to 2 NTU in at least 95 percent of measurements based on the maximum daily value of readings taken at least once every four hours from each sedimentation basin while the plant is operating.

*b. Individual filter performance goals.* The individual filter performance goals depend upon the system's capability of filtering to waste.

(1) For systems that have the capability of filtering to waste, the individual filter turbidity should be less than or equal to 0.10 NTU in at least 95 percent of measurements over the course of the calendar year, based on the daily maximum value of readings recorded at least once per minute while the plant is in operation. The maximum individual filter turbidity must not exceed 0.30 NTU at any time. The filter must return to service with a turbidity of 0.10 NTU or less.

(2) For systems that do not have the capability of filtering to waste, the individual filter turbidity should be less than or equal to 0.10 NTU in at least 95 percent of measurements over the course of the calendar year, excepting the 15 minutes following the completion of the backwash process, based on the daily maximum value of readings recorded at least once per minute while the plant is in operation. The maximum individual filter turbidity must not exceed 0.30 NTU following backwash and must return to a level at or below 0.10 NTU within 15 minutes of returning the filter to service.

*c. Combined filter performance goal.* The combined filter performance goal has two components:

(1) Combined filter effluent turbidity should be less than or equal to 0.10 NTU in at least 95 percent of measurements over the course of the calendar year, based on daily maximum value of readings recorded at least once per minute while the plant is operating.

(2) The maximum individual filter turbidity must not exceed 0.30 NTU at any time.

**43.12(2) Disinfection optimization goals.** Reserved.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 56. Adopt the following **new** Appendix B in **567—Chapter 43**:

APPENDIX B: CT TABLES FOR *CRYPTOSPORIDIUM* INACTIVATIONTABLE 1: CT Values (mg-min/L) for *Cryptosporidium* Inactivation by Chlorine Dioxide<sup>1</sup>

Log Credit	Water Temperature, °C										
	≤0.5	1	2	3	5	7	10	15	20	25	30
0.25	159	153	140	128	107	90	69	45	29	19	12
0.5	319	305	279	256	214	180	138	89	58	38	24
1.0	637	610	558	511	429	360	277	179	116	75	49
1.5	956	915	838	767	643	539	415	268	174	113	73
2.0	1275	1220	1117	1023	858	719	553	357	232	150	98
2.5	1594	1525	1396	1278	1072	899	691	447	289	188	122
3.0	1912	1830	1675	1534	1286	1079	830	536	347	226	147

<sup>1</sup> Systems may use this equation to determine log credit between the indicated values:

$$\text{Log credit} = [0.001506 \times (1.09116)^{\text{Temp}}] \times \text{CT}$$

TABLE 2: CT Values (mg-min/L) for *Cryptosporidium* Inactivation by Ozone<sup>1</sup>

Log Credit	Water Temperature, °C										
	≤0.5	1	2	3	5	7	10	15	20	25	30
0.25	6.0	5.8	5.2	4.8	4.0	3.3	2.5	1.6	1.0	0.6	0.39
0.5	12	12	10	9.5	7.9	6.5	4.9	3.1	2.0	1.2	0.78
1.0	24	23	21	19	16	13	9.9	6.2	3.9	2.5	1.6
1.5	36	35	31	29	24	20	15	9.3	5.9	3.7	2.4
2.0	48	46	42	38	32	26	20	12	7.8	4.9	3.1
2.5	60	58	52	48	40	33	25	16	9.8	6.2	3.9
3.0	72	69	63	57	47	39	30	19	12	7.4	4.7

<sup>1</sup> Systems may use this equation to determine log credit between the indicated values:

$$\text{Log credit} = [0.0397 \times (1.09757)^{\text{Temp}}] \times \text{CT}$$

TABLE 3: UV Dose for *Cryptosporidium*, *Giardia lamblia*, and Virus Inactivation Credit<sup>1</sup>

Log Credit	<i>Cryptosporidium</i> UV dose (mJ/cm <sup>2</sup> )	<i>Giardia lamblia</i> UV dose (mJ/cm <sup>2</sup> )	Virus UV dose (mJ/cm <sup>2</sup> )
0.5	1.6	1.5	39
1.0	2.5	2.1	58
1.5	3.9	3.0	79
2.0	5.8	5.2	100
2.5	8.5	7.7	121
3.0	12	11	143
3.5	15	15	163
4.0	22	22	186

<sup>1</sup>The treatment credits listed in Table 3 are for UV light at a wavelength of 254 nm as produced by a low-pressure mercury vapor lamp. To receive treatment credit for other lamp types, systems must demonstrate an equivalent germicidal dose through reactor validation testing. The UV dose values in this table are applicable only to post-filter applications of UV in filtered systems.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 57. Amend paragraph **83.1(3)“a”** as follows:

a. *Water supply (drinking water)*. The requirements of this chapter apply to all laboratories conducting drinking water analyses pursuant to 567—Chapters 40, 41, 42, and 43, ~~and 47~~. Routine, on-site monitoring for alkalinity, calcium, conductivity, residual disinfectant, orthophosphate, pH, silica, temperature, turbidity and on-site operation and maintenance-related analytical monitoring are excluded from this requirement, and may be performed by a Grade I, II, III, or IV certified operator meeting the requirements of 567—Chapter 81, any person under the supervision of a Grade I, II, III, or IV certified operator meeting the requirements of 567—Chapter 81, or a laboratory certified by the department to perform water supply analyses under this chapter.

ITEM 58. Amend paragraph **83.6(4)“a”** as follows:

a. *Certification of the University State of Iowa Hygienic Laboratory*. The department has designated the University State of Iowa Hygienic Laboratory (UHL SHL) as its appraisal authority for laboratory certification. ~~The U.S. Environmental Protection Agency is responsible for the certification of UHL for the SDWA program, and the UHL~~ The SHL is responsible for attaining and maintaining laboratory certification for the SDWA program that is acceptable to the U.S. Environmental Protection Agency (EPA). The SHL quality assurance officer is responsible for the certification of ~~UHL SHL~~ SHL for those programs with no available EPA certification program, including wastewater, underground storage tank, solid waste, and contaminated site programs. ~~The UHL SHL~~ The SHL quality assurance officer reports directly to the office of the ~~UHL SHL~~ SHL director and operates independently of all areas of the laboratory generating data to ensure complete objectivity in the evaluation of laboratory operations. The quality assurance officer will schedule a biennial on-site inspection of the ~~UHL SHL~~ SHL and review results for acceptable performance. Inadequacies or unacceptable performance shall be reported by the quality assurance officer to the ~~UHL SHL~~ SHL and the department for correction. The department shall be notified if corrective action is not taken.

ITEM 59. Amend subparagraph **83.6(6)“a”(1)**, introductory paragraph, as follows:

(1) Certified laboratories must report to the department, or its designee such as ~~UHL SHL~~, all analytical test results for all public water supplies, using forms provided or approved by the department or by electronic means acceptable to the department. If a public water supply is required by the department to collect and analyze a sample for an analyte not normally required by 567—Chapters 41 and 43, the laboratory testing for that analyte must also be certified and report the results of that analyte to the department. It is the responsibility of the laboratory to correctly assign and track the sample identification number as well as facility ID and source/entry point data for all reported samples.

ITEM 60. Rescind subparagraph **83.6(7)“a”(6)** and adopt the following **new** subparagraph in lieu thereof:

(6) Disinfection byproducts. To obtain certification to conduct analyses for disinfection byproducts listed in 567—paragraph 41.6(1)“b,” laboratories must:

1. Analyze PE samples approved by EPA, the department, or a third-party provider acceptable to the department at least once during each period of 12 consecutive months by each method for which the laboratory desires certification;

2. Achieve quantitative results on the PE sample analyses that are within the following acceptance limits:

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Disinfection Byproduct	Acceptance limits (plus or minus this percent of true value)	Comments
TTHM		Laboratory must meet all four individual THM acceptance limits in order to successfully pass a PE sample for TTHM.
Bromoform	20	
Bromodichloromethane	20	
Chloroform	20	
Dibromomethane	20	
HAA5	40	Laboratory must meet the acceptance limits for 4 of the 5 HAA5 compounds in order to successfully pass a PE sample for HAA5.
Monobromoacetic Acid	40	
Dibromoacetic Acid	40	
Monochloroacetic Acid	40	
Dichloroacetic Acid	40	
Trichloroacetic Acid	40	
Chlorite	30	
Bromate	30	

3. Report quantitative data for concentrations at least as low as the levels listed in the following table for all disinfection byproduct samples analyzed for compliance with 567—41.6(455B).

Disinfection Byproduct	Minimum reporting level, mg/L <sup>1</sup>	Comments
TTHM <sup>2</sup>		
Bromoform	0.0010	
Bromodichloromethane	0.0010	
Chloroform	0.0010	
Dibromomethane	0.0010	
HAA5 <sup>2</sup>		
Monobromoacetic Acid	0.0010	
Dibromoacetic Acid	0.0010	
Monochloroacetic Acid	0.0020	
Dichloroacetic Acid	0.0010	
Trichloroacetic Acid	0.0010	
Chlorite	0.020	Applicable to chlorite monitoring conducted by a certified laboratory required under 567—paragraphs 41.6(1)“c”(3)“2” and 41.6(1)“c”(3)“3”
Bromate	0.0050 or 0.0010	Laboratories that use EPA Method 317.0 Revision 2, 321.8, or 326.0 must meet a 0.0010 mg/L MRL for bromate.

<sup>1</sup>The calibration curve must encompass the regulatory minimum reporting level (MRL) concentration. Data may be reported for concentrations lower than the regulatory MRL as long as the precision and accuracy criteria are met by analyzing an MRL check standard at the lowest reporting limit chosen by the laboratory. The laboratory must verify the accuracy of the calibration curve at the MRL concentration by analyzing an MRL check standard with a concentration less than or equal to 100 percent of the MRL with each batch of samples. The measured concentration for the MRL check standard must be plus or minus 50 percent of the expected value, if any field sample in the batch has a concentration less than five times the regulatory MRL. Method requirements to analyze higher concentration check standards and meet tighter acceptance criteria for them must be met in addition to the MRL check standard requirement.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

<sup>2</sup>When adding the individual trihalomethanes or haloacetic acid concentrations to calculate the TTHM or HAA5 concentrations, respectively, a zero is used for any analytical result that is less than the MRL concentration for that disinfection byproduct, unless otherwise specified by the department.

**ARC 9734B****HUMAN SERVICES DEPARTMENT[441]****Notice of Termination**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby terminates rule-making proceedings under the provisions of Iowa Code section 17A.4(1)"b" for proposed rule making relating to Chapter 11, "Collection of Public Assistance Debts," and Chapter 76, "Application and Investigation," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 9, 2011, as **ARC 9361B**. The Notice proposed to make a debt based on unpaid premiums subject to the same collection procedures as a debt for assistance that a member received when ineligible and to change the due date for the return of verifications for applications from five working days to ten calendar days.

Because the bill containing the statutory changes necessary to allow the collection of unpaid premiums, 2011 Iowa Acts, Senate File 313, was not enacted until July 26, 2011, the Council on Human Services was not able to adopt the proposed amendments before the 180-day expiration of the Notice of Intended Action. Therefore, the Department is not able to proceed with rule making on **ARC 9361B** at this time. The amendments proposed under that Notice of Intended Action have been Adopted and Filed Emergency and are published herein as **ARC 9701B**.

**ARC 9735B****HUMAN SERVICES DEPARTMENT[441]****Notice of Termination**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services hereby terminates rule-making proceedings under the provisions of Iowa Code section 17A.4(1)"b" for proposed rule making relating to Chapter 36, "Facility Assessments," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 29, 2011, as **ARC 9591B**. The Notice proposed to raise the amount of the assessment fee charged to an intermediate care facility for persons with mental retardation (an ICF/MR) from 5.5 percent to 6.0 percent of the facility's revenue, as allowed under Iowa Code section 249A.21. The assessment has been limited to 5.5 percent of revenues due to a provision of Public Law 109-432, the Tax Relief and Health Care Act of 2006, which expires on September 30, 2011.

However, this action was not included in the cost containment measures approved by the General Assembly in 2011 Iowa Acts, House File 649, section 10, subsection 20(a). Therefore, the Department is not proceeding with this rule making. The technical changes that were included in the Notice of Intended Action have been included in the Notice of Intended Action published in this issue as **ARC 9731B**.

**ARC 9731B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249L.4(4), the Department of Human Services proposes to amend Chapter 36, “Facility Assessments,” Iowa Administrative Code.

The proposed amendments:

- Change the conditions affecting the amount of the quality assurance assessment fee to comply with federal provider tax waiver regulations.
- Clarify when the assessment level will be determined.
- Clarify that inadvertence or oversight does not constitute good cause for failure to pay the nursing facility quality assurance assessment timely.
- Update legal references.

Currently, three categories of facilities are assessed a fee of \$1 per non-Medicare patient day, while the rest are assessed \$5.26 per non-Medicare patient day. The amendments change the criteria for one of these categories, shifting facilities that have 47 to 50 certified beds from currently paying the \$1 fee to paying the \$5.26 fee. Changing the certified-bed criteria will allow the state to continue the nursing facility provider tax program.

The number of licensed beds on file with the Department of Inspections and Appeals as of May 1 of each year shall be used to determine the assessment level effective July 1 of each year. The amendments provide that the assessment level for each nursing facility shall be determined on an annual basis and shall be effective for the period July 1 through June 30.

Any interested person may make written comments on the proposed amendments on or before September 27, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments do not provide for waivers in specified situations because waivers would make the application of the assessment fee inequitable to facilities. However, requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapters 249L and 249M.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 36, Division II**, preamble, as follows:

PREAMBLE

These rules describe the nursing facility quality assurance assessment authorized by ~~2009~~ Iowa Code Supplement chapter 249L. The rules explain how the assessment is determined and paid.

ITEM 2. Amend subrule 36.6(2) as follows:

**36.6(2) Assessment level.** The assessment level for each nursing facility shall be determined on an annual basis and shall be effective for the period July 1 through June 30.

*a.* Nursing facilities with ~~50~~ 46 or fewer licensed beds are required to pay a quality assurance assessment of \$1 per non-Medicare patient day. The number of licensed beds on file with the department of inspections and appeals as of May 1 of each year shall be used to determine the assessment level effective July 1 of each year.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

*b.* Nursing facilities designated as continuing care retirement centers (CCRCs) by the insurance division of the Iowa department of commerce, as of May 1 of each year, are required to pay a quality assurance assessment of \$1 per non-Medicare patient day.

*c.* Nursing facilities with annual Iowa Medicaid patient days of 26,500 or more are required to pay a quality assurance assessment of \$1 per non-Medicare patient day. The annual number of Iowa Medicaid patient days will be determined as of May 1 of each year using the most current cost report submitted to Iowa Medicaid enterprise as of May 1 of each year.

*d.* All other nursing facilities are required to pay a quality assurance assessment of \$5.26 per non-Medicare patient day.

ITEM 3. Amend subrule 36.7(4) as follows:

**36.7(4)** A nursing facility that fails to pay the quality assurance assessment within the time frame specified above shall pay a penalty in the amount of 1.5 percent of the quality assurance assessment amount owed for each month or portion of a month that the payment is overdue.

*a.* ~~If the department determines that~~ facility substantiates good cause is shown beyond the facility's control for failure to comply with payment of the quality assurance assessment, the department shall waive the penalty or a portion of the penalty. For purposes of this subrule, "good cause" shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

*b.* Requests for a good cause waiver must be submitted to the Iowa Medicaid Enterprise, Provider Cost Audit and Rate Setting Unit, 100 Army Post Road, Des Moines, Iowa 50315, within 30 days of notice to the facility that the penalty is due.

ITEM 4. Amend **441—Chapter 36, Division II**, implementation sentence, as follows:

These rules are intended to implement ~~2009~~ Iowa Code Supplement chapter 249L.

ITEM 5. Amend **441—Chapter 36, Division III**, preamble, as follows:

PREAMBLE

These rules describe the hospital health care access assessment authorized by ~~2010 Iowa Acts, Senate File 2388, enacted by the Eighty-third General Assembly~~ Code chapter 249M. The rules explain how the assessment is determined and paid.

ITEM 6. Strike the parenthetical implementation "(83GA,SF2388)" in rules **441—36.10(83GA,SF2388)** to **441—36.12(83GA,SF2388)** and insert "(249M)" in lieu thereof.

ITEM 7. Amend **441—Chapter 36, Division III**, implementation sentence, as follows:

These rules are intended to implement ~~2010 Iowa Acts, Senate File 2388~~ Code chapter 249M.

**ARC 9697B**

**HUMAN SERVICES DEPARTMENT[441]**

**Notice of Intended Action**

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

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

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

This amendment allows the Department to recover Medicaid expenditures when liability for negligence (malpractice) is admitted or established. Iowa has been one of the few states that do not have this capability. These collections are now authorized by statutory changes enacted in 2011 Iowa Acts, House File 649. This change was one of the cost containment strategies recommended by Governor Branstad.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 9696B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before September 27, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

This amendment does not provide for waivers in specified situations because the savings assumed in the Department's appropriations will not be achieved if waivers are provided. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4, Iowa Code section 147.136 as amended by 2011 Iowa Acts, House File 649, section 85, and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

**ARC 9700B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

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

These amendments affect Medicaid coverage for drugs by:

- Removing coverage for lipase inhibitor drugs when used to promote weight loss;
- Removing coverage for prescription drugs and certain nonprescription products used for symptomatic relief of cough and colds; and
- Updating the list of covered nonprescription drugs to reflect current rebatable drugs.

2011 Iowa Acts, House File 649, allows the Department to implement the Medicaid cost containment strategies recommended by Governor Branstad. Federal Medicaid law allows states to exclude coverage for these two categories of drugs, and eliminating coverage for them is one of the recommended strategies.

Lipase inhibitor drugs are the only weight-loss drug category currently covered in Iowa. There is one covered lipase inhibitor drug which will no longer be payable. This drug has minimal utilization (due to side effects) and effectiveness. Alternative nonpharmaceutical treatment options exist that are at least as effective as, if not more effective than, that drug.

Iowa presently covers a limited number of preferred nonprescription and prescription cough and cold products. These amendments retain coverage only for products that are both cost-effective and supported by sufficient clinical evidence. Coverage for all prescription cough and cold products is eliminated. These products tend to be combinations of multiple ingredients, some at subtherapeutic doses that have minimal effectiveness, with an increased tendency toward side effects and drug interactions. Alternative nonpharmaceutical options for treatment also exist.

Nonprescription products that contain only one or two ingredients, a decongestant and cough syrup containing dextromethorphan, will remain payable. There is evidence to support or expert opinion recommending treatment of symptomatic cold symptoms with a decongestant and some evidence to support the use of dextromethorphan.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9699B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before September 27, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

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

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

**ARC 9703B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

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

These amendments change the Medicaid criterion for the medical necessity of orthodontia for children by raising the minimum score on the Salzmann index to 26. (Orthodontia coverage for members over the age of 21 was eliminated in 2002.) The minimum Salzmann index score currently used to establish medical necessity for orthodontia is 21. Changing this criterion is one of the Medicaid cost containment strategies recommended by Governor Branstad. 2011 Iowa Acts, House File 649, authorizes the Department to implement these recommendations.

Of the 17 states that responded to a survey requesting Medicaid criteria for orthodontia, Iowa's criterion is one of the most liberal. The survey showed that other Midwestern states have established criteria at the following indexes: Illinois at 42, Missouri at 28, Nebraska at 40, and Wisconsin at 30. The criterion used in Iowa's HAWK-I program is 26. Changing the Iowa Medicaid criterion will align the policies of the two Iowa programs and move Iowa's Medicaid criterion toward the level required by many other states.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9702B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before September 27, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

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

After analysis and review of this rule making, no impact on jobs has been found.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

## **ARC 9705B**

### **HUMAN SERVICES DEPARTMENT[441]**

#### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 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 change the payment methodology for the following Medicaid home- and community-based services (HCBS) waivers to align with the payment methodology for durable medical equipment under the Medicaid state plan:

- Assistive devices under the elderly waiver.
- Environmental modifications and adaptive devices under the children’s mental health waiver.
- Home and vehicle modifications under the ill and handicapped, elderly, intellectual disability, brain injury and physical disability waivers.
- Specialized medical equipment under the brain injury and physical disability waivers.

Aligning the reimbursement for durable equipment is one of the Medicaid cost containment strategies recommended by Governor Branstad. 2011 Iowa Acts, House File 649, authorizes the Department to implement these recommendations.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9704B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before September 27, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

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

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

**ARC 9707B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments increase reimbursement rates for home- and community-based services (HCBS) to reflect the appropriation of \$1.5 million for state fiscal year 2012 for this purpose. These amendments essentially restore the reductions in the waiver reimbursement limits that were implemented in December 2009 as a result of Executive Order 19. At that time, rate maximums were reduced by 2.5 percent for most waiver services. Maximums for home health aide, nursing, and interim medical monitoring and treatment performed by a home health agency were reduced by 5 percent.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9706B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before September 27, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

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

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 28, subsection 1(q).

**ARC 9709B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments increase the Medicaid dispensing fee for prescribed drugs of \$4.34 by an additional amount based on additional appropriations made in 2011 Iowa Acts, House File 649. For state fiscal year 2012, the total dispensing fee will be \$6.20, the usual fee of \$4.34 plus an add-on of \$1.86 to reflect the additional appropriation.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9708B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before September 27, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

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

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 28, subsection 1(b).

**ARC 9711B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 85, “Services in Psychiatric Institutions,” Iowa Administrative Code.

These amendments restore the 5 percent reduction in the maximum Medicaid reimbursement rate for care in a non-state-owned psychiatric medical institution for children (PMIC) that was implemented in December 2009 as a result of Executive Order 19.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9710B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before September 27, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

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

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 28, subsection 1(i)(2).

**ARC 9713B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments eliminate reimbursement for the costs of graduate medical education in the calculation of Medicaid reimbursement for acute hospital inpatient and outpatient services provided by hospitals outside of Iowa. 2011 Iowa Acts, House File 649, passed by the Eighty-Fourth General Assembly allows the Department to implement the Medicaid cost containment strategies recommended by Governor Branstad. This change is one of those recommended strategies.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9712B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before September 27, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

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

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

**ARC 9715B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment precludes increased Medicaid payments for inpatient hospital services based on hospital-acquired conditions for which increased payments are not allowed under the Medicare program. Legislation passed by the Eighty-Fourth General Assembly allows the Department to implement Medicaid cost containment strategies recommended by Governor Branstad. This change is one of those

## HUMAN SERVICES DEPARTMENT[441](cont'd)

strategies. The change will align Medicaid and Medicare reimbursement policy and will be required for Medicaid upon implementation of the Affordable Care Act, Public Law 111-148, Section 2702.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 9714B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before September 27, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

This amendment does not provide for waivers in specified situations because the savings assumed in the Department's appropriations will not be achieved if waivers are provided. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

**ARC 9721B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment lowers Medicaid reimbursement for physician services when the services are provided in a health care facility setting instead of the physician's office. This reduction is consistent with similar changes that have been made in the Medicare program. Legislation passed by the Eighty-Fourth General Assembly allows the Department to implement the Medicaid cost containment strategies recommended by Governor Branstad. This change is one of the recommended strategies.

The rationale for this change is that a physician's expense in rendering a service in a facility setting is less than it would be in an office setting. When services are rendered in the physician's office, the cost of the service reflects not just the physician's time, but also the various support and auxiliary services involved in maintaining the office and providing services to patients. When services are provided in another facility, these expenses are borne by the facility and are reflected in the facility's reimbursement.

The Iowa Medicaid Enterprise has identified nearly 1,800 procedure codes that have lower Medicare reimbursement when services are provided in a facility and has calculated the percentage differential in the two reimbursement amounts for each code. The Iowa Medicaid Enterprise will apply that percentage differential to the Iowa Medicaid physician fee schedule for the same procedure code to arrive at the reduced Medicaid payment for the service when the service is rendered in a facility setting.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 9719B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before September 27, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street,

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

This amendment does not provide for waivers in specified situations because the savings assumed in the Department's appropriations will not be achieved if waivers are provided. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

**ARC 9723B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments:

- Reduce or eliminate Medicaid reimbursement for nonemergency services rendered in a hospital emergency room. The amount of reduction will depend on whether a member was referred to the emergency room by medical personnel.
- Implement a \$3 copayment from the Medicaid member for treatment of a nonemergency medical condition in a hospital emergency room (the same charge as for a physician visit). Copayment will not be charged if the member is admitted to the hospital for inpatient care.

These amendments are intended to reduce inappropriate use of hospital emergency rooms for treatment of nonemergency medical conditions. Legislation passed by the Eighty-Fourth General Assembly allows the Department to implement the Medicaid cost containment strategies recommended by Governor Branstad. These changes are part of those recommended strategies.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9722B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before September 27, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

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

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

**ARC 9725B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 80, “Procedure and Method of Payment,” Iowa Administrative Code.

This amendment requires providers who bill using paper claim forms to submit both the crossover claim form and the Explanation of Medicare Benefits (EOMB) when billing Medicaid for dually eligible members. Submission of both the claim form and the denied EOMB from Medicare will provide essential claim information, such as diagnosis codes and procedure modifiers, so that claims can be processed properly. This change is expected to eliminate the manual data entry of over 20,000 claim forms per month and associated data entry errors that delay payment.

2011 Iowa Acts, House File 649, allows the Department to implement the Medicaid cost containment strategies recommended by Governor Branstad. This change is one of the recommended strategies. This change is part of a larger effort to improve processing of Medicare crossover claims that will generate combined savings estimated at \$275,000 annually.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 9724B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before September 27, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

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

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

**ARC 9727B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

These amendments change the Department’s procedures for implementation of the federal preadmission screening and annual resident review (PASARR) requirements for nursing facilities.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These requirements, which are contained in 42 CFR Part 483, Subpart C, apply to all persons seeking care in a Medicaid-certified facility, regardless of the source of payment for that care.

PASARR regulations require that persons seeking to enter nursing facilities be reviewed to screen for mental retardation, a related condition, or mental illness (Level I review). If one of these conditions is indicated, an evaluation must be conducted to determine whether the person actually needs nursing facility care, needs specialized services for mental retardation or mental illness, or needs both nursing care and specialized services (Level II review). The state mental health authority (the Department's Division of Mental Health and Disability Services) must approve the person's evaluation and plan of care to ensure that the person is receiving appropriate care and treatment.

The Department has contracted with Ascend Management Innovations, LLC, to perform the evaluations required for Level II reviews. These amendments list conditions that temporarily or permanently exempt a person from Level II review. The amendments also provide that the Department will not approve payment for a person's nursing facility care until a Level I review and (if indicated) a Level II review are completed. This provision is expected to result in cost avoidance for the state and is included in Governor Branstad's list of cost containment recommendations.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9726B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before September 27, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments do not provide for waivers in specified situations since reviews are required by federal Medicaid regulations. However, the Department does have a general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

**ARC 9729B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 92, “IowaCare,” Iowa Administrative Code.

Federally qualified health centers designated as IowaCare medical home providers have expressed concern about their limited ability to provide medically necessary care to IowaCare members. Federally qualified health centers without on-site laboratory or radiology services have to pay outside sources in order to provide those services to IowaCare members. Also, IowaCare does not cover home health services, durable medical equipment or rehabilitation and therapy services that may be needed by a member recovering from an inpatient stay. Failure to provide these services may result in readmission to the hospital.

In response to these concerns, the Eighty-Fourth General Assembly has created two new capped funding pools, a care coordination pool and a laboratory test and radiology pool, to help medical homes defray the cost for medically necessary care not otherwise covered under IowaCare. These amendments:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- Establish covered services to be reimbursed through the new funding pools;
- Establish protocols for referral of IowaCare members to another provider;
- Make a technical correction to clarify that members are assigned to, rather than enrolled in, medical homes;
- Require IowaCare providers to develop a process to improve communication and resolve care disputes when referring members for specialty and hospital care.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9728B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before September 27, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

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).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 249J and 2011 Iowa Acts, House File 649, section 35, subsections 6 and 7.

**ARC 9716B****REAL ESTATE APPRAISER EXAMINING BOARD[193F]****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 543D.5, the Iowa Real Estate Appraiser Examining Board hereby gives Notice of Intended Action to amend Chapter 2, “Definitions,” Chapter 10, “Reciprocity,” and Chapter 11, “Continuing Education,” Iowa Administrative Code.

The proposed amendment to Chapter 2 amends the definition of “USPAP” to remove the word “annually.”

Chapter 10 addresses individuals who are certified appraisers outside the state of Iowa but wish to practice as certified appraisers in Iowa, either temporarily or by reciprocity. The proposed amendments to Chapter 10 are intended to clarify the rules for a non-Iowa certified appraiser who performs an appraisal that requires a certified appraiser but who only needs temporary approval for the project. The clarity given to these rules will enhance the good will of the state of Iowa toward certified appraisers wishing to practice temporarily or permanently within the state.

Proposed amendments to Chapter 11 revise definitions related to continuing education for “live instruction” and “home-study/correspondence program” and adopt a new definition of “distance education.” The Board also proposes to remove the continuing education requirement that all appraisers complete a report-writing class prior to certification renewal. This provision was implemented with the intent that all appraisers take a report-writing course at least two times over four years. This provision has served its purpose and it is time to remove it.

There is no fiscal impact to the state of Iowa.

A public hearing will be held on September 27, 2011, at 9 a.m. in the Second Floor Professional Licensing Small Conference Room, 1920 SE Hulsizer Road, Ankeny, Iowa, at which time persons may present their views on the proposed amendments either orally or in writing. At the hearing, any persons

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

who wish to speak will be asked to give their name and address for the record and to confine remarks to the subject of the proposed amendments.

Consideration will be given to all written suggestions or comments received no later than 4:30 p.m. on September 27, 2011. Comments should be addressed to Toni Bright, Executive Officer, Iowa Real Estate Appraiser Examining Board, 1920 SE Hulsizer Road, Ankeny, Iowa 50021; or faxed to (515)281-7411. E-mail may be sent to [toni.bright@iowa.gov](mailto:toni.bright@iowa.gov).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 543D.6.

The following amendments are proposed.

ITEM 1. Amend rule **193F—2.1(543D)**, definition of “USPAP,” as follows:

“USPAP” means the Uniform Standards of Professional Appraisal Practice published ~~annually~~ by the Appraisal Foundation.

ITEM 2. Amend subrule 10.2(1) as follows:

**10.2(1)** The board will recognize, on a temporary basis and for a maximum of two assignments per year, the certification ~~or licensure~~ of an appraiser issued by another state.

ITEM 3. Adopt the following new subrules 10.2(3) to 10.2(8):

**10.2(3)** An appraiser holding an inactive or lapsed certificate as a real estate appraiser in Iowa may apply for a temporary practice permit if the appraiser holds an active, unexpired certificate as a real estate appraiser in good standing in another jurisdiction and is otherwise eligible for a temporary practice permit.

**10.2(4)** An appraiser who was previously a registered associate or certified appraiser in Iowa whose Iowa registration or certificate has been revoked or surrendered in connection with a disciplinary investigation or proceeding is ineligible to apply for a temporary practice permit in Iowa.

**10.2(5)** The board may deny an application for a temporary practice permit if the applicant has been disciplined in Iowa or another jurisdiction, a disciplinary investigation or proceeding is pending in Iowa, the person has been convicted of a crime that is a ground for discipline in Iowa, or it appears the applicant is applying for a temporary permit because the applicant would not qualify to renew or reinstate in active status in Iowa and the application for a temporary permit is made primarily to compromise compliance with Iowa laws and rules.

**10.2(6)** An appraiser holding an inactive or lapsed Iowa certificate who applies to reinstate to active status in Iowa shall not be given credit for any fees paid during the biennial period for one or more temporary practice permits.

**10.2(7)** An appraiser holding a license to practice as a real estate appraiser in another jurisdiction may practice in Iowa without applying for a temporary practice permit or paying any fees as long as the appraiser does not perform appraisal services in Iowa for which certification is required by state or federal law, rule or policy.

**10.2(8)** The board must receive and approve an application for a temporary practice permit before the applicant is eligible to practice in Iowa under a temporary practice permit. Applicants are encouraged to submit applications by E-mail or facsimile to avoid the possible delays of mail service, because the board will not approve an application with a retroactive start date. The board shall grant or deny all applications for temporary practice permits as quickly as reasonably feasible and no later than five days of receipt of a completed application. Applicants shall use the form prescribed by the board. Applicants disclosing discipline or criminal convictions shall attach documentation from which the board can determine if the discipline or criminal history would be a ground to deny the application. Falsification of information or failure to disclose material information shall be a ground to deny the application and may form the basis to deny any subsequent application or an application to reinstate a lapsed or inactive Iowa certificate.

ITEM 4. Amend rule **193F—11.1(272C,543D)**, definitions of “Home-study/correspondence program” and “Live instruction,” as follows:

*“Home-study/correspondence program,”* ~~means a computer-generated program, such as CD-ROM, or written materials or exercises intended for self-study, which does not include simultaneous interaction~~

## REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

~~with an instructor but does include tests transmitted to the provider for review and grading as that term relates to Iowa Code section 543D.16(2), refers to self-study programs which are not generally approved by the Appraisal Qualifications Board for continuing education credit because such courses do not usually provide a reciprocal environment where the student has verbal or written communication with the instructor. The statutory limitation on correspondence and home study courses does not apply to interactive programs that are approved by the Appraisal Qualifications Board and AQB-approved delivery mechanisms.~~

~~“Live instruction” means an educational program delivered in a classroom setting or through videoconferencing whereby the instructor and student carry out essential tasks while together where both the student and the instructor are present in the same room.~~

ITEM 5. Adopt the following **new** definition in rule **193F—11.1(272C,543D)**:

“Distance education” means any education process based on the geographical separation of student and instructor. “Distance education” includes computer-generated programs, webinars, and home-study/correspondence programs.

ITEM 6. Amend rule 193F—11.2(272C,543D) as follows:

**193F—11.2(272C,543D) Continuing education requirements.**

**11.2(1)** Certified residential, certified general and associate appraisers must demonstrate compliance with the following continuing education requirements as a condition of biennial renewal:

*a. to c.* No change.

~~*d.* Effective with renewals commencing in June 2008, appraisers must successfully complete a seven-hour course in report writing each two-year renewal cycle.~~

**11.2(2)** A maximum of 14 of the required 28 credit hours may be acquired in approved ~~home study/correspondence~~ distance education programs.

**11.2(3)** No change.

**11.2(4)** An applicant seeking to renew an initial certificate or registration issued less than 185 days prior to renewal is not required to report any continuing education. An applicant seeking to renew an initial certificate or registration issued for 185 days to 365 days prior to renewal must demonstrate completion of at least 14 credit hours, including ~~at least 7 credit hours of report writing and~~ 7 credit hours of the most recent National USPAP Update. An applicant seeking to renew an initial certificate or registration issued 365 days prior to renewal or more must demonstrate completion of at least 28 credit hours, including ~~at least 7 credit hours of report writing and~~ 7 credit hours of the most recent National USPAP Update.

**11.2(5) to 11.2(9)** No change.

ITEM 7. Amend rule 193F—11.4(272C,543D) as follows:

**193F—11.4(272C,543D) Minimum program qualifications.**

**11.4(1)** No change.

**11.4(2)** Continuing education programs dealing with the following subject areas that are integrally related to appraisal topics will generally be acceptable:

*a. to o.* No change.

*p.* Real estate law, easements, and legal interests;

*q. to w.* No change.

**11.4(3)** The following programs will not be acceptable:

*a. to d.* No change.

~~*e.* Home study/correspondence~~ Distance education programs which are not tested and successfully completed;

*f.* No change.

**11.4(4) and 11.4(5)** No change.

**ARC 9741B****REVENUE DEPARTMENT[701]****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 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 12, “Filing Returns, Payment of Tax, Penalty and Interest,” Chapter 40, “Determination of Net Income,” Chapter 42, “Adjustments to Computed Tax and Tax Credits,” Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Chapter 53, “Determination of Net Income,” and Chapter 67, “Administration,” Iowa Administrative Code.

These amendments are proposed as a result of 2011 Iowa Acts, Senate Files 531 and 533.

Item 1 amends 701—Chapter 12 by adding new rule 701—12.18(423) to provide for the biodiesel production refund for sales and use tax for certain producers of biodiesel.

Item 2 amends 701—Chapter 40 by adding new rule 701—40.77(422) to provide for the exclusion from Iowa individual income tax of the amount of biodiesel production refund reported as income on the federal income tax return.

Items 3, 4 and 5 amend the introductory paragraph of rule 701—42.33(422), subrule 42.33(1) and the implementation sentence for rule 701—42.33(422) to provide for changes in the E-85 gasoline promotion tax credit for Iowa individual income tax for E-85 gasoline gallons sold on or after January 1, 2012.

Items 6, 7 and 8 amend the introductory paragraph of rule 701—42.34(422), subrule 42.34(1) and the implementation sentence for rule 701—42.34(422) to provide for changes in the biodiesel blended fuel tax credit for Iowa individual income tax for biodiesel blended fuel gallons sold on or after January 1, 2012.

Items 9, 10 and 11 amend subrule 42.39(2), subrule 42.39(5) and the implementation sentence for rule 701—42.39(422) to provide for changes in the ethanol promotion tax credit for Iowa individual income tax for ethanol blended gallons sold on or after January 1, 2011.

Item 12 amends 701—Chapter 42 by adding new rule 701—42.46(422) to provide for the new E-15 plus gasoline promotion tax credit for individual income tax for E-15 plus gasoline gallons sold on or after July 1, 2011.

Items 13, 14 and 15 amend the introductory paragraph of rule 701—52.30(422), subrule 52.30(1) and the implementation sentence for rule 701—52.30(422) to provide for changes in the E-85 gasoline promotion tax credit for Iowa corporation income tax for E-85 gasoline gallons sold on or after January 1, 2012. This is similar to the changes in Items 3, 4 and 5.

Items 16, 17 and 18 amend the introductory paragraph of rule 701—52.31(422), subrule 52.31(1) and the implementation sentence for rule 701—52.31(422) to provide for changes in the biodiesel blended fuel tax credit for Iowa corporation income tax for biodiesel blended fuel gallons sold on or after January 1, 2012. This is similar to the changes in Items 6, 7 and 8.

Items 19 and 20 amend subrules 52.36(2) and 52.36(5) to provide for changes in the ethanol promotion tax credit for Iowa corporation income tax for ethanol blended gallons sold on or after January 1, 2011. This is similar to the changes in Items 9 and 10. Item 21 amends the implementation sentence in rule 701—52.36(422).

Item 22 amends 701—Chapter 52 by adding new rule 701—52.43(422) to provide for the new E-15 plus gasoline promotion tax credit for corporation income tax for E-15 plus gasoline gallons sold on or after July 1, 2011. This is similar to the change in Item 12.

## REVENUE DEPARTMENT[701](cont'd)

Item 23 amends 701—Chapter 53 by adding new rule 701—53.26(422) to provide for the exclusion from Iowa corporation income tax of the amount of biodiesel production refund reported as income on the federal income tax return. This is similar to the change in Item 2.

Items 24 and 25 amend rule 701—67.27(452A) and the implementation clause for rule 701—67.27(452A) to provide that the annual report filed by retail dealers of motor fuel must include the number of motor fuel gallons sold on both a companywide basis and a site-by-site basis.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 10, 2011, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 27, 2011. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 27, 2011.

After analysis and review of this rule making, no adverse impact on jobs has been found. The tax credits may positively impact job and economic growth for businesses in the state of Iowa.

These amendments are intended to implement Iowa Code sections 422.7, 422.11N, 422.11O, 422.33, 422.35 and 452A.33 as amended by 2011 Iowa Acts, Senate File 531; sections 422.11P and 423.4 as amended by 2011 Iowa Acts, Senate File 531 and Senate File 533; and 2011 Iowa Acts, Senate File 531, section 35, as amended by 2011 Iowa Acts, Senate File 533.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 701—12.18(423):

**701—12.18(423) Biodiesel production refund.** A refund of sales or use tax is available for certain producers of biodiesel for calendar years 2012 to 2014.

**12.18(1) *Qualifications for the refund.*** A biodiesel producer must meet the following criteria to be eligible for the refund.

*a.* The producer must be engaged in the manufacture of biodiesel and have registered with the United States Environmental Protection Agency as a manufacturer in accordance with the requirements of 40 CFR Part 79.4.

*b.* The biodiesel produced must be for use in biodiesel blended fuel in accordance with Iowa Code section 214A.2.

*c.* The biodiesel must be produced in Iowa.

**12.18(2) *Calculation of the refund.***

*a.* The refund is calculated by multiplying the total number of gallons produced by the biodiesel producer in this state during each quarter of the calendar year by the following rate:

- (1) For the calendar year 2012, three cents.
- (2) For the calendar year 2013, two and one-half cents.
- (3) For the calendar year 2014, two cents.

## REVENUE DEPARTMENT[701](cont'd)

b. The refund is calculated on the first 25 million gallons of biodiesel produced at each facility during the calendar year. No refund will be allowed on gallons produced in excess of 25 million at a facility during each of the calendar years 2012 to 2014. No refund will be allowed for gallons produced at a facility on or after January 1, 2015.

**12.18(3) Claiming the tax credit.** The refund shall be computed after subtracting any amount of sales or use tax imposed and paid upon purchases made by the biodiesel producer. The biodiesel producer must file and report the amount of sales or use tax upon purchases made during each calendar year quarter from 2012 to 2014 by filing a quarterly sales or use tax return. The biodiesel producer must then file Form IA 843, Claim for Refund, for each calendar quarter and report all of the following:

- a. The amount of biodiesel produced during the quarter at each facility.
- b. The calculation of the biodiesel production refund.
- c. The amount of sales or use tax paid upon purchases during the quarter.
- d. The amount of biodiesel production refund requested.

EXAMPLE: A biodiesel producer produced 5 million gallons during the first quarter of 2012. The producer owes \$10,000 of Iowa consumers use tax based on purchases made during the first quarter of 2012. The producer will file an Iowa consumers use tax return and report \$10,000 of tax due, but this amount will not be paid with the return. The producer will also file Form IA 843, Claim for Refund, to request a refund of \$140,000 for the first quarter of 2012. This amount is calculated by multiplying 5 million gallons times three cents, or \$150,000, less the \$10,000 of Iowa consumers use tax due.

This rule is intended to implement Iowa Code section 423.4 as amended by 2011 Iowa Acts, Senate Files 531 and 533.

ITEM 2. Adopt the following **new** rule 701—40.77(422):

**701—40.77(422) Exclusion of biodiesel production refund.** A taxpayer may exclude, to the extent included in federal adjusted gross income, the amount of the biodiesel production refund described in rule 701—12.18(423).

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 531.

ITEM 3. Amend rule 701—42.33(422), introductory paragraph, as follows:

**701—42.33(422) E-85 gasoline promotion tax credit.** Effective for tax years beginning on or after January 1, 2006, a retail dealer of gasoline may claim an E-85 gasoline promotion tax credit. “E-85 gasoline” means ethanol blended gasoline formulated with a minimum percentage of between 70 percent and 85 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 135. The credit is calculated by multiplying the total number of E-85 gallons sold by the retail dealer during the tax year by the following designated rates:

Calendar years 2006, 2007 and 2008	25 cents
Calendar years 2009 and 2010	20 cents
Calendar year 2011	10 cents
Calendar year 2012 <u>through 2017</u>	9 <u>16</u> cents
<del>Calendar year 2013</del>	<del>8 cents</del>
<del>Calendar year 2014</del>	<del>7 cents</del>
<del>Calendar year 2015</del>	<del>6 cents</del>
<del>Calendar year 2016</del>	<del>5 cents</del>
<del>Calendar year 2017</del>	<del>4 cents</del>
<del>Calendar year 2018</del>	<del>3 cents</del>
<del>Calendar year 2019</del>	<del>2 cents</del>
<del>Calendar year 2020</del>	<del>1 cent</del>

## REVENUE DEPARTMENT[701](cont'd)

ITEM 4. Amend subrule 42.33(1), introductory paragraph, as follows:

**42.33(1) Fiscal year filers.** For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-85 gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, ~~2021~~ 2018, a taxpayer whose tax year ends prior to December 31, ~~2020~~ 2017, may continue to claim the tax credit in the following tax year for any E-85 gallons sold through December 31, ~~2020~~ 2017. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-85 credit on the previous return, the dealer may claim the credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

ITEM 5. Amend rule 701—**42.33(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.11O as amended by 2011 Iowa Acts, Senate File 531.

ITEM 6. Amend rule 701—42.34(422), introductory paragraph and first unnumbered paragraph, as follows:

**701—42.34(422) Biodiesel blended fuel tax credit.** Effective for tax years beginning on or after January 1, 2006, a retail dealer of biodiesel blended fuel may claim a biodiesel blended fuel tax credit. “Biodiesel blended fuel” means a blend of biodiesel with petroleum-based diesel fuel which meets the standards provided in Iowa Code section 214A.2. The biodiesel blended fuel must be formulated with a minimum percentage of 2 percent by volume of biodiesel, if the formulation meets the standards provided by Iowa Code section 214A.2, to qualify for the tax credit for gallons sold on or after January 1, 2006, but before January 1, 2013. For gallons sold on or after January 1, 2013, but before January 1, 2018, the biodiesel blended fuel must be formulated with a minimum percentage of 5 percent by volume of biodiesel, if the formulation meets the standards provided by Iowa Code section 214A.2, to qualify for the tax credit. In addition, of the total gallons of diesel fuel sold by the retail dealer, 50 percent or more must be biodiesel blended fuel to be eligible for the tax credit for tax years beginning prior to January 1, 2009. For tax years beginning on or after January 1, 2009, but before January 1, 2012, the biodiesel blended fuel tax credit is calculated separately for each retail motor fuel site for which 50 percent or more of the total gallons of diesel fuel sold at the motor fuel site was biodiesel blended fuel. For tax years beginning on or after January 1, 2012, the requirement that 50 percent of all diesel fuel gallons sold be biodiesel gallons to be eligible for the tax credit is eliminated.

The tax credit equals three cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year for gallons sold through December 31, 2011. For gallons sold during the 2012 calendar year, the tax credit equals the sum of two cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 2 percent by volume of biodiesel but less than 5 percent by volume of biodiesel and four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 5 percent by volume of biodiesel. For gallons sold during the 2013 to 2017 calendar years, the tax credit equals four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 5 percent by volume of biodiesel. In determining the minimum percentage by volume of biodiesel, the department will take into account reasonable variances due to testing and other limitations. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 8864.

ITEM 7. Amend subrule 42.34(1), introductory paragraph, as follows:

**42.34(1) Fiscal year filers.** Taxpayers whose tax year is not on a calendar-year basis and whose tax year ends before December 31, 2006, may compute the tax credit on the gallons of biodiesel blended fuel sold during the period from January 1, 2006, through the end of the tax year, provided that 50 percent of all diesel fuel sold during that period was biodiesel blended fuel. Because the tax credit is repealed on January 1, ~~2012~~ 2018, a taxpayer whose tax year ends prior to December 31, ~~2011~~ 2017, may continue to claim the tax credit in the following tax year for any biodiesel blended fuel sold through December

## REVENUE DEPARTMENT[701](cont'd)

31, 2011 2017, provided that 50 percent of diesel fuel sold at qualifying retail motor fuel sites during that period was biodiesel blended fuel.

ITEM 8. Amend rule 701—42.34(422), implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.11P as amended by 2011 Iowa Acts, Senate Files 531 and 533.

ITEM 9. Amend subrule 42.39(2) as follows:

**42.39(2) Calculation of tax credit.**

a. The tax credit is calculated by multiplying the retail dealer's total ethanol gallonage by the tax credit rate, which is adjusted based upon the retail dealer's biofuel threshold percentage disparity. The tax credit rate is set forth below:

Biofuel Threshold Percentage Disparity	Tax Credit Rate Per Gallon 2009-2010	Tax Credit Rate Per Gallon 2011	Tax Credit Rate Per Gallon 2012-2020
0%	6.5 cents	<u>8 cents</u>	<u>8 cents</u>
0.01% to 2.00%	4.5 cents	<u>6 cents</u>	<u>6 cents</u>
2.01% to 4.00%	2.5 cents	<u>2.5 cents</u>	<u>4 cents</u>
4.01% or more	0 cents	<u>0 cents</u>	<u>0 cents</u>

b. For use in calculating a retail dealer's total ethanol gallonage, the department is required to establish a schedule regarding the average amount of ethanol contained in E-85 gasoline.

c. A taxpayer may claim the ethanol promotion tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 701—42.33(422) or the E-15 plus gasoline promotion tax credit provided in rule 701—42.46(422) for the same tax year for the same ethanol gallons.

d. The tax credit must be calculated separately for each retail motor fuel site operated by the taxpayer for tax years beginning prior to January 1, 2011. The biofuel threshold percentage disparity of the taxpayer is computed on a statewide basis based on the total ethanol gallonage sold in Iowa. The taxpayer must determine the ethanol gallonage sold at each retail motor fuel site and multiply this ethanol gallonage by the applicable tax credit rate based on the biofuel threshold percentage disparity to calculate the ethanol promotion tax credit.

e. For tax years beginning on or after January 1, 2011, the taxpayer may elect to compute the biofuel threshold percentage disparity and the tax credit on either a site-by-site basis or on a companywide basis. The election made on the first return beginning on or after January 1, 2011, for either the site-by-site method or the companywide method is binding on the taxpayer for subsequent tax years unless the taxpayer petitions the department for a change in the method. Any petition for a change in the method should be made within a reasonable period of time prior to the due date of the return for which the change is requested. For example, if a change is requested for the tax return beginning January 1, 2012, the petition should be made by January 31, 2013, which is 90 days prior to the due date of the return.

The mere fact that a change in the method will result in a larger tax credit for subsequent years is not, of itself, sufficient grounds for changing the method for computing the credit. An example of a case for which the department may grant a change in the method is if the taxpayer has a significant change in the type of fuel sold at the taxpayer's retail sites in Iowa. For example, if a retail dealer opted to start selling E-85 gasoline at all the taxpayer's retail sites in Iowa for a subsequent tax year, the department may grant a change in the method.

If a taxpayer chooses the site-by-site method to compute the biofuel threshold percentage disparity, the gallons sold at all sites in Iowa must be considered in determining if the biofuel threshold percentage as defined in subrule 42.39(1) is based on more than 200,000 gallons or on 200,000 gallons or less. For example, if a taxpayer operates three motor fuel sites in Iowa and each site sells 80,000 gallons of motor fuel during 2011, the biofuel threshold percentage of 12 percent must be used for each retail site if the tax credit is computed on a site-by-site basis, even though each retail site sold less than 200,000 gallons of motor fuel.

## REVENUE DEPARTMENT[701](cont'd)

*e.g.* Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

ITEM 10. Adopt the following **new** examples at the end of subrule **42.39(5)**:

EXAMPLE 6. Assume the same facts as Example 3, except that the gallons were sold in 2011. The taxpayer chose the companywide method to compute the biofuel threshold percentage disparity and the tax credit. The biofuel distribution percentage is 11.63%, and since the biofuel threshold percentage is 12% for retailers selling more than 200,000 gallons of motor fuel, the biofuel threshold percentage disparity is 0.37%. This results in an ethanol promotion tax credit on a companywide basis of 6 cents multiplied by the ethanol gallonage of 27,900 or \$1,674.

EXAMPLE 7. Assume the same facts as Example 3, except that the gallons were sold in 2011. The taxpayer chose the site-by-site method to compute the biofuel threshold percentage disparity and the tax credit. The biofuel threshold percentage is still 12% since the retailer sold more than 200,000 gallons of motor fuel at all sites in Iowa. The biofuel distribution percentage for Site A and Site B is 7,000 divided by 80,000, or 8.75%. The biofuel threshold percentage disparity for Site A and Site B is 3.25%, or 12% less 8.75%. The biofuel distribution percentage for Site C is 13,900 divided by 80,000, or 17.38%. The biofuel threshold percentage disparity for Site C is 0% since the biofuel distribution percentage exceeds the biofuel threshold percentage. This results in an ethanol promotion tax credit on a site-by-site basis of \$1,462, as shown below:

Site A – 7,000 times 2.5 cents equals	\$175
Site B – 7,000 times 2.5 cents equals	\$175
Site C – 13,900 times 8 cents equals	\$1,112
Total	\$1,462

ITEM 11. Amend rule **701—42.39(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.11N as amended by 2011 Iowa Acts, Senate File 531.

ITEM 12. Adopt the following **new** rule 701—42.46(422):

**701—42.46(422) E-15 plus gasoline promotion tax credit.** Effective for eligible gallons sold on or after July 1, 2011, a retail dealer of gasoline may claim an E-15 plus gasoline promotion tax credit. "E-15 plus gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 15 percent and 69 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA138. The tax credit is calculated by multiplying the total number of E-15 plus gallons sold by the retail dealer during the tax year by the following designated rates:

Gallons sold from July 1, 2011, through December 31, 2014	3 cents
Gallons sold from January 1, 2015, through December 31, 2017	2 cents

A taxpayer may claim the E-15 plus gasoline promotion tax credit even if the taxpayer also claims the ethanol promotion tax credit provided in rule 701—42.39(422) for gallons sold for the same tax year for the same ethanol gallons.

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**42.46(1) Fiscal year filers.** For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-15 plus gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2018, a taxpayer whose tax year ends prior to December 31, 2017, may continue to claim the tax credit in the following tax year for any E-15 plus gallons sold through December 31, 2017. For a retail dealer whose tax year is not on a

## REVENUE DEPARTMENT[701](cont'd)

calendar-year basis and who did not claim the E-15 plus credit on the previous return, the dealer may claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year. However, for taxpayers whose fiscal year ends before December 31, 2011, the dealer must claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year.

EXAMPLE 1: A taxpayer who is a retail dealer of gasoline has a fiscal year ending October 31, 2011. The taxpayer sold 2,000 gallons of E-15 plus gasoline for the period from July 1, 2011, through October 31, 2011, and sold 7,000 gallons of E-15 plus gasoline for the period from November 1, 2011, through October 31, 2012. The taxpayer is entitled to a total E-15 plus gasoline promotion tax credit of \$270 for the fiscal year ending October 31, 2012, which consists of a \$60 credit (2,000 gallons multiplied by 3 cents) for the period from July 1, 2011, through October 31, 2011, and a credit of \$210 (7,000 gallons multiplied by 3 cents) for the period from November 1, 2011, through October 31, 2012.

EXAMPLE 2: A taxpayer who is a retail dealer of gasoline has a fiscal year ending April 30, 2012. The taxpayer sold 4,000 gallons of E-15 plus gasoline between July 1, 2011, and April 30, 2012. The taxpayer sold 9,000 gallons of E-15 plus gasoline between May 1, 2012, and April 30, 2013. The taxpayer is entitled to claim an E-15 plus gasoline promotion tax credit of \$120 (4,000 gallons times 3 cents) for the fiscal year ending April 30, 2012. In lieu of claiming the credit on the return for the period ending April 30, 2012, the taxpayer can claim the E-15 plus gasoline promotion tax credit on the tax return for the period ending April 30, 2013, for all E-15 plus gasoline gallons sold for the period from July 1, 2011, through April 30, 2013.

EXAMPLE 3: A taxpayer who is a retail dealer of gasoline has a fiscal year ending February 28, 2018. The taxpayer sold 20,000 gallons of E-15 plus gasoline for the period from March 1, 2017, through February 28, 2018, of which 16,000 gallons were sold between March 1, 2017, and December 31, 2017. The taxpayer is entitled to claim an E-15 plus gasoline promotion tax credit of \$320 (16,000 gallons times 2 cents) on the taxpayer's Iowa income tax return for the period ending February 28, 2018.

**42.46(2) Allocation of credit to owners of a business entity.** If a taxpayer claiming the E-15 plus gasoline promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement 2011 Iowa Acts, Senate File 531, section 35, as amended by 2011 Iowa Acts, Senate File 533, sections 63 to 65.

ITEM 13. Amend rule 701—52.30(422), introductory paragraph, as follows:

**701—52.30(422) E-85 gasoline promotion tax credit.** Effective for tax years beginning on or after January 1, 2006, a retail dealer of gasoline may claim an E-85 gasoline promotion tax credit. "E-85 gasoline" means ethanol blended gasoline formulated with a minimum percentage of between 70 percent and 85 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 135. The credit is calculated by multiplying the total number of E-85 gallons sold by the retail dealer during the tax year by the following designated rates:

Calendar years 2006, 2007 and 2008	25 cents
Calendar years 2009 and 2010	20 cents
Calendar year 2011	10 cents
Calendar year 2012 <u>through 2017</u>	9 <u>16</u> cents
<del>Calendar year 2013</del>	<del>8 cents</del>
<del>Calendar year 2014</del>	<del>7 cents</del>

## REVENUE DEPARTMENT[701](cont'd)

Calendar year 2015	6 cents
Calendar year 2016	5 cents
Calendar year 2017	4 cents
Calendar year 2018	3 cents
Calendar year 2019	2 cents
Calendar year 2020	1 cent

ITEM 14. Amend subrule 52.30(1), introductory paragraph, as follows:

**52.30(1) Fiscal year filers.** For taxpayers whose tax year is not on a calendar year basis, the taxpayer may compute the tax credit on the gallons of E-85 gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, ~~2021~~ 2018, a taxpayer whose tax year ends prior to December 31, ~~2020~~ 2017, can continue to claim the tax credit in the following tax year for any E-85 gallons sold through December 31, ~~2020~~ 2017. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-85 credit on the previous return, the dealer may claim the credit for the current tax year for the period beginning on January 1 of the previous tax year until the last day of the previous tax year.

ITEM 15. Amend rule ~~701—52.30(422)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.33 as amended by ~~2006~~ 2011 Iowa Acts, House Files ~~2754 and 2759~~ Senate File 531.

ITEM 16. Amend rule ~~701—52.31(422)~~, introductory paragraph and first unnumbered paragraph, as follows:

**~~701—52.31(422) Biodiesel blended fuel tax credit.~~** Effective for tax years beginning on or after January 1, 2006, a retail dealer of biodiesel blended fuel may claim a biodiesel blended fuel tax credit. “Biodiesel blended fuel” means a blend of biodiesel with petroleum-based diesel fuel which meets the standards provided in Iowa Code section 214A.2. The biodiesel blended fuel must be formulated with a minimum percentage of 2 percent by volume of biodiesel, if the formulation meets the standards provided by Iowa Code section 214A.2, to qualify for the tax credit for gallons sold on or after January 1, 2006, but before January 1, 2013. For gallons sold on or after January 1, 2013, but before January 1, 2018, the biodiesel blended fuel must be formulated with a minimum percentage of 5 percent by volume of biodiesel, if the formulation meets the standards provided by Iowa Code section 214A.2, to qualify for the tax credit. In addition, of the total gallons of diesel fuel sold by the retail dealer, 50 percent or more must be biodiesel blended fuel to be eligible for the tax credit for tax years beginning prior to January 1, 2009. For tax years beginning on or after January 1, 2009, but before January 1, 2012, the biodiesel blended fuel tax credit is calculated separately for each retail motor fuel site for which 50 percent or more of the total gallons of diesel fuel sold at the motor fuel site was biodiesel blended fuel. For tax years beginning on or after January 1, 2012, the requirement that 50 percent of all diesel fuel gallons sold be biodiesel gallons to be eligible for the tax credit is eliminated.

The tax credit equals three cents multiplied by the qualifying number of biodiesel blended fuel gallons sold by the taxpayer during the tax year for gallons sold through December 31, 2011. For gallons sold during the 2012 calendar year, the tax credit equals the sum of two cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 2 percent by volume of biodiesel but less than 5 percent by volume of biodiesel and four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 5 percent by volume of biodiesel. For gallons sold during the 2013-2017 calendar years, the tax credit equals four and one-half cents multiplied by the qualifying number of biodiesel blended fuel gallons that have a minimum percentage of 5 percent by volume of biodiesel. In determining the minimum percentage by volume of biodiesel, the department will take into account reasonable variances due to testing and other limitations. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA 8864.

## REVENUE DEPARTMENT[701](cont'd)

ITEM 17. Amend subrule 52.31(1), introductory paragraph, as follows:

**52.31(1) Fiscal year filers.** For taxpayers whose tax year is not on a calendar-year basis and whose tax year ends before December 31, 2006, the taxpayer may compute the tax credit on the gallons of biodiesel blended fuel sold during the period from January 1, 2006, through the end of the tax year, provided that 50 percent of all diesel fuel sold during that period was biodiesel blended fuel. Because the tax credit is repealed on January 1, ~~2012~~ 2018, a taxpayer whose tax year ends prior to December 31, ~~2011~~ 2017, may continue to claim the tax credit in the following tax year for any biodiesel blended fuel sold through December 31, ~~2011~~ 2017, ~~provided that 50 percent of diesel fuel sold at qualifying retail motor fuel sites during that period was biodiesel blended fuel.~~

ITEM 18. Amend rule ~~701—52.31(422)~~, implementation sentence, as follows:

This rule is intended to implement Iowa Code Supplement section 422.33 as amended by ~~2008~~ 2011 Iowa Acts, House Senate File ~~2689~~, ~~section 33~~ 531.

ITEM 19. Amend subrule 52.36(2) as follows:

**52.36(2) Calculation of tax credit.**

a. The tax credit is calculated by multiplying the retail dealer's total ethanol gallonage by the tax credit rate, which is adjusted based upon the retail dealer's biofuel threshold percentage disparity. The tax credit rate is set forth below:

Biofuel Threshold Percentage Disparity	Tax Credit Rate Per Gallon <u>2009-2010</u>	<u>Tax Credit Rate</u> Per Gallon 2011	<u>Tax Credit Rate</u> Per Gallon 2012-2020
0%	6.5 cents	<u>8 cents</u>	<u>8 cents</u>
0.01% to 2.00%	4.5 cents	<u>6 cents</u>	<u>6 cents</u>
2.01% to 4.00%	2.5 cents	<u>2.5 cents</u>	<u>4 cents</u>
4.01% or more	0 cents	<u>0 cents</u>	<u>0 cents</u>

b. For use in calculating a retail dealer's total ethanol gallonage, the department is required to establish a schedule regarding the average amount of ethanol contained in E-85 gasoline.

c. A taxpayer may claim the ethanol promotion tax credit even if the taxpayer also claims the E-85 gasoline promotion tax credit provided in rule 701—52.30(422) or the E-15 plus gasoline promotion tax credit provided in rule 701—52.43(422) for the same tax year for the same ethanol gallons.

d. The tax credit must be calculated separately for each retail motor fuel site operated by the taxpayer for tax years beginning prior to January 1, 2011. The biofuel threshold percentage disparity of the taxpayer is computed on a statewide basis based on the total ethanol gallonage sold in Iowa. The taxpayer must determine the ethanol gallonage sold at each retail motor fuel site and multiply this ethanol gallonage by the applicable tax credit rate based on the biofuel threshold percentage disparity to calculate the ethanol promotion tax credit.

e. For tax years beginning on or after January 1, 2011, the taxpayer may elect to compute the biofuel threshold percentage disparity and the tax credit on either a site-by-site basis or on a companywide basis. The election made on the first return beginning on or after January 1, 2011, for either the site-by-site method or the companywide method is binding on the taxpayer for subsequent tax years unless the taxpayer petitions the department for a change in the method. Any petition for a change in the method should be made within a reasonable period of time prior to the due date of the return for which the change is requested. For example, if a change is requested for the tax return beginning January 1, 2012, the petition should be made by January 31, 2013, which is 90 days prior to the due date of the return.

The mere fact that a change in the method will result in a larger tax credit for subsequent years is not, of itself, sufficient grounds for changing the method for computing the credit. An example of a case for which the department may grant a change in the method is if the taxpayer has a significant change in the type of fuel sold at the taxpayer's retail sites in Iowa. For example, if a retail dealer opted to start selling E-85 gasoline at all the taxpayer's retail sites in Iowa for a subsequent tax year, the department may grant a change in the method.

## REVENUE DEPARTMENT[701](cont'd)

If a taxpayer chooses the site-by-site method to compute the biofuel threshold percentage disparity, the gallons sold at all sites in Iowa must be considered in determining if the biofuel threshold percentage as defined in subrule 52.36(1) is based on more than 200,000 gallons, or 200,000 gallons or less. For example, if a taxpayer operates three motor fuel sites in Iowa and each site sells 80,000 gallons of motor fuel during 2011, the biofuel threshold percentage of 12 percent must be used for each retail site if the tax credit is computed on a site-by-site basis, even though each retail site sold less than 200,000 gallons of motor fuel.

*e. f.* Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming a refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

ITEM 20. Adopt the following **new** examples at the end of subrule **52.36(5)**:

EXAMPLE 6. Assume the same facts as Example 3, except that the gallons were sold in 2011. The taxpayer chose the companywide method to compute the biofuel threshold percentage disparity and the tax credit. The biofuel distribution percentage is 11.63%, and since the biofuel threshold percentage is 12% for retailers selling more than 200,000 gallons of motor fuel, the biofuel threshold percentage disparity is 0.37%. This results in an ethanol promotion tax credit on a companywide basis of 6 cents multiplied by the ethanol gallonage of 27,900 or \$1,674.

EXAMPLE 7. Assume the same facts as Example 3, except that the gallons were sold in 2011. The taxpayer chose the site-by-site method to compute the biofuel threshold percentage disparity and the tax credit. The biofuel threshold percentage is still 12% since the retailer sold more than 200,000 gallons of motor fuel at all sites in Iowa. The biofuel distribution percentage for Site A and Site B is 7,000 divided by 80,000, or 8.75%. The biofuel threshold percentage disparity for Site A and Site B is 3.25%, or 12% less 8.75%. The biofuel distribution percentage for Site C is 13,900 divided by 80,000, or 17.38%. The biofuel threshold percentage disparity for Site C is 0% since the biofuel distribution percentage exceeds the biofuel threshold percentage. This results in an ethanol promotion tax credit on a site-by-site basis of \$1,462, as shown below:

Site A – 7,000 times 2.5 cents equals	\$175
Site B – 7,000 times 2.5 cents equals	\$175
Site C – 13,900 times 8 cents equals	<u>\$1,112</u>
Total	\$1,462

ITEM 21. Amend rule **701—52.36(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code Supplement section 422.33 as amended by 2011 Iowa Acts, Senate File 531.

ITEM 22. Adopt the following **new** rule 701—52.43(422):

**701—52.43(422) E-15 plus gasoline promotion tax credit.** Effective for eligible gallons sold on or after July 1, 2011, a retail dealer of gasoline may claim an E-15 plus gasoline promotion tax credit. “E-15 plus gasoline” means ethanol blended gasoline formulated with a minimum percentage of between 15 percent and 69 percent of volume of ethanol, if the formulation meets the standards provided in Iowa Code section 214A.2. For purposes of this rule, tank wagon sales are considered retail sales. The credit is calculated on Form IA138. The tax credit is calculated by multiplying the total number of E-15 plus gallons sold by the retail dealer during the tax year by the following designated rates:

Gallons sold from July 1, 2011, through December 31, 2014	3 cents
Gallons sold from January 1, 2015, through December 31, 2017	2 cents

A taxpayer may claim the E-15 plus gasoline promotion tax credit even if the taxpayer also claims the ethanol promotion tax credit provided in rule 701—52.36(422) for gallons sold for the same tax year for the same ethanol gallons.

## REVENUE DEPARTMENT[701](cont'd)

Any credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**52.43(1) Fiscal year filers.** For taxpayers whose tax year is not on a calendar-year basis, the taxpayer may compute the tax credit on the gallons of E-15 plus gasoline sold during the year using the designated rates as shown above. Because the tax credit is repealed on January 1, 2018, a taxpayer whose tax year ends prior to December 31, 2017, may continue to claim the tax credit in the following tax year for any E-15 plus gallons sold through December 31, 2017. For a retail dealer whose tax year is not on a calendar-year basis and who did not claim the E-15 plus credit on the previous return, the dealer may claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year. However, for taxpayers whose fiscal year ends before December 31, 2011, the dealer must claim the credit for the current tax year for gallons sold for the period beginning on July 1 of the previous tax year until the last day of the previous tax year.

EXAMPLE 1: A taxpayer who is a retail dealer of gasoline has a fiscal year ending October 31, 2011. The taxpayer sold 2,000 gallons of E-15 plus gasoline for the period from July 1, 2011, through October 31, 2011, and sold 7,000 gallons of E-15 plus gasoline for the period from November 1, 2011, through October 31, 2012. The taxpayer is entitled to a total E-15 plus gasoline promotion tax credit of \$270 for the fiscal year ending October 31, 2012, which consists of a \$60 credit (2,000 gallons multiplied by 3 cents) for the period from July 1, 2011, through October 31, 2011, and a credit of \$210 (7,000 gallons multiplied by 3 cents) for the period from November 1, 2011, through October 31, 2012.

EXAMPLE 2: A taxpayer who is a retail dealer of gasoline has a fiscal year ending April 30, 2012. The taxpayer sold 4,000 gallons of E-15 plus gasoline between July 1, 2011, and April 30, 2012. The taxpayer sold 9,000 gallons of E-15 plus gasoline between May 1, 2012, and April 30, 2013. The taxpayer is entitled to claim an E-15 plus gasoline promotion tax credit of \$120 (4,000 gallons times 3 cents) for the fiscal year ending April 30, 2012. In lieu of claiming the credit on the return for the period ending April 30, 2012, the taxpayer can claim the E-15 plus gasoline promotion tax credit on the tax return for the period ending April 30, 2013, for all E-15 plus gasoline gallons sold for the period from July 1, 2011, through April 30, 2013.

EXAMPLE 3: A taxpayer who is a retail dealer of gasoline has a fiscal year ending February 28, 2018. The taxpayer sold 20,000 gallons of E-15 plus gasoline for the period from March 1, 2017, through February 28, 2018, of which 16,000 gallons were sold between March 1, 2017, and December 31, 2017. The taxpayer is entitled to claim an E-15 plus gasoline promotion tax credit of \$320 (16,000 gallons times 2 cents) on the taxpayer's Iowa income tax return for the period ending February 28, 2018.

**52.43(2) Allocation of credit to owners of a business entity.** If a taxpayer claiming the E-15 plus gasoline promotion tax credit is a partnership, limited liability company, S corporation, or an estate or trust electing to have the income taxed directly to the individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, limited liability company, S corporation, or estate or trust.

This rule is intended to implement Iowa Code section 422.33 as amended by 2011 Iowa Acts, Senate File 531.

ITEM 23. Adopt the following **new** rule 701—53.26(422):

**701—53.26(422) Exclusion of biodiesel production refund.** A taxpayer may exclude, to the extent included in federal taxable income, the amount of the biodiesel production refund described in rule 701—12.18(423).

This rule is intended to implement Iowa Code section 422.35 as amended by 2011 Iowa Acts, Senate File 531.

ITEM 24. Amend rule 701—67.27(452A), introductory paragraph, as follows:

**701—67.27(452A) Retailer gallons report.** The department is required to compile information reported to it by retail dealers regarding the number of gallons of the various fuel classifications sold by retail dealers in the previous calendar year and submit a report to the governor and the legislative services

## REVENUE DEPARTMENT[701](cont'd)

agency by April 1 of each year. Each retail dealer is required to file a report with the department detailing the number of motor fuel gallons sold during the previous calendar year on both a companywide basis and a site-by-site basis as required by the department. The retail dealer report is due by January 31 following the close of the calendar year.

ITEM 25. Amend rule **701—67.27(452A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~452A.33(2)~~ 452A.33 as amended by ~~2008~~ 2011 Iowa Acts, Senate File ~~2400~~ 531.

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**REVENUE DEPARTMENT[701]**

**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 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 38, “Administration,” and Chapter 40, “Determination of Net Income,” Iowa Administrative Code.

These amendments are proposed as a result of 2011 Iowa Acts, House File 652.

Items 1 and 2 amend subrules 38.17(3) and 40.5(2) to provide a cross reference to new rule 701—40.76(422).

Item 3 amends rule 701—40.61(422) to provide for an exclusion from Iowa individual income tax for active duty pay received by national guard members and armed forces reserve members for service under military orders for Operation New Dawn for tax years beginning on or after January 1, 2010.

Item 4 amends 701—Chapter 40 by adopting new rule 701—40.76(422) which provides for an exclusion from Iowa individual income tax for all pay received from the federal government for military service performed while on active duty status in the armed forces, armed forces military reserve, or the national guard for tax years beginning on or after January 1, 2011.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 10, 2011, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 27, 2011. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 27, 2011.

## REVENUE DEPARTMENT[701](cont'd)

After analysis and review of this rule making, no adverse impact on jobs has been found. The tax exclusion may positively impact job and economic growth for businesses in the state of Iowa. More importantly, the tax exclusion will financially assist Iowa's active military members.

These amendments are intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, House File 652.

The following amendments are proposed.

ITEM 1. Amend subrule **38.17(3)**, first unnumbered paragraph, as follows:

Residents For tax years beginning prior to January 1, 2011, residents of Iowa in military service will have Iowa income tax withheld from their military pay except when the military pay is earned in a combat zone and is totally or partially exempt from both federal and state income tax. An Iowa resident in military service can change state of residence for purposes of withholding of state income tax by completing Form DD2058 and designating a state other than Iowa as the individual's new state of residence. The military payroll officer of the service person will accept the DD2058 form and stop withholding Iowa income tax from the service person's military pay and start withholding the state income tax of the state of new residence of the service person (assuming the new state of residence has an income tax and assuming the new state of residence requires withholding of income tax from wage payments to its residents in military service). However, the completion of the DD2058 form by the "former Iowa resident" will not be considered as a valid change of residence for Iowa income tax purposes unless the service person was physically residing in the new state of residence at the time the DD2058 form was completed and the service person took other actions to show intent to change state of residence. Other actions to show intent to change state of residence would include: (1) registering to vote in the new state; (2) purchasing real property in the new state; (3) titling and registering vehicles in the new state; (4) notifying the state of previous residence of the state of residence change; (5) preparing a new last will and testament which indicates the new residence; and (6) complying with the tax laws of the state of new residence. For tax years beginning on or after January 1, 2011, see rule 701—40.76(422) regarding the exemption of active duty pay for both resident and nonresident members of the armed forces, armed forces military reserve, or the national guard.

ITEM 2. Amend subrule 40.5(2), introductory paragraph, as follows:

**40.5(2)** For income received for services performed prior to January 1, 1969, and for services performed for tax periods beginning on or after January 1, 1977, but before January 1, 2011. An Iowa resident who is on active duty in the armed forces of the United States, as defined in Title 10, United States Code, Section 101, shall include all income received for such service performed prior to January 1, 1969, and for services performed during tax periods beginning on or after January 1, 1977, but before January 1, 2011. For tax years beginning on or after January 1, 2011, see Iowa rule 701—40.76(422). However, the taxability of this active duty military income shall be terminated for any income received for services performed effective the day after either of the two following conditions:

ITEM 3. Amend rule 701—40.61(422) as follows:

**701—40.61(422) Exclusion of active duty pay of national guard members and armed forces military reserve members for service under orders for Operation Iraqi Freedom, Operation Noble Eagle, or Operation Enduring Freedom or Operation New Dawn.** For tax years beginning on or after January 1, 2003, active duty pay received by national guard members and armed forces reserve members is excluded to the extent the income is included in federal adjusted gross income and to the extent the active duty pay is for service under military orders for Operation Iraqi Freedom, Operation Noble Eagle or Operation Enduring Freedom. For tax years beginning on or after January 1, 2010, active duty pay received by national guard members and armed forces reserve members is excluded to the extent the income is included in federal adjusted gross income and to the extent the active duty pay is for service under military orders for Operation New Dawn. National guard members and military reserve members receiving active duty pay on or after January 1, 2003, but before January 1, 2011, for service not covered by military orders for one of the three operations specified above are subject to Iowa income tax on the active duty pay to the extent the active duty pay is included in federal adjusted gross income. For active

REVENUE DEPARTMENT[701](cont'd)

duty pay received on or after January 1, 2011, see rule 701—40.76(422). An example of a situation where the active duty pay may not be included in federal adjusted gross income is when the active duty pay was received for service in an area designated as a combat zone or in an area designated as a hazardous duty area so the income may be excluded from federal adjusted gross income. That is, if an individual's active duty military pay is not subject to federal income tax, the active duty military pay will not be taxable on the individual's Iowa income tax return.

National guard members and military reserve members who are receiving active duty pay for service on or after January 1, 2003, that is exempt from Iowa income tax, may complete an IA W-4 Employee Withholding Allowance Certificate and claim exemption from Iowa income tax for active duty pay received during the time they are serving on active duty pursuant to military orders for Operation Iraqi Freedom, Operation Noble Eagle, ~~or~~ Operation Enduring Freedom or Operation New Dawn.

This rule is intended to implement Iowa Code section 422.7 as amended by ~~2003~~ 2011 Iowa Acts, House File ~~674~~ 652.

ITEM 4. Adopt the following new rule 701—40.76(422):

**701—40.76(422) Exemption of active duty pay for armed forces, armed forces military reserve, or the national guard.** For tax years beginning on or after January 1, 2011, all pay received from the federal government for military service performed while on active duty status in the armed forces, armed forces military reserve, or the national guard is excluded to the extent the pay was included in federal adjusted gross income.

**40.76(1)** Definition of active duty personnel. Active duty personnel who qualify for the exclusion include the following:

- a. Active duty members of the regular armed forces, which include the Army, Navy, Marines, Air Force and Coast Guard of the United States.
- b. Members of a reserve component of the Army, Navy, Marines, Air Force and Coast Guard who are on an active duty status as defined in Title 10 of the United States Code.
- c. Members of the national guard who are in an active duty status as defined in Title 10 of the United States Code.

**40.76(2)** Military personnel who do not qualify for the exclusion include the following:

- a. Members of a reserve component of the Army, Navy, Marines, Air Force and Coast Guard who are not in an active duty status as defined in Title 10 of the United States Code.
- b. Full-time members of the national guard who perform duties in accordance with Title 32 of the United States Code.
- c. Other members of the national guard who are not in an active duty status as defined in Title 10 of the United States Code.
- d. Other members of the national guard who do not receive pay from the federal government.

**40.76(3)** Income from nonmilitary activities. Any wages earned from nonmilitary wages for personal services conducted in Iowa by both residents and nonresidents of Iowa will still be subject to Iowa individual income tax. In addition, both residents and nonresidents of Iowa who earn income from businesses, trades, professions or occupations operated in Iowa that are unrelated to military activity will be subject to Iowa individual income tax on that income.

**40.76(4)** Exemption from Iowa withholding. Active duty personnel meeting the requirements of subrule 40.76(1) who are receiving pay from the federal government on or after January 1, 2011, that is exempt from Iowa individual income tax may complete an IA W-4 Employee Withholding Allowance Certificate and claim exemption from Iowa income tax for active duty pay received from the federal government.

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, House File 652.

**ARC 9740B****REVENUE DEPARTMENT[701]****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 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 38, “Administration,” Chapter 40, “Determination of Net Income,” Chapter 41, “Determination of Taxable Income,” Chapter 42, “Adjustments to Computed Tax and Tax Credits,” Chapter 44, “Penalty and Interest,” Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Chapter 53, “Determination of Net Income,” Chapter 58, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” and Chapter 59, “Determination of Net Income,” Iowa Administrative Code.

These amendments are proposed as a result of 2011 Iowa Acts, Senate Files 512 and 533.

Item 1 amends subrule 38.19(2) to clarify that applications are no longer mailed by the Department when notifying taxpayers that they may be eligible for health care coverage for the Medicaid or HAWK-I program.

Item 2 amends rule 701—40.1(422) to reference new rules 701—40.76(422) through 701—40.79(422).

Items 3 and 4 amend rule 701—40.60(422) by adding new subrule 40.60(5) and amending the implementation clause to provide that bonus depreciation provided in section 168(k) of the Internal Revenue Code for assets acquired after December 31, 2009, but before January 1, 2013, does not apply for Iowa individual income tax.

Item 5 amends rule 701—40.65(422) to provide that the increase in the expensing allowance provided in section 179(b) of the Internal Revenue Code does apply for Iowa individual income tax for tax years beginning on or after January 1, 2010.

Item 6 amends the implementation clause for rule 701—40.65(422).

Item 7 amends rule 701—40.67(422) to update the alternative motor vehicles which qualify for the deduction up to \$2,000 for Iowa individual income tax.

Item 8 amends rule 701—40.73(422) to clarify that the exclusion from Iowa individual income tax for health care benefits of nonqualified tax dependents is the same as allowed for federal income tax purposes for tax years beginning on or after January 1, 2011.

Item 9 amends 701—Chapter 40 by adding new rules 701—40.78(422) regarding allowance of certain deductions for Iowa individual income tax for the 2008 tax year and 701—40.79(422) regarding special filing provisions related to 2010 tax changes for Iowa individual income tax.

Item 10 amends subrule 41.5(2) to provide that the itemized deduction for state sales and use tax in lieu of state income tax is available for tax years beginning on or after January 1, 2010, but before January 1, 2012.

Item 11 amends the implementation clause for rule 701—41.5(422).

Item 12 amends rule 701—42.4(422) to provide clarification on how the tuition and textbook credit for Iowa individual income tax should be allocated between spouses.

Item 13 amends subrule 42.11(3) to provide for the alternative simplified method to compute the Iowa research activities credit for individual income tax for tax years beginning on or after January 1, 2010.

Item 14 amends the implementation clause for rule 701—42.11(15,422).

Item 15 rescinds and reserves rule 701—44.5(422). This rule has been superseded by the change in Item 9 which now allows a deduction for disaster-related casualty losses for the 2008 tax year consistent with section 165(h) of the Internal Revenue Code.

## REVENUE DEPARTMENT[701](cont'd)

Items 16, 17 and 18 amend subrules 52.7(3), 52.7(5) and 52.7(6) to provide for the alternative simplified method to compute the Iowa research activities credit for corporation income tax for tax years beginning on or after January 1, 2010.

Item 19 amends the implementation clause for rule 701—52.7(422).

Item 20 amends rule 701—53.1(422) to reference new rule 701—53.26(422).

Items 21 and 22 amend rule 701—53.22(422) by adding new subrule 53.22(5) and amending the implementation clause to provide that bonus depreciation provided in section 168(k) of the Internal Revenue Code for assets acquired after December 31, 2009, but before January 1, 2013, does not apply for Iowa corporation income tax. This is similar to the change in Items 3 and 4.

Item 23 amends rule 701—53.23(422), introductory paragraph, to provide that the increase in the expensing allowance provided in section 179(b) of the Internal Revenue Code does apply for Iowa corporation income tax for tax years beginning on or after January 1, 2010. This is similar to the change in Item 5.

Items 24 and 25 amend rule 701—53.23(422) by adding new subrule 53.23(3) and amending the implementation clause to provide for special filing provisions for Iowa corporation income tax for 2010 changes related to the increase in the section 179 expensing amount.

Items 26 and 27 amend rule 701—59.23(422) by adding new subrule 59.23(5) and amending the implementation clause to provide that bonus depreciation provided in section 168(k) of the Internal Revenue Code for assets acquired after December 31, 2009, but before January 1, 2013, does not apply for Iowa franchise tax. This is similar to the change in Items 3 and 4 and Items 21 and 22.

Item 28 amends rule 701—59.24(422), introductory paragraph, to provide that the increase in the expensing allowance provided in section 179(b) of the Internal Revenue Code does apply for Iowa franchise tax for tax years beginning on or after January 1, 2010. This is similar to the change in Items 5 and 23.

Items 29 and 30 amend rule 701—59.24(422) by adding new subrule 59.24(3) and amending the implementation clause for rule 701—59.24(422) to provide for special filing provisions for Iowa franchise tax for 2010 changes related to the increase in the section 179 expensing amount. This is similar to the change in Items 24 and 25.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 10, 2011, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before September 27, 2011. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by September 27, 2011.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 15.335, 15A.9, 422.3, 422.5, 422.7, 422.9, 422.10, 422.32, 422.33 and 422.35 as amended by 2011 Iowa Acts, Senate File 512, and sections 422.7 and 422.9 as amended by 2011 Iowa Acts, Senate File 533.

## REVENUE DEPARTMENT[701](cont'd)

The following amendments are proposed.

ITEM 1. Amend subrule 38.19(2) as follows:

**38.19(2) Notification to the taxpayer.** If the taxpayer indicates on the return that a dependent child does not have health care coverage and the taxpayer's income reflected on the tax return is within the eligibility requirements for either the Medicaid program or the HAWK-I program, the department will send a letter to the taxpayer indicating that the dependent may be eligible for health care coverage under either the Medicaid or HAWK-I program. The letter will also ~~encl~~provide the address for a Web site which has an online application for health care coverage under either the Medicaid or HAWK-I program which can be completed and sent to the Iowa department of human services. The letter will also include the telephone number to call to request a paper application. The taxpayer must submit the application to the Iowa department of human services within 90 days of receipt of the enrollment information from the department of revenue. The department of human services will make the final determination on whether the taxpayer is eligible under the Medicaid or HAWK-I program. A dependent child must be under the age of 21 to be eligible for the Medicaid program, and a dependent child must be under the age of 19 to be eligible for the HAWK-I program.

ITEM 2. Amend rule 701—40.1(422) as follows:

**701—40.1(422) Net income defined.** Net income for state individual income tax purposes shall mean federal adjusted gross income as properly computed under the Internal Revenue Code and shall include the adjustments in 701—40.2(422) to 701—40.9(422). The remaining provisions of this rule and 701—40.12(422) to 701—40.75(422) 701—40.79(422) shall also be applicable in determining net income.

This rule is intended to implement Iowa Code section 422.7.

ITEM 3. Adopt the following **new** subrule 40.60(5):

**40.60(5) Assets acquired after December 31, 2009, but before January 1, 2013.** For tax periods beginning after December 31, 2009, but beginning before January 1, 2013, the bonus depreciation authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 111-240, Section 2022, and Public Law No. 111-312, Section 401, does not apply for Iowa individual income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2009, but before January 1, 2013, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2009, but before January 1, 2013, can be calculated on Form IA 4562A.

See 701—subrule 53.22(3) for examples illustrating how this subrule is applied.

ITEM 4. Amend rule **701—40.60(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.7 as amended by 2011 Iowa Acts, Senate File 512.

ITEM 5. Amend rule 701—40.65(422), introductory paragraph, as follows:

**701—40.65(422) Section 179 expensing.** For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27, Section 202, may be taken for Iowa individual income tax. If the taxpayer elects to take the increased Section 179 expensing, the Section 179 expensing allowance on the Iowa individual income tax return

## REVENUE DEPARTMENT[701](cont'd)

is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. In addition, for tax periods beginning on or after January 1, 2008, but beginning before January 1, 2009, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 110-185, Section 102, may be taken for Iowa individual income tax. For tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-5, Section 1202, cannot be taken for Iowa individual income tax purposes. The maximum amount of Section 179 expensing allowed for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, is \$133,000 for Iowa individual income tax purposes. For tax years beginning on or after January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-240, Section 2021, and Public Law No. 111-312, Section 402, may be taken for Iowa individual income tax.

ITEM 6. Amend rule **701—40.65(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.7 as amended by ~~2008~~ 2011 Iowa Acts, Senate File ~~2423~~ 512.

ITEM 7. Amend rule 701—40.67(422) as follows:

**701—40.67(422) Deduction for alternative motor vehicles.** For tax years beginning on or after January 1, 2006, but beginning before January 1, ~~2011~~ 2015, a taxpayer may subtract \$2,000 for the cost of a clean fuel motor vehicle if the taxpayer was eligible to claim for federal tax purposes the alternative motor vehicle credit under Section 30B of the Internal Revenue Code for this motor vehicle.

The vehicles eligible for this deduction include new qualified fuel cell motor vehicles, new advanced lean burn technology motor vehicles, new qualified hybrid motor vehicles, qualified plug-in electric drive motor vehicles and new qualified alternative fuel vehicles. ~~These~~ The advanced lean burn technology, qualified hybrid and qualified alternative fuel vehicles must be placed in service ~~after December 31, 2005, but~~ before January 1, 2011, to qualify for the deduction. The qualified plug-in electric drive motor vehicles must be placed in service before January 1, 2012, to qualify for the deduction. The qualified fuel cell motor vehicles must be placed in service before January 1, 2015, to qualify for the deduction. A taxpayer must claim a credit on the taxpayer's federal income tax return on federal Form 8910 to claim the deduction on the Iowa return.

This rule is intended to implement Iowa Code section 422.7 ~~as amended by 2006 Iowa Acts, House File 2464.~~

ITEM 8. Amend rule 701—40.73(422) as follows:

**701—40.73(422) Exclusion for health care benefits of nonqualified tax dependents.** Effective for tax years beginning on or after January 1, 2009, but beginning before January 1, 2011, a taxpayer may exclude from Iowa individual income tax the income reported from including nonqualified tax dependents on the taxpayer's health care plan, to the extent this income was reported on the federal income tax return.

**40.73(1) Term of coverage.** Iowa Code section 509A.13B provides that group insurance, group insurance for public employees, and individual health insurance policies or contracts permit continuation of existing coverage for an unmarried child of an insured or enrollee, if the insured or enrollee so elects. If the election is made, it will be in effect through the policy anniversary date on or after the date the child marries, ceases to be a resident of Iowa, or attains the age of 25, whichever occurs first, so long as the unmarried child maintains full-time status as a student in an accredited institution of postsecondary education. These children can be included on the health care coverage even though they are not claimed as a dependent on the federal and Iowa income tax returns.

**40.73(2) Federal treatment.** Section 105(b) of the Internal Revenue Code provides that the income reported from including dependents on the taxpayer's health care coverage is exempt from federal income

## REVENUE DEPARTMENT[701](cont'd)

tax. However, income is reported for federal income tax purposes on the value of the health care coverage of children who are not claimed as dependents on the taxpayer's federal and Iowa income tax returns for tax years beginning on or after January 1, 2009, but beginning before January 1, 2011. The amount of income included on the federal income tax return is allowed to be excluded on the Iowa return. For tax years beginning on or after January 1, 2011, income is no longer reported on the federal income tax return on the value of health care coverage of children who are not claimed as dependents and who have not attained age 27 as of the end of the tax year; therefore, no adjustment is required on the Iowa return.

This rule is intended to implement Iowa Code section 422.7 as amended by ~~2009~~ 2011 Iowa Acts, Senate File ~~389~~ 512.

ITEM 9. Adopt the following new rules 701—40.78(422) and 701—40.79(422):

**701—40.78(422) Allowance of certain deductions for 2008 tax year.**

**40.78(1)** For the tax year beginning on or after January 1, 2008, but before January 1, 2009, the following deductions provided in the federal Emergency Economic Stabilization Act of 2008, Public Law No. 110-343, will be allowed on the Iowa individual income tax return:

a. The deduction for certain expenses of elementary and secondary school teachers allowed under Section 62(a)(2)(D) of the Internal Revenue Code.

b. The deduction for qualified tuition and related expenses allowed under Section 222 of the Internal Revenue Code.

c. The deduction for disaster-related casualty losses allowed under Section 165(h) of the Internal Revenue Code.

**40.78(2)** Taxpayers who did not claim these deductions on the Iowa return for 2008 as originally filed, or taxpayers who claimed these deductions on the Iowa return as filed and subsequently filed an amended return disallowing these deductions, must file an amended return for the 2008 tax year to claim these deductions. The amended return must be filed within the statute of limitations provided in 701—subrules 43.3(8) and 43.3(15). If the amended return is filed within the statute of limitations, the taxpayer is only entitled to a refund of the excess tax paid. The taxpayer will not be entitled to any interest on the excess tax paid.

This rule is intended to implement Iowa Code sections 422.7 and 422.9 as amended by 2011 Iowa Acts, Senate File 533.

**701—40.79(422) Special filing provisions related to 2010 tax changes.**

**40.79(1)** For the tax year beginning on or after January 1, 2010, but before January 1, 2011, the following adjustments will be allowed on the Iowa individual income tax return:

a. The deduction for certain expenses of elementary and secondary school teachers allowed under Section 62(a)(2)(D) of the Internal Revenue Code.

b. The deduction for qualified tuition and related expenses allowed under Section 222 of the Internal Revenue Code.

c. The increased expensing allowance authorized under Section 179(b) of the Internal Revenue Code.

**40.79(2)** Taxpayers who did not claim these adjustments on the Iowa return for 2010 as originally filed have two options to reflect these adjustments. Taxpayer may either file an amended return for the 2010 tax year to reflect these adjustments, or taxpayer may reflect these adjustments on the tax return for the 2011 tax year. If the taxpayer elects to reflect these adjustments on the 2011 tax return, the following provisions are suspended related to the claiming of the following adjustments for 2011:

a. The limitation based on income provisions and regulations of Section 179(b)(3) of the Internal Revenue Code with regard to the Section 179(b) adjustment.

b. The applicable dollar limit provision of Section 222(b)(2)(B) of the Internal Revenue Code with regard to the qualified tuition and related expenses adjustment.

**40.79(3)** Examples. The following noninclusive examples illustrate how this rule applies:

EXAMPLE 1: Taxpayer claimed a \$150,000 Section 179 expense on the federal return for 2010. Taxpayer only claimed a \$134,000 Section 179 expense on the Iowa return as originally filed for 2010.

## REVENUE DEPARTMENT[701](cont'd)

Taxpayer elects not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayer reported a loss from the taxpayer's trade or business on the 2011 federal return, so no Section 179 expense can be claimed on the federal return for 2011 in accordance with Section 179(b)(3) of the Internal Revenue Code. Taxpayer can claim the \$16,000 (\$150,000 less \$134,000) difference as a deduction on the Iowa return for 2011 since the income provision of Section 179(b)(3) is suspended for Iowa tax purposes.

EXAMPLE 2: Taxpayers are a married couple who claimed a \$4,000 tuition and related expenses deduction on their federal return for 2010. Taxpayers did not claim this deduction on their Iowa return as originally filed for 2010. Taxpayers elected not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayers reported federal adjusted gross income in excess of \$160,000 on their 2011 federal return, so no deduction for tuition and related expenses can be claimed on the 2011 federal return in accordance with Section 222(b)(2)(B) of the Internal Revenue Code. Taxpayers can claim the \$4,000 deduction on the Iowa return for 2011 since the dollar limit provision of Section 222(b)(2)(B) is suspended for Iowa tax purposes.

EXAMPLE 3: Taxpayer is an elementary school teacher who claimed a \$250 deduction for out-of-pocket expenses for school supplies on the federal return for 2010. Taxpayer did not claim this deduction on the Iowa return as originally filed for 2010. Taxpayer elected not to file an amended return for 2010, but to make the adjustment on the 2011 Iowa return. Taxpayer also claimed a \$200 deduction for out-of-pocket expenses for school supplies on the federal return for 2011. Taxpayer can claim a \$450 (\$250 plus \$200) deduction on the Iowa return for 2011.

This rule is intended to implement 2011 Iowa Acts, Senate File 533, section 143.

ITEM 10. Amend subrule 41.5(2), introductory paragraph, as follows:

**41.5(2)** For the tax years beginning on or after January 1, 2004, and before January 1, 2008, and for tax years beginning on or after January 1, 2010, but before January 1, 2012, the itemized deduction for state sales and use taxes is allowed on the Iowa return only if the taxpayer elected to deduct state sales and use taxes as an itemized deduction in lieu of the deduction for state income taxes on the federal return under Section 164 of the Internal Revenue Code.

ITEM 11. Amend rule **701—41.5(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~Supplement~~ sections 422.7 and 422.9 as amended by 2011 Iowa Acts, Senate File 512.

ITEM 12. Adopt the following **new** subrule 42.4(4):

**42.4(4) Claiming the credit.** The credit can only be claimed by the spouse who claims the dependent credit on the Iowa tax return as described in subrule 42.3(3). For example, for divorced or separated parents, only the spouse who claims the dependent credit on the Iowa return can claim the tuition and textbook credit for tuition and textbook expenses for that dependent.

In cases where married taxpayers file separately on a combined return form, the tuition and textbook credit shall be allocated between the spouses in the ratio in which the dependent credit was claimed between the spouses.

EXAMPLE: A married couple has two dependent children and claimed a tuition and textbook credit of \$500 related to both children on their 2011 Iowa return. The taxpayers filed separately on a combined Iowa return form for 2011. One spouse claimed both of the dependent credits on the Iowa return. The \$500 tuition and textbook credit will be claimed by the spouse who claimed the dependent credits on the Iowa return.

EXAMPLE: A married couple has three dependent children and claimed a tuition and textbook credit of \$600 related to all three children on their 2011 Iowa return. The taxpayers filed separately on a combined Iowa return form for 2011. One spouse claimed one dependent credit, and the other spouse claimed two dependent credits on the Iowa return. The spouse who claimed one dependent credit will claim \$200 of the tuition and textbook credit, while the spouse who claimed two dependent credits will claim \$400 of the tuition and textbook credit.

## REVENUE DEPARTMENT[701](cont'd)

ITEM 13. Amend subrule 42.11(3) as follows:

**42.11(3)** Research activities credit for tax years beginning in 2000. Effective for tax years beginning on or after January 1, 2000, the taxes imposed for individual income tax purposes will be reduced by a tax credit for increasing research activities in this state.

*a.* The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research activities.

*b.* In lieu of the credit computed under paragraph "~~*a*~~" of this subrule, 42.11(3) "*a*," a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code for tax years beginning on or after January 1, 2000, but beginning before January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year, and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative incremental research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.

*c.* In lieu of the credit computed under paragraph 42.11(3) "*a*," a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative simplified credit described in Section 41(c)(5) of the Internal Revenue Code for tax years beginning on or after January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year, and the taxpayer may use another method or this same method for any subsequent tax year.

For purposes of this alternative simplified research credit computation, the credit percentages applicable to qualified research expenses described in Section 41(c)(5)(A) and clause (ii) of Section 41(c)(5)(B) of the Internal Revenue Code are 4.55 percent and 1.95 percent, respectively.

~~*d.*~~ For purposes of this subrule, the terms "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph "~~*b*~~" of this subrule, 42.11(3) "*b*" and the alternative simplified credit described in paragraph 42.11(3) "*c*," such amounts are limited to research activities conducted within this state. For purposes of this subrule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, ~~2009~~ 2011.

~~*e.*~~ *e.* An individual may claim a research activities credit incurred by a partnership, S corporation, limited liability company, estate, or trust electing to have the income of the business entity taxed to the individual. The amount claimed by an individual from the business entity shall be based upon the pro-rata share of the individual's earnings from a partnership, S corporation, estate or trust. Any research credit in excess of the individual's tax liability, less the nonrefundable credits authorized in Iowa Code chapter 422, division II, may be refunded to the individual or may be credited to the individual's tax liability for the following tax year.

~~*f.*~~ *f.* An eligible business approved under the new jobs and income program prior to July 1, 2005, is eligible for an additional research activities credit as described in 701—subrule 52.7(4). An eligible business approved under the enterprise zone program is eligible for an additional research activities credit as described in 701—subrules 52.7(5) and 52.7(6).

## REVENUE DEPARTMENT[701](cont'd)

~~f. g.~~ Tax years ending on or after July 1, 2005, but before July 1, 2009. For eligible businesses approved under the enterprise zone program and the high quality job creation program, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa. These expenses are not eligible for the federal credit for increasing research activities. These innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity. The research activities credit related to renewable energy generation components under the enterprise zone program and the high quality job creation program shall not exceed \$1 million in the aggregate.

These expenses are available only for the additional research activities credit set forth in subrule 42.11(3), paragraph ~~"e,"~~ "f," for businesses in enterprise zones and the additional research activities credit set forth in subrule 42.29(1) for businesses approved under the high quality job creation program. These expenses are not available for the research activities credit set forth in subrule 42.11(3), paragraphs ~~"a" and "b."~~ "a," "b" and "c."

~~g. h.~~ Tax years ending on or after July 1, 2009. For eligible businesses approved under the enterprise zone program, research activities allowable for the Iowa research activities credit include expenses related to the development and deployment of innovative renewable energy generation components manufactured or assembled in Iowa; such expenses related to the development and deployment of innovative renewable energy generation components are not eligible for the federal credit for increasing research activities.

(1) For purposes of this paragraph, innovative renewable energy generation components do not include components with more than 200 megawatts in installed effective nameplate capacity.

(2) The research activities credit related to renewable energy generation components under the enterprise zone program and the high quality jobs program described in subrule 42.42(1) shall not exceed \$2 million for the fiscal year ending June 30, 2010, and \$1 million for the fiscal year ending June 30, 2011.

(3) These expenses related to the development and deployment of innovative renewable energy generation components are applicable only to the additional research activities credit set forth in subrule 42.11(3), paragraph ~~"e,"~~ "f," for businesses in enterprise zones and the additional research activities credit set forth in subrule 42.42(1) for businesses approved under the high quality jobs program, and are not applicable to the research activities credit set forth in subrule 42.11(3), paragraphs ~~"a" and "b."~~ "a," "b" and "c."

ITEM 14. Amend rule **701—42.11(15,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 15.335 and 422.10 as amended by ~~2009~~ 2011 Iowa Acts, Senate File 478 512.

ITEM 15. Rescind and reserve rule **701—44.5(422)**.

ITEM 16. Amend subrule 52.7(3) as follows:

**52.7(3)** Research activities credit for tax years beginning in 2000. Effective for tax years beginning on or after January 1, 2000, the taxes imposed for corporate income tax purposes will be reduced by a tax credit for increasing research activities.

*a.* The credit equals the sum of the following:

(1) Six and one-half percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

(2) Six and one-half percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state's apportioned share of the qualifying expenditures for increasing research activities.

The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in this state to total qualified research expenditures.

## REVENUE DEPARTMENT[701](cont'd)

*b.* In lieu of the credit computed under paragraph ~~“a” of this subrule, 52.7(3) “a,”~~ a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code for tax years beginning on or after January 1, 2000, but beginning before January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer’s federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year.

For purposes of this alternative incremental research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 1.65 percent, 2.20 percent, and 2.75 percent, respectively.

*c.* In lieu of the credit computed under paragraph 52.7(3) “a,” a taxpayer may elect to compute the credit amount for qualified research expenses incurred in this state in a manner consistent with the alternative simplified credit described in Section 41(c)(5) of the Internal Revenue Code for tax years beginning on or after January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer’s federal income tax return. The election made under this paragraph is for the tax year, and the taxpayer may use another method or this same method for any subsequent tax year.

For purposes of this alternative simplified research credit computation, the credit percentages applicable to qualified research expenses described in Section 41(c)(5)(A) and clause (ii) of Section 41(c)(5)(B) of the Internal Revenue Code are 4.55 percent and 1.95 percent, respectively.

*e. d.* For purposes of this subrule, the terms “base amount,” “basic research payment,” and “qualified research expense” mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph 52.7(3) ~~“b” of this subrule,~~ and the alternative simplified credit described in paragraph 52.7(3) “c,” such amounts are limited to research activities conducted within this state. For purposes of this rule, “Internal Revenue Code” means the Internal Revenue Code in effect on January 1, ~~2009~~ 2011.

~~*e. e.*~~ A shareholder in an S corporation may claim the pro-rata share of the Iowa credit for increasing research activities on the shareholder’s individual return. The S corporation must provide each shareholder with a schedule showing the computation of the corporation’s Iowa credit for increasing research activities and the shareholder’s pro-rata share. The shareholder’s pro-rata share of the Iowa credit for increasing research activities must be in the same ratio as the shareholder’s pro-rata share in the earnings of the S corporation.

Any research credit in excess of the corporation’s tax liability less the credits authorized in Iowa Code sections 422.33, 422.91 and 422.111 may be refunded to the taxpayer or credited to the estimated tax of the corporation for the following year.

ITEM 17. Amend subrule 52.7(5) as follows:

**52.7(5)** Corporate tax research credit for increasing research activities within an enterprise zone. Effective for tax years beginning on or after January 1, 2000, for awards made by the Iowa department of economic development prior to July 1, 2010, the taxes imposed for corporate income tax purposes will be reduced by a tax credit for increasing research activities within an area designated as an enterprise zone. This credit for increasing research activities is in lieu of the research activities credit described in 701—subrule 42.11(3) or the research activities credit described in subrule 52.7(3). For the amount of the credit for increasing research activities within an enterprise zone for awards made by the ~~Iowa department of economic development authority~~ on or after July 1, 2010, see subrule 52.7(6).

*a.* The credit equals the sum of the following:

(1) Thirteen percent of the excess of qualified research expenses during the tax year over the base amount for the tax year based upon the state’s apportioned share of the qualifying expenditures for research activities.

(2) Thirteen percent of the basic research payments determined under Section 41(e)(1)(A) of the Internal Revenue Code during the tax year based upon the state’s apportioned share of the qualifying

## REVENUE DEPARTMENT[701](cont'd)

expenditures for increasing research activities. The state's apportioned share of the qualifying expenditures for increasing research activities is a percent equal to the ratio of qualified research expenditures in the enterprise zone to total qualified research expenditures.

*b.* In lieu of the credit computed under paragraph "*a*" of this subrule, ~~52.7(5)~~ "*a*," a taxpayer may elect to compute the credit amount for qualified research expenses incurred in the enterprise zone in a manner consistent with the alternative incremental credit described in Section 41(c)(4) of the Internal Revenue Code for tax years beginning prior to January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in clauses (i), (ii), and (iii) of Section 41(c)(4)(A) of the Internal Revenue Code are 3.30 percent, 4.40 percent, and 5.50 percent, respectively.

*c.* In lieu of the credit computed under paragraph 52.7(5) "*a*," a taxpayer may elect to compute the credit amount for qualified research expenses incurred in the enterprise zone in a manner consistent with the alternative simplified credit described in Section 41(c)(5) of the Internal Revenue Code for tax years beginning on or after January 1, 2010. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in Section 41(c)(5)(A) and clause (ii) of Section 41(c)(5)(B) are 9.10 percent and 3.90 percent, respectively.

*e. d.* For purposes of this subrule, the terms "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative incremental credit described in paragraph 52.7(3) "*b*" and the alternative simplified credit described in paragraph 52.7(3) "*c*" of this rule, such amounts are limited to research activities conducted within the enterprise zone. For purposes of this rule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, ~~2009~~ 2011.

~~*e. e.*~~ Any research credit in excess of the corporation's tax liability for the taxable year may be refunded to the taxpayer or credited to the corporation's tax liability for the following year.

ITEM 18. Amend paragraphs **52.7(6)"c"** and "**d**" as follows:

*c.* In lieu of the credit computed under paragraphs 52.7(6) "*a*" and "*b*," a taxpayer may elect to compute the credit amount for qualified research expenses incurred in the enterprise zone in a manner consistent with the alternative ~~incremental~~ simplified credit described in Section 41(c)(4)~~(4)~~(5) of the Internal Revenue Code. The taxpayer may make this election regardless of the method used by the taxpayer on the taxpayer's federal income tax return. The election made under this paragraph is for the tax year and the taxpayer may use another method or this same method for any subsequent tax year. For purposes of this alternative research credit computation, the credit percentages applicable to qualified research expenses described in ~~clauses (i), (ii), and (iii) of Section 41(c)(4)(5)(A) and clause (ii) of Section 41(c)(5)(B) of the Internal Revenue Code~~ depend upon the gross revenues of the eligible business.

(1) The percentages are ~~4.19~~ 7 percent, ~~5.58~~ percent, and ~~6.98~~ 3 percent, respectively, for eligible businesses with gross revenues of less than \$20 million.

(2) The percentages are ~~2.41~~ 2.1 percent, ~~3.22~~ percent, and ~~4.02~~ 0.9 percent, respectively, for eligible businesses with gross revenues of \$20 million or more.

*d.* For purposes of this subrule, the terms "base amount," "basic research payment," and "qualified research expense" mean the same as defined for the federal credit for increasing research activities under Section 41 of the Internal Revenue Code, except that, for purposes of the alternative ~~incremental~~ simplified credit described in paragraph ~~52.7(3)"b"~~ 52.7(3)"c" of this rule, such amounts are limited

## REVENUE DEPARTMENT[701](cont'd)

to research activities conducted within the enterprise zone. For purposes of this rule, "Internal Revenue Code" means the Internal Revenue Code in effect on January 1, ~~2009~~ 2011.

ITEM 19. Amend rule **701—52.7(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.33 as amended by ~~2009~~ 2011 Iowa Acts, Senate File 478 512.

ITEM 20. Amend rule 701—53.1(422), introductory paragraph, as follows:

**701—53.1(422) Computation of net income for corporations.** Net income for state purposes shall mean federal taxable income, before deduction for net operating losses, as properly computed under the Internal Revenue Code, and shall include the adjustments in 701—53.2(422) to 701—53.13(422) and 701—53.17(422) to ~~53.25(422)~~ 701—53.26(422). The remaining provisions of this rule and 701—53.14(422) to 701—53.16(422) shall also be applicable in determining net income.

ITEM 21. Adopt the following **new** subrule 53.22(5):

**53.22(5) Assets acquired after December 31, 2009, but before January 1, 2013.** For tax periods beginning after December 31, 2009, but beginning before January 1, 2013, the bonus depreciation authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 111-240, Section 2022, and Public Law No. 111-312, Section 401, does not apply for Iowa corporation income tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2009, but before January 1, 2013, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2009, but before January 1, 2013, can be calculated on Form IA 4562A.

See subrule 53.22(3) for examples illustrating how this subrule is applied.

ITEM 22. Amend rule **701—53.22(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.35 as amended by 2011 Iowa Acts, Senate File 512.

ITEM 23. Amend rule 701—53.23(422), introductory paragraph, as follows:

**701—53.23(422) Section 179 expensing.** For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27, Section 202, may be taken for Iowa corporation income tax. If the taxpayer elects to take the increased Section 179 expensing, the Section 179 expensing allowance on the Iowa corporation income tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. In addition, for tax periods beginning on or after January 1, 2008, but beginning before January 1, 2009, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 110-185, Section 102, may be taken for Iowa corporation income tax. For tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-5, Section 1202, cannot be taken for Iowa corporation income tax purposes. The maximum amount of Section 179 expensing allowed for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, is \$133,000 for Iowa corporation income tax purposes. For tax years beginning on or after January 1, 2010, the increase

## REVENUE DEPARTMENT[701](cont'd)

in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-240, Section 2021, and Public Law No. 111-312, Section 402, may be taken for Iowa corporation income tax.

ITEM 24. Adopt the following **new** subrule 53.23(3):

**53.23(3)** Special filing provision for 2010 change. Taxpayers who did not claim the increased Section 179 expensing on their tax return for the period beginning on or after January 1, 2010, but before January 1, 2011, as originally filed have two options to reflect this adjustment. Taxpayer may either file an amended return for the applicable tax year to reflect this adjustment, or taxpayer may reflect this adjustment on the next tax return. If the taxpayer elects to reflect this adjustment on the next tax return, the limitation based on income provisions and regulations of Section 179(b)(3) of the Internal Revenue Code is suspended related to the claiming of the adjustment for the next tax year.

EXAMPLE: Taxpayer claimed a \$150,000 Section 179 expense on the federal return for the period ending December 31, 2010. Taxpayer only claimed a \$134,000 Section 179 expense on the Iowa return as originally filed for the period ending December 31, 2010. Taxpayer elects not to file an amended return for the period ending December 31, 2010, but to make the adjustment on the Iowa return for the period ending December 31, 2011. Taxpayer reported a loss on the federal return for the period ending December 31, 2011; therefore, no Section 179 expense can be claimed on the federal return for the period ending December 31, 2011, in accordance with Section 179(b)(3) of the Internal Revenue Code. Taxpayer can claim the \$16,000 (\$150,000 less \$134,000) difference as a deduction on the Iowa return for the period ending December 31, 2011, since the income provision of Section 179(b)(3) is suspended for Iowa tax purposes.

ITEM 25. Amend rule **701—53.23(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.35 as amended by ~~2008~~ 2011 Iowa Acts, Senate File ~~2423~~ 512.

ITEM 26. Adopt the following **new** subrule 59.23(5):

**59.23(5)** *Assets acquired after December 31, 2009, but before January 1, 2013.* For tax periods beginning after December 31, 2009, but beginning before January 1, 2013, the bonus depreciation authorized in Section 168(k) of the Internal Revenue Code, as amended by Public Law No. 111-240, Section 2022, and Public Law No. 111-312, Section 401, does not apply for Iowa franchise tax. Taxpayers who claim the bonus depreciation on their federal income tax return must add the total amount of depreciation claimed on assets acquired after December 31, 2009, but before January 1, 2013, and subtract the amount of depreciation taken on such property using the modified accelerated cost recovery system (MACRS) depreciation method applicable under Section 168 of the Internal Revenue Code without regard to Section 168(k).

If any such property was sold or disposed of during the tax year, the applicable depreciation catch-up adjustment must be made to adjust the basis of the property for Iowa tax purposes. The gain or loss reported on the sale or disposition of these assets for federal tax purposes must be adjusted for Iowa tax purposes to account for the adjusted basis of assets.

The adjustment for both depreciation and the gain or loss on the sale of qualifying assets acquired after December 31, 2009, but before January 1, 2013, can be calculated on Form IA 4562A.

See 701—subrule 53.22(3) for examples illustrating how this subrule is applied.

ITEM 27. Amend rule **701—59.23(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.35 as amended by ~~2005~~ 2011 Iowa Acts, ~~House~~ Senate File ~~402~~ 512, and section 422.61.

ITEM 28. Amend rule 701—59.24(422), introductory paragraph, as follows:

**701—59.24(422) Section 179 expensing.** For tax periods beginning on or after January 1, 2003, but beginning before January 1, 2006, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 108-27, Section 202, may be taken for Iowa franchise tax. If the taxpayer elects to take the increased Section

## REVENUE DEPARTMENT[701](cont'd)

179 expensing, the Section 179 expensing allowance on the Iowa franchise tax return is the same as the Section 179 expensing allowance on the federal income tax return for tax years beginning on or after January 1, 2003, but beginning before January 1, 2006. In addition, for tax periods beginning on or after January 1, 2008, but beginning before January 1, 2009, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 110-185, Section 102, may be taken for Iowa franchise tax. For tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-5, Section 1202, cannot be taken for Iowa franchise tax purposes. The maximum amount of Section 179 expensing allowed for tax periods beginning on or after January 1, 2009, but beginning before January 1, 2010, is \$133,000 for Iowa franchise tax purposes. For tax years beginning on or after January 1, 2010, the increase in the expensing allowance for qualifying property authorized in Section 179(b) of the Internal Revenue Code, as enacted by Public Law No. 111-240, Section 2021, and Public Law No. 111-312, Section 402, may be taken for Iowa franchise tax.

ITEM 29. Adopt the following **new** subrule 59.24(3):

**59.24(3)** Special filing provision for 2010 change. Taxpayers who did not claim the increased Section 179 expensing on their tax return for the period beginning on or after January 1, 2010, but before January 1, 2011, as originally filed have two options to reflect this adjustment. Taxpayer may either file an amended return for the applicable tax year to reflect this adjustment, or taxpayer may reflect this adjustment on the next tax return. If the taxpayer elects to reflect this adjustment on the next tax return, the limitation based on income provisions and regulations of Section 179(b)(3) of the Internal Revenue Code is suspended related to the claiming of the adjustment for the next tax year.

EXAMPLE: Taxpayer claimed a \$150,000 Section 179 expense on the federal return for the period ending December 31, 2010. Taxpayer only claimed a \$134,000 Section 179 expense on the Iowa return as originally filed for the period ending December 31, 2010. Taxpayer elects not to file an amended return for the period ending December 31, 2010, but to make the adjustment on the Iowa return for the period ending December 31, 2011. Taxpayer reported a loss on the federal return for the period ending December 31, 2011; therefore, no Section 179 expense can be claimed on the federal return for the period ending December 31, 2011, in accordance with Section 179(b)(3) of the Internal Revenue Code. Taxpayer can claim the \$16,000 (\$150,000 less \$134,000) difference as a deduction on the Iowa return for the period ending December 31, 2011, since the income provision of Section 179(b)(3) is suspended for Iowa tax purposes.

ITEM 30. Amend rule **701—59.24(422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 422.35 as amended by ~~2005~~ 2011 Iowa Acts, ~~House~~ Senate File ~~402~~ 512, and section 422.61.

**ARC 9742B**

## **TRANSPORTATION DEPARTMENT[761]**

### **Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12 and 2011 Iowa Acts, Senate File 312, section 3, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 400, "Vehicle Registration and Certificate of Title," and Chapter 401, "Special Registration Plates," Iowa Administrative Code.

The proposed amendments implement 2011 Iowa Acts, House File 651, which was effective July 1, 2011, and provide for combat infantryman badge, combat action badge, combat action ribbon, air force

## TRANSPORTATION DEPARTMENT[761](cont'd)

combat action medal, combat medical badge, civil war sesquicentennial, and fallen peace officers special registration plates.

The proposed amendments also implement 2011 Iowa Acts, Senate File 312, which was effective July 1, 2011, and apply to registration plates issued during registration periods beginning on or after January 1, 2012. 2011 Iowa Acts, Senate File 312, section 3, allows the Department to adopt rules requiring the use of a sticker for special trucks when regular registration plates or special registration plates are displayed in lieu of special truck registration plates.

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.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)817-6511; Internet E-mail address: [tracy.george@dot.iowa.gov](mailto:tracy.george@dot.iowa.gov).
5. Be received by the Office of Policy and Legislative Services no later than September 27, 2011.

A meeting to hear requested oral presentations is scheduled for Thursday, September 29, 2011, at 10 a.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

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

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 321, 2011 Iowa Acts, House File 651, and 2011 Iowa Acts, Senate File 312.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 400.53(4):

**400.53(4) Special truck sticker.** An owner of a special truck, registered pursuant to Iowa Code section 321.121, who has been issued either regular registration plates or special registration plates other than special truck registration plates must obtain from the county treasurer a sticker which distinguishes the vehicle as a special truck. The sticker shall be affixed to the lower right corner of the rear registration plate. EXCEPTION: If the vehicle displays front and rear plates, two stickers shall be issued with one sticker affixed to the lower right corner of the front plate and rear plate. For natural resources plates, the stickers must be affixed to the lower left corner of the front and rear plates.

ITEM 2. Amend rule **761—400.53(321)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.34, 321.40, 321.41, 321.121 as amended by 2011 Iowa Acts, Senate File 312, section 3, and 321.166.

ITEM 3. Adopt the following **new** rule 761—401.18(321):

**761—401.18(321) Combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, combat medical badge, fallen peace officers and civil war sesquicentennial plates.** Following is the application and approval process for special plate requests under Iowa Code section 321.34 as amended by 2011 Iowa Acts, House File 651, section 2.

**401.18(1) Design.**

a. The plates shall be a standard background plate with a distinguishing processed emblem specific to each plate type, consistent with processed emblems approved pursuant to rule 761—401.15(321).

b. The distinguishing processed emblem shall be limited to 3" x 3½" on the registration plate.

## TRANSPORTATION DEPARTMENT[761](cont'd)

*c.* A distinguishing processed emblem owned or subject to legal rights of another person will not be used unless the department receives certification from the person that allows use of the emblem. The certification must include a statement holding the department harmless for using the emblem on a registration plate.

*d.* The office of vehicle services may consult with other organizations, law enforcement authorities, and the general public concerning distinguishing processed emblems.

**401.18(2) Production.** None of the special registration plates subject to this rule will be manufactured or issued until 250 paid applications are submitted to the department. This minimum order requirement applies to each of the special registration plates subject to this rule. Each application must be accompanied by a statutory start-up fee.

**401.18(3) Discontinuance.** If 250 paid applications for any special registration plate subject to this rule are not submitted within one year after the date the department makes the plate available for application, the department shall report that fact to the legislature at the next regular session of the general assembly and request authority to discontinue the special registration plate.

**401.18(4) Application process.**

*a.* Applications for either letter-number designated or personalized combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal, or combat medical badge special registration plates shall be submitted to the department on a form prescribed by the department. The applicant shall attach to the application a copy of an official government document verifying award of the combat infantryman badge, combat action badge, combat action ribbon, air force combat action medal or combat medical badge to the applicant.

*b.* Applications for letter-number designated civil war sesquicentennial or fallen peace officers special registration plates shall be submitted to the county treasurer.

*c.* Applications for personalized civil war sesquicentennial or fallen peace officers special registration plates shall be submitted to the department on a form prescribed by the department.

**401.18(5) Characters.** Plates are limited to five characters. Personalized plates shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs “a” to “d.”

**401.18(6) Right of approval.** The department reserves the right to approve or disapprove any application.

ITEM 4. Amend **761—Chapter 401**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 35A.11 as amended by 2011 Iowa Acts, House File 651, section 1, 321.34 as amended by 2011 Iowa Acts, House File 651, section 2, 321.105, 321.166 and 321L.1.

## 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:

September 1, 2010 — September 30, 2010	5.00%
October 1, 2010 — October 31, 2010	4.75%
November 1, 2010 — November 30, 2010	4.75%
December 1, 2010 — December 31, 2010	4.50%
January 1, 2011 — January 31, 2011	4.75%
February 1, 2011 — February 28, 2011	5.25%
March 1, 2011 — March 31, 2011	5.50%

## USURY(cont'd)

April 1, 2011 — April 30, 2011	5.50%
May 1, 2011 — May 31, 2011	5.50%
June 1, 2011 — June 30, 2011	5.50%
July 1, 2011 — July 31, 2011	5.25%
August 1, 2011 — August 31, 2011	5.00%
September 1, 2011 — September 30, 2011	5.00%

## ARC 9746B

## ECONOMIC DEVELOPMENT AUTHORITY[261]

## Adopted and Filed Emergency

Pursuant to the authority of 2011 Iowa Acts, House File 590, section 7, the Economic Development Authority hereby amends Chapter 65, "Brownfield Redevelopment Program," Iowa Administrative Code.

The amendments incorporate changes to Iowa Code provisions that establish the Brownfield and Grayfield Redevelopment Tax Credit Program. The Legislature in 2011 Iowa Acts, Senate File 514, authorized the Authority to issue up to \$5 million in tax credits from the Authority's maximum aggregate tax credit limit in Iowa Code section 15.119.

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to public interest because of the benefit conferred to the public by having updated application procedures in effect immediately.

The Authority further finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing. The Authority's finding is based upon the fact that the amendments will confer a benefit upon the public by updating application procedures and providing opportunities for additional discussion before these rules are amended further.

These amendments are published herein under Notice of Intended Action as **ARC 9747B** to allow for public comment.

The Economic Development Authority adopted these amendments on August 18, 2011.

These amendments became effective August 19, 2011.

After analysis and review of this rule making, no negative impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 15.291, 15.292, 15.293A and 15.293B as amended by 2011 Iowa Acts, Senate File 514.

The following amendments are adopted.

ITEM 1. Amend rule 261—65.1(15) as follows:

**261—65.1(15) Purpose.** The brownfield redevelopment program is designed to provide financial and technical assistance for the acquisition, remediation, or redevelopment of brownfield and grayfield sites.

ITEM 2. Amend rule **261—65.2(15)**, definitions of "Acquisition," "Board" and "Qualifying investment," as follows:

"*Acquisition*" means the purchase of brownfield or grayfield property.

"*Board*" means the Iowa economic development authority board pursuant to Iowa Code section ~~15.103~~ 2011 Iowa Acts, House File 590, section 3.

"*Qualifying investment*" means the purchase price, cleanup cost(s), and redevelopment cost(s) costs that are directly related to a qualifying redevelopment project and that are incurred after the project has been registered and approved by the board. "Qualifying investment" only includes the purchase price, the cleanup costs, and the redevelopment costs.

ITEM 3. Rescind the definition of "Department" in rule **261—65.2(15)**.

ITEM 4. Adopt the following **new** definition in rule **261—65.2(15)**:

"*Authority*" means the economic development authority.

ITEM 5. Amend subrules 65.4(2) and 65.4(3) as follows:

**65.4(2) *Technical Other forms of assistance.*** ~~Technical assistance under this program is available in the form of providing an applicant with assistance in identifying~~ The authority may provide information on alternative forms of assistance for which the applicant may be eligible.

**65.4(3) *Limitation on amount.*** An applicant shall not receive financial assistance of more than 25 percent of the agreed-upon estimated total cost of remediation, acquisition or redevelopment. This limitation does not apply to assistance provided in the form of tax credits pursuant to subrule 65.11(4).

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

ITEM 6. Amend rule 261—65.5(15) as follows:

**261—65.5(15) Repayment to IDED economic development authority.** Upon the subsequent sale of the property by an applicant to a person other than the original owner, the applicant shall repay the ~~department~~ authority for financial assistance received by the applicant. The repayment shall be in an amount equal to the sales price less the amount paid to the original owner pursuant to the agreement between the applicant and the original owner. The repayment amount shall not exceed the amount of financial assistance received by the applicant.

ITEM 7. Amend rule 261—65.6(15) as follows:

**261—65.6(15) Application and award procedures.** Subject to availability of funds, applications will be reviewed and rated by IDED economic development authority staff on an ongoing basis and reviewed quarterly by the advisory council. Brownfield redevelopment funds will be awarded on a competitive basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. Recommendations from the advisory council will be submitted to the board. The board may approve, deny or defer an application.

ITEM 8. Amend rule 261—65.7(15) as follows:

**261—65.7(15) Application.**

**65.7(1)** Every application for assistance shall include, ~~but not be limited to,~~ evidence of sponsorship and any other information the authority deems necessary in order to process and review the application. An application shall be considered received by the authority only when the authority deems it to be complete. In addition, applications Applications for assistance ~~other than tax credits~~ shall also include the following information:

a. A business plan. The business plan should, at a minimum, include a remediation plan, a project contact/applying agency, a project overview (which would include the background of the project area, goals and objectives of the project, and implementation strategy), and a project/remediation budget.

b. A statement of purpose describing the intended use of and proposed repayment schedule for any financial assistance received by the applicant.

**65.7(2)** ~~The department authority shall accept applications and determine application eligibility review applications in conjunction with the council and the board. The council shall consider applications in the order complete applications are received and make application recommendations to the board. The board shall approve or deny applications.~~

**65.7(3)** Upon review of the application, the authority may register the project under the program. If the authority registers the project, it shall, in conjunction with the council and the board, make a preliminary determination as to the maximum amount of the tax credit for which the investor qualifies. After registering the project, the authority shall issue a letter notifying the investor of successful registration under the program. The letter shall include the maximum amount of tax credit for which the investor has received preliminary approval and shall state that the amount is a preliminary determination only. The preliminary determination is not a contract, contract term, promise, guarantee, assurance, or representation of the actual tax credit the investor will receive or should expect to receive. The preliminary determination is a nonbinding figure, provided purely for the investor's and the authority's information and convenience, based on the authority's existing understanding and estimates related to the project. The amount of tax credit included on a certificate issued pursuant to this subrule shall be contingent upon completion of the requirements of subrules 65.7(4) to 65.7(6) and shall be based solely on completion and compliance with all terms and conditions of the contract pursuant to this rule, rule 261—65.10(15), and Iowa Code sections 15.293A and 15.293B as amended by 2011 Iowa Acts, Senate File 514.

~~65.7(3)~~ **65.7(4)** Approved applicants shall enter into an agreement with the ~~department~~ authority. The agreement shall specify the requirements necessary in order to receive tax credit and the maximum amount of tax credit available.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

65.7(5) Upon completion of a registered project, an audit of the project's qualifying expenses shall be completed by an independent certified public accountant licensed in the state of Iowa and shall be submitted to the authority.

~~65.7(4)~~ 65.7(6) The department shall issue a tax credit certificate upon Upon written notification of project completion, review of the independent audit, and verification of the amount of the investment, the authority may issue a certificate to the investor.

ITEM 9. Amend rule 261—65.8(15) as follows:

**261—65.8(15) Application forms.** Application forms for the brownfield redevelopment program shall be available upon request from ~~IED~~ Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. ~~IED~~ The authority may provide technical assistance as necessary to applicants. ~~IED~~ Authority staff may conduct on-site evaluations of proposed activities.

ITEM 10. Amend subrules 65.10(1), 65.10(2) and 65.10(5) as follows:

**65.10(1)** A contract shall be executed between the recipient and ~~IED~~ the authority. These rules and applicable state laws and regulations shall be part of the contract.

**65.10(2)** The recipient must execute and return the contract to ~~IED~~ the authority within 45 days of transmittal of the final contract from ~~IED~~ the authority. Failure to do so may be cause for the board to terminate the award.

**65.10(5)** Awards may be conditioned upon ~~IED~~'s the authority's receipt and approval of an implementation plan for the funded activity.

ITEM 11. Amend subrule 65.11(1) as follows:

**65.11(1) Purpose.** The purpose of the redevelopment tax credit program is to make tax credits available for a redevelopment project investment. The ~~department~~ authority may cooperate with the department of natural resources and local governments in an effort to disseminate information regarding the redevelopment tax credit.

ITEM 12. Amend paragraph **65.11(3)“a”** as follows:

*a. Issuance.* The ~~department~~ authority shall issue a redevelopment tax credit certificate upon completion of the project and submittal of proof of completion by the qualified investor. The tax credit certificate shall contain the qualified investor's name, address, tax identification number, the amount of the credit, the name of the qualifying investor, any other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

ITEM 13. Amend paragraph **65.11(4)“d”** as follows:

*d. Maximum credit total.* For the fiscal year beginning July 1, 2009, the maximum amount of tax credits issued by the ~~department~~ authority shall not exceed \$1 million. For the fiscal year beginning July 1, 2011, and for each subsequent fiscal year, the maximum amount of tax credits issued by the authority shall be an amount determined by the board but not in excess of \$5 million. ~~The department shall not issue tax credits pursuant to this rule in subsequent fiscal years unless authorized pursuant to this subrule.~~

ITEM 14. Amend subrules 65.11(7) to 65.11(10) as follows:

**65.11(7) Project completion.**

*a.* An investment shall be deemed to have been made on the date the qualifying redevelopment project is completed. An investment made prior to January 1, 2009, ~~or after June 30, 2010,~~ shall not qualify for a tax credit under this rule.

*b.* ~~A qualifying redevelopment project not completed within 30 months after board approval shall not be eligible for a tax credit pursuant to this rule. The board has the discretion to allow an additional 12-month extension period to complete a project.~~ A registered project shall be completed within 30 months of the project's approval unless the authority, with the approval of the board, provides additional time to complete the project. A project shall not be provided more than 12 months of additional time. If the registered project is not completed within the time required, the project is not eligible to claim a tax credit.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

c. Failure to comply. If a taxpayer receives a tax credit pursuant to Iowa Code section 15.293A as amended by 2011 Iowa Acts, Senate File 514, but fails to comply with any of the requirements, the taxpayer loses any right to the tax credit. The Iowa department of revenue shall seek recovery of the value of the credit the qualified investor received.

**65.11(8) Tax credit carryover.** If the maximum amount of tax credits available has not been issued at the end of the fiscal year, the remaining tax credit amount may be carried over to a subsequent fiscal year or the ~~department~~ authority may prorate the remaining credit amount among other eligible applicants.

**65.11(9) Department Authority registration and authorization.** The ~~department~~ authority shall develop a system for registration and authorization of tax credits. The ~~department~~ authority shall control distribution of all tax credits distributed to investors, including developing and maintaining a list of tax credit applicants from year to year to ensure that if the maximum aggregate amount of tax credits is reached in one year, an applicant can be given priority consideration for a tax credit in an ensuing year.

**65.11(10) Other financial assistance considerations.** If a qualified investor has also applied to the ~~department~~ authority, the board, or any other agency of state government for additional financial assistance, the ~~department~~ authority, the board, or the agency of state government shall not consider the receipt of a tax credit issued pursuant to this rule when considering the application for additional financial assistance.

ITEM 15. Amend rule 261—65.12(15) as follows:

**261—65.12(15) Council Review, approval, and repayment requirements of redevelopment tax credit.**

**65.12(1)** A qualified investor seeking to claim a tax credit pursuant to Iowa Code sections 15.293A and 15.293B as amended by 2011 Iowa Acts, Senate File 514, shall apply to the ~~council~~, authority, and applications shall be reviewed by the council as established in Iowa Code section 15.294 as amended by 2011 Iowa Acts, Senate File 514. The council shall recommend to the board the tax credit amount available for each qualifying redevelopment project.

**65.12(2)** A qualified investor shall provide to the authority, the council with and the board all of the following:

a. Information showing the total costs of the qualifying redevelopment project, including the costs of land acquisition, cleanup, and redevelopment.

b. Information about the financing sources of the investment which is directly related to the qualifying redevelopment project for which the taxpayer is seeking approval for a tax credit, as provided in Iowa Code section 15.293A as amended by 2011 Iowa Acts, Senate File 514.

ITEM 16. Amend **261—Chapter 65**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections ~~15.291 to 15.293~~ 15.293 and 15.295 and sections 15.291, 15.292, 15.293A, 15.293B and 15.294 as amended by 2011 Iowa Acts, Senate File 514.

[Filed Emergency 8/19/11, effective 8/19/11]

[Published 9/7/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/7/11.

**ARC 9698B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 7, "Appeals and Hearings," and Chapter 175, "Abuse of Children," Iowa Administrative Code.

These amendments conform the Department's rules to statutory changes made in 2011 Iowa Acts, House File 562. Those changes:

- Shorten the time limit for appeal of a child abuse finding from six months to 90 days.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

- Clarify that failure on the part of the person responsible for the care of a child to provide adequate medical or mental health treatment or to provide adequate supervision meets the definition of child abuse.
- Clarify when a finding of child abuse shall be placed on the Central Abuse Registry.
- Remove obsolete provisions for review of abuse cases that were placed on the Registry before 1997.

The legislation provides that, with certain exceptions, information on founded abuse cases shall not be placed on the Registry when the Department:

- Determines that an allegation of physical abuse is founded but determines that the resulting injury was minor, isolated, and unlikely to reoccur; or
- Determines that an allegation of abuse by failure to provide adequate supervision or adequate clothing is founded but determines that the resulting risk to the child's health and welfare was minor, isolated, and unlikely to reoccur.

Even in those circumstances, the founded abuse shall be placed on the Registry if:

- The case was referred for juvenile or criminal court action due to the acts or omissions of the alleged perpetrator of abuse;
- The Department has determined within the past 18 months that other acts or omissions of the alleged perpetrator met the definition of abuse; or
- The Department determines that the alleged perpetrator will continue to pose a danger to children.

The legislation also provides that the name of the alleged perpetrator of founded sexual abuse shall not be placed on the Registry when the alleged perpetrator is aged 13 or younger, and allows the court to find good cause for not listing the name when the alleged perpetrator is aged 14 through 17. All other child abuse information in these cases will be listed on the Registry.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on June 29, 2011, as **ARC 9589B**. 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 August 10, 2011.

These amendments do not provide for waivers in specified situations because the Department does not have the authority to waive statutory provisions.

The Department finds that these amendments confer a benefit on the public by eliminating conflicts between the rules and the statute. 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.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 235A and sections 232.68 and 232.71D as amended by 2011 Iowa Acts, House File 562.

These amendments became effective on August 15, 2011.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [7.5(4)“d,” 175.21, 175.25(7), 175.32, 175.39, 175.40] is being omitted. These amendments are identical to those published under Notice as **ARC 9589B**, IAB 6/29/11.

[Filed Emergency After Notice 8/15/11, effective 8/15/11]

[Published 9/7/11]

[For replacement pages for IAC, see IAC Supplement 9/7/11.]

**ARC 9701B**

**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 11, “Collection of Public Assistance Debts,” and Chapter 76, “Application and Investigation,” Iowa Administrative Code.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments implement 2011 Iowa Acts, Senate File 313. This legislation amends Iowa Code sections 8A.504, 217.34, 249A.3 and 249J.8 on debt collection to include unpaid premiums assessed by the Department for medical assistance.

Currently, two medical assistance programs, the Medicaid coverage group for working persons with disabilities and the IowaCare program, use a fee schedule for member participation in the cost of medical coverage. In both programs, members with the lowest incomes are not assessed a premium. Working persons with disabilities who have sufficient income must pay the monthly premium before assistance is given and do not have the option to claim hardship for inability to pay the premium.

IowaCare members who are assessed a premium have the opportunity to claim hardship and pay a partial premium or no premium. However, an IowaCare member who neither pays the premium nor claims hardship will have benefits canceled for failure to pay the assessed premiums when a premium remains unpaid after the sixtieth day past the due date. Since the member was eligible during the period for which the premiums were due, this is technically not an "overpayment" as medical assistance debts have customarily been defined.

These amendments make a debt based on unpaid premiums subject to the same collection procedures as a debt for assistance that a member received when ineligible. These collection procedures may include setoff of state tax refunds or other payments.

The amendments also change the due date for the return of verifications for applications from five working days to ten calendar days to align with the due date for the return of all other requested verifications. This change gives applicants more time to submit information and avoid denial of the application for failure to provide necessary information.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on February 9, 2011, as **ARC 9361B**. The Department received no comments on the Notice of Intended Action. Although that Notice has expired (see Notice of Termination **ARC 9734B** herein), these amendments are identical to those published under that Notice of Intended Action.

The Council on Human Services adopted these amendments on August 10, 2011.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because these amendments were published under Notice of Intended Action previously. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department finds that the prompt implementation of statutory directives on recoupment of unpaid premiums confers a public benefit and that the extension of time for returning verification confers a benefit on Medicaid applicants. 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 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).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 8A.504, 217.34, 249A.3 and 249J.8 as amended by 2011 Iowa Acts, Senate File 313.

These amendments became effective on September 1, 2011.

The following amendments are adopted.

ITEM 1. Amend rule **441—11.1(217)**, definition of "Debtor," as follows:

*"Debtor"* shall mean a current or former recipient of public assistance that has been determined by the department to be responsible for the repayment of a particular debt. For food assistance, "debtor" shall include all adult members of the food assistance household participating at the time the food assistance overpayment or program violation occurred and shall include nonrecipients found guilty of violating food assistance program rules by committing an act such as, but not limited to, trafficking. For child care assistance, "debtor" may include the current or former provider or current or former recipient of child care assistance. For Medicaid, "debtor" shall include ~~the~~ any Medicaid member ~~and any or nonmember~~ who fraudulently receives services or owes a debt of unpaid premium payments for medical assistance.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend subrules 76.2(4) and 76.2(5) as follows:

**76.2(4) *Providing additional information.*** The department shall notify the applicant in writing of additional information or verification that is required to establish eligibility. This notice shall be provided to the applicant or member personally or by mail or facsimile.

*a.* The department shall allow the applicant ~~five working~~ ten calendar days to supply the information or verification requested. Applicants for whom eligibility is determined in whole or in part by the Social Security Administration shall make application to the Social Security Administration within ~~five working~~ ten calendar days of referral by the department.

*b. to d.* No change.

**76.2(5) *Reporting of changes.*** The applicant shall report any change as defined at 441—paragraph 75.52(4)“c” which occurs during the application process within ~~five working~~ ten calendar days of the change. Changes that occur after approval for benefits shall be reported in accordance with 441—paragraph 75.52(4)“c.”

ITEM 3. Amend subrule 76.10(3) as follows:

**76.10(3)** A report shall be considered timely when received by the department:

*a.* Within ten calendar days from the date the change is known to the member or authorized representative; or

*b.* Within ~~five~~ ten calendar days from the date the change is known to the applicant or authorized representative.

ITEM 4. Adopt the following **new** definition in subrule **76.12(1)**:

“*Premiums paid for medical assistance*” means monthly premiums assessed to a member or household for Medicaid or IowaCare coverage.

ITEM 5. Amend subrules 76.12(2) and 76.12(3) as follows:

**76.12(2) *Amount subject to recovery.*** The department shall recover from a client all Medicaid funds incorrectly expended to or on behalf of the client and all unpaid premiums assessed by the department for medical assistance. The incorrect expenditures or unpaid premiums may result from client or agency error, or administrative overpayment.

**76.12(3) *Notification.*** All clients shall be promptly notified on Form 470-2891, Notice of Medical Assistance Overpayment, when it is determined that assistance was incorrectly expended or when assessed premiums are unpaid.

*a.* Notification of incorrect expenditures shall include:

- (1) ~~for~~ For whom assistance was paid;
- (2) ~~the time~~ The period during which assistance was incorrectly paid;
- (3) ~~the~~ The amount of assistance subject to recovery; and
- (4) ~~the~~ The reason for the incorrect expenditure.

*b.* Notification of unpaid premiums shall include:

- (1) The amount of the premium; and
- (2) The month covered by the medical assistance premium.

[Filed Emergency 8/15/11, effective 9/1/11]

[Published 9/7/11]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/7/11.

**ARC 9696B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a), the Department of Human Services amends Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment allows the Department to recover Medicaid expenditures when liability for negligence (malpractice) is admitted or established. Iowa has been one of the few states that do not have this capability. These collections are now authorized by statutory changes enacted in 2011 Iowa Acts, House File 649. This change was one of the cost containment strategies recommended by Governor Branstad.

The Council on Human Services adopted this amendment on August 10, 2011.

The Department finds that notice and public participation are impracticable because the Department's appropriation for the fiscal year beginning July 1, 2011, assumes the implementation of the cost containment strategies recommended by the Governor without a delay for notice and public comment. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of this amendment should be waived, as authorized by 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

This amendment is also published herein under Notice of Intended Action as **ARC 9697B** to allow for public comment.

This amendment does not provide for waivers in specified situations because the savings assumed in the Department's appropriations will not be achieved if waivers are provided. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4, Iowa Code section 147.136 as amended by 2011 Iowa Acts, House File 649, section 85, and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

This amendment became effective September 1, 2011.

The following amendment is adopted.

Amend subrule 75.4(1), introductory paragraph, as follows:

**75.4(1)** When payment is made by the department the medical assistance program pays for a member's medical care or expenses through the medical assistance program on behalf of a member, the department shall have a lien, to the extent of those payments, to upon all monetary claims which the member may have against third parties for those expenses. Monetary claims shall include medical malpractice claims for injuries sustained on or after July 1, 2011. The lien shall be to the extent of the medical assistance payments only.

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**ARC 9699B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a), the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

These amendments affect Medicaid coverage for drugs by:

- Removing coverage for lipase inhibitor drugs when used to promote weight loss;
- Removing coverage for prescription drugs and certain nonprescription products used for symptomatic relief of cough and colds; and
- Updating the list of covered nonprescription drugs to reflect current rebatable drugs.

2011 Iowa Acts, House File 649, allows the Department to implement the Medicaid cost containment strategies recommended by Governor Branstad. Federal Medicaid law allows states to exclude coverage

## HUMAN SERVICES DEPARTMENT[441](cont'd)

for these two categories of drugs, and eliminating coverage for them is one of the recommended strategies.

Lipase inhibitor drugs are the only weight-loss drug category currently covered in Iowa. There is one covered lipase inhibitor drug which will no longer be payable. This drug has minimal utilization (due to side effects) and effectiveness. Alternative nonpharmaceutical treatment options exist that are at least as effective as, if not more effective than, that drug.

Iowa presently covers a limited number of preferred nonprescription and prescription cough and cold products. These amendments retain coverage only for products that are both cost-effective and supported by sufficient clinical evidence. Coverage for all prescription cough and cold products is eliminated. These products tend to be combinations of multiple ingredients, some at subtherapeutic doses that have minimal effectiveness, with an increased tendency toward side effects and drug interactions. Alternative nonpharmaceutical options for treatment also exist.

Nonprescription products that contain only one or two ingredients, a decongestant and cough syrup containing dextromethorphan, will remain payable. There is evidence to support or expert opinion recommending treatment of symptomatic cold symptoms with a decongestant and some evidence to support the use of dextromethorphan.

The Council on Human Services adopted these amendments on August 10, 2011.

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

The Department finds that notice and public participation are impracticable because the Department's appropriation for the fiscal year beginning July 1, 2011, assumes the implementation of the cost containment strategies recommended by the Governor without a delay for notice and public comment. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived, as authorized by 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

These amendments are also published herein under Notice of Intended Action as **ARC 9700B** to allow for public comment.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

These amendments became effective September 1, 2011.

The following amendments are adopted.

ITEM 1. Amend subparagraph **78.2(4)“b”(2)** as follows:

(2) Drugs used to ~~cause~~ for anorexia, weight gain, or weight loss, ~~except for lipase inhibitor drugs prescribed for weight loss with prior authorization as provided in paragraph “a.”.~~

ITEM 2. Adopt the following new subparagraph **78.2(4)“b”(11)**:

(11) Drugs used for symptomatic relief of cough and colds, except for nonprescription drugs listed at subrule 78.2(5).

ITEM 3. Amend subrule 78.2(5) as follows:

**78.2(5) Nonprescription drugs.** The following drugs that may otherwise be dispensed without a prescription are covered subject to the prior authorization requirements stated below and as specified in the preferred drug list published by the department pursuant to Iowa Code section 249A.20A:

Acetaminophen tablets 325 mg, 500 mg  
Acetaminophen elixir 160 mg/5 ml  
Acetaminophen solution 100 mg/ml  
Acetaminophen suppositories 120 mg  
Artificial tears ophthalmic solution  
Artificial tears ophthalmic ointment  
Aspirin tablets 325 mg, 650 mg, 81 mg (chewable)

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Aspirin tablets, enteric coated 325 mg, 650 mg, 81 mg  
Aspirin tablets, buffered 325 mg  
Bacitracin ointment 500 units/gm  
Benzoyl peroxide 5%, gel, lotion  
Benzoyl peroxide 10%, gel, lotion  
Calcium carbonate chewable tablets ~~1250 mg (500 mg elemental calcium)~~ 500 mg, 750 mg, 1000 mg, 1250 mg  
Calcium carbonate suspension 1250 mg/5 ml  
Calcium carbonate tablets 600 mg  
Calcium carbonate-vitamin D tablets 500 mg-200 units  
Calcium carbonate-vitamin D tablets 600 mg-200 units  
Calcium citrate tablets 950 mg (200 mg elemental calcium)  
Calcium gluconate tablets 650 mg  
Calcium lactate tablets 650 mg  
Cetirizine hydrochloride liquid 1 mg/ml  
Cetirizine hydrochloride tablets 5 mg  
Cetirizine hydrochloride tablets 10 mg  
Chlorpheniramine maleate tablets 4 mg  
Clotrimazole vaginal cream 1%  
Diphenhydramine hydrochloride capsules 25 mg  
Diphenhydramine hydrochloride elixir, liquid, and syrup 12.5 mg/5 ml  
Epinephrine racemic solution 2.25%  
Ferrous sulfate tablets 325 mg  
Ferrous sulfate elixir 220 mg/5 ml  
Ferrous sulfate drops 75 mg/0.6 ml  
Ferrous gluconate tablets 325 mg  
Ferrous fumarate tablets 325 mg  
Guaifenesin 100 mg/5 ml with dextromethorphan 10 mg/5 ml liquid  
Ibuprofen suspension 100 mg/5 ml  
Ibuprofen tablets 200 mg  
Insulin  
Lactic acid (ammonium lactate) lotion 12%  
Loperamide hydrochloride liquid 1 mg/5 ml  
Loperamide hydrochloride tablets 2 mg  
Loratadine syrup 5 mg/5 ml  
Loratadine tablets 10 mg  
Magnesium hydroxide suspension 400 mg/5 ml  
Magnesium oxide capsule 140 mg (85 mg elemental magnesium)  
Magnesium oxide tablets 400 mg  
Meclizine hydrochloride tablets 12.5 mg, 25 mg oral and chewable  
Miconazole nitrate cream 2% topical and vaginal  
Miconazole nitrate vaginal suppositories, 100 mg  
Multiple vitamin and mineral products with prior authorization  
Neomycin-bacitracin-polymyxin ointment  
Niacin (nicotinic acid) tablets 50 mg, 100 mg, 250 mg, 500 mg  
Nicotine gum 2 mg, 4 mg  
Nicotine lozenge 2 mg, 4 mg  
Nicotine patch 7 mg/day, 14 mg/day and 21 mg/day  
Pediatric oral electrolyte solutions  
Permethrin ~~liquid~~ lotion 1%  
Polyethylene glycol 3350 powder  
Pseudoephedrine hydrochloride tablets 30 mg, 60 mg

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Pseudoephedrine hydrochloride liquid 30 mg/5 ml  
 Pseudoephedrine/dextromethorphan 15 mg/7.5 mg/5 mL liquid  
 Pseudoephedrine/dextromethorphan 20 mg/10 mg/5 mL liquid  
 Pseudoephedrine/dextromethorphan 30 mg/15 mg/5 mL liquid  
 Pseudoephedrine/dextromethorphan 20 mg/10 mg/5 mL elixir  
 Pseudoephedrine/dextromethorphan 15 mg/7.5 mg/5 mL syrup  
 Pseudoephedrine/dextromethorphan 30 mg/15 mg/5 mL syrup  
 Pseudoephedrine/dextromethorphan 7.5 mg/2.5 mg/0.8 mL solution  
 Pyrethrins-piperonyl butoxide liquid 0.33-4%  
 Pyrethrins-piperonyl butoxide shampoo 0.3-3%  
 Pyrethrins-piperonyl butoxide shampoo 0.33-4%  
 Salicylic acid liquid 17%  
 Senna tablets 187 mg  
 Sennosides-docusate sodium tablets 8.6 mg-50 mg  
 Sennosides syrup 8.8 mg/5 ml  
 Sennosides tablets 8.6 mg  
 Sodium bicarbonate tablets 325 mg  
 Sodium bicarbonate tablets 650 mg  
 Sodium chloride hypertonic ophthalmic ointment 5%  
 Sodium chloride hypertonic ophthalmic solution 5%  
 Tolnaftate 1% cream, solution, powder  
 Other nonprescription drugs listed as preferred in the preferred drug list published by the department pursuant to Iowa Code section 249A.20A.

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[Published 9/7/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/7/11.

**ARC 9702B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a), the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

These amendments change the Medicaid criterion for the medical necessity of orthodontia for children by raising the minimum score on the Salzmann index to 26. (Orthodontia coverage for members over the age of 21 was eliminated in 2002.) The minimum Salzmann index score currently used to establish medical necessity for orthodontia is 21. Changing this criterion is one of the Medicaid cost containment strategies recommended by Governor Branstad. 2011 Iowa Acts, House File 649, authorizes the Department to implement these recommendations.

Of the 17 states that responded to a survey requesting Medicaid criteria for orthodontia, Iowa's criterion is one of the most liberal. The survey showed that other Midwestern states have established criteria at the following indexes: Illinois at 42, Missouri at 28, Nebraska at 40, and Wisconsin at 30. The criterion used in Iowa's HAWK-I program is 26. Changing the Iowa Medicaid criterion will align the policies of the two Iowa programs and move Iowa's Medicaid criterion toward the level required by many other states.

The Council on Human Services adopted these amendments on August 10, 2011.

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

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Department finds that notice and public participation are impracticable because the Department's appropriation for the fiscal year beginning July 1, 2011, assumes the implementation of the cost containment strategies recommended by the Governor without a delay for notice and public comment. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

These amendments are also published herein under Notice of Intended Action as **ARC 9703B** to allow for public comment.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

These amendments became effective September 1, 2011.

The following amendments are adopted.

ITEM 1. Amend subrule 78.4(8) as follows:

**78.4(8) Orthodontic procedures.** Payment may be made for the following orthodontic procedures:

a. ~~When prior approval has been given for orthodontic~~ Orthodontic services to treat the most handicapping malocclusions ~~in a manner consistent with~~ are payable with prior approval. A score of 26 or above on the index from "Handicapping Malocclusion Assessment to Establish Treatment Priority," by J. A. Salzmann, D.D.S., American Journal of Orthodontics, October 1968, is required for approval.

(1) A handicapping malocclusion is a condition that constitutes a hazard to the maintenance of oral health and interferes with the well-being of the patient by causing impaired mastication, dysfunction of the temporomandibular articulation, susceptibility to periodontal disease, susceptibility to dental caries, and impaired speech due to malpositions of the teeth. Treatment of handicapping malocclusions will be approved only for the severe and the most handicapping. Assessment of the most handicapping malocclusion is determined by the magnitude of the following variables: degree of malalignment, missing teeth, angle classification, overjet and overbite, openbite, and crossbite.

(2) A request to perform an orthodontic procedure must be accompanied by an interpreted cephalometric radiograph and study models trimmed so that the models simulate centric occlusion of the patient. A written plan of treatment must accompany the diagnostic aids. Posttreatment records must be furnished upon request of the Iowa Medicaid enterprise.

(3) Approval may be made for eight units of a three-month active treatment period. Additional units may be approved by the Iowa Medicaid enterprise's orthodontic consultant if found to be medically necessary. (Cross-reference 78.28(2)"d")

b. and c. No change.

ITEM 2. Amend paragraph **78.28(2)"d"** as follows:

d. Orthodontic services ~~will be approved when it is determined that a patient has the most to treat~~ a handicapping malocclusion ~~are payable with prior approval. This determination is made in a manner consistent with~~ A score of 26 or above on the index from the "Handicapping Malocclusion Assessment to Establish Treatment Priority," by J. A. Salzmann, D.D.S., American Journal of Orthodontics, October 1968, is required for approval.

(1) to (3) No change.

[Filed Emergency 8/15/11, effective 9/1/11]

[Published 9/7/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/7/11.

**ARC 9704B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a), 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 change the payment methodology for the following Medicaid home- and community-based services (HCBS) waivers to align with the payment methodology for durable medical equipment under the Medicaid state plan:

- Assistive devices under the elderly waiver (Item 3).
- Environmental modifications and adaptive devices under the children’s mental health waiver (Item 9).
- Home and vehicle modifications under the ill and handicapped, elderly, intellectual disability, brain injury and physical disability waivers (Items 1, 2, 4, 5, and 7).
- Specialized medical equipment under the brain injury and physical disability waivers (Items 6 and 8).

Aligning the reimbursement for durable equipment is one of the Medicaid cost containment strategies recommended by Governor Branstad. 2011 Iowa Acts, House File 649, authorizes the Department to implement these recommendations.

The Council on Human Services adopted these amendments on August 10, 2011.

The Department finds that notice and public participation are impracticable because the Department’s appropriation for the fiscal year beginning July 1, 2011, assumes the implementation of the cost containment strategies recommended by the Governor without a delay for notice and public comment. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived, as authorized by 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

These amendments are also published herein under Notice of Intended Action as **ARC 9705B** to allow for public comment.

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

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

These amendments became effective September 1, 2011.

The following amendments are adopted.

ITEM 1. Amend paragraphs **78.34(9)“e”** and **“f”** as follows:

*e.* Services shall be performed following prior department approval of the modification as specified in 441—subrule 79.1(17) and a binding contract between the enrolled home and vehicle modification provider and the member. ~~Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.~~

*f.* All contracts for home or vehicle modification shall be awarded through competitive bidding. The contract shall include the scope of work to be performed, the time involved, supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers’ compensation coverage and the applicable permit and license.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend paragraphs **78.37(9)“e”** and **“f”** as follows:

*e.* Services shall be performed following prior department approval of the modification as specified in 441—subrule 79.1(17) and a binding contract between the enrolled home and vehicle modification provider and the member. ~~Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.~~

*f.* All contracts for home or vehicle modification shall be awarded through competitive bidding. The contract shall include the scope of work to be performed, the time involved, supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers' compensation coverage and the applicable permit and license.

ITEM 3. Amend subrule 78.37(13) as follows:

**78.37(13) Assistive devices.** Assistive devices means practical equipment products to assist persons with activities of daily living and instrumental activities of daily living to allow the person more independence. They include, but are not limited to: long-reach brush, extra long shoehorn, nonslip grippers to pick up and reach items, dressing aids, shampoo rinse tray and inflatable shampoo tray, double-handled cup and sipper lid. A unit is an item.

*a.* The service shall be included in the member's service plan and shall exceed the services available under the Medicaid state plan.

*b.* The service shall be provided following prior approval by the Iowa Medicaid enterprise.

*c.* Payment for most items shall be based on a fee schedule. The amount of the fee shall be determined as directed in 441—subrule 79.1(17).

ITEM 4. Amend paragraphs **78.41(4)“e”** and **“f”** as follows:

*e.* Services shall be performed following prior department approval of the modification as specified in 441—subrule 79.1(17) and a binding contract between the enrolled home and vehicle modification provider and the member. ~~Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.~~

*f.* All contracts for home or vehicle modification shall be awarded through competitive bidding. The contract shall include the scope of work to be performed, the time involved, supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers' compensation coverage and the applicable permit and license.

ITEM 5. Amend paragraphs **78.43(5)“e”** and **“f”** as follows:

*e.* Services shall be performed following prior department approval of the modification as specified in 441—subrule 79.1(17) and a binding contract between the enrolled home and vehicle modification provider and the member. ~~Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.~~

*f.* All contracts for home or vehicle modification shall be awarded through competitive bidding. The contract shall include the scope of work to be performed, the time involved, supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers' compensation coverage and the applicable permit and license.

ITEM 6. Adopt the following **new** paragraph **78.43(8)“e”**:

*e.* Payment for most items shall be based on a fee schedule. The amount of the fee shall be determined as directed in 441—subrule 79.1(17).

ITEM 7. Amend paragraphs **78.46(2)“e”** and **“f”** as follows:

*e.* Services shall be performed following prior department approval of the modification as specified in 441—subrule 79.1(17) and a binding contract between the enrolled home and vehicle modification provider and the member. ~~Whenever possible, three itemized, competitive bids shall be obtained for each project and be reviewed by the case manager or service worker before approval of the contract.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

f. All contracts for home or vehicle modification shall be awarded through competitive bidding. The contract shall include the scope of work to be performed, the time involved, supplies needed, the cost, diagrams of the project whenever applicable, and an assurance that the provider has liability and workers' compensation coverage and the applicable permit and license.

ITEM 8. Adopt the following new paragraph **78.46(4)“e”**:

e. Payment for most items shall be based on a fee schedule. The amount of the fee shall be determined as directed in 441—subrule 79.1(17).

ITEM 9. Adopt the following new paragraph **78.52(2)“d”**:

d. Payment for most items shall be based on a fee schedule. The amount of the fee shall be determined as directed in 441—subrule 79.1(17).

ITEM 10. Amend subrule **79.1(2)**, “HCBS waiver service providers,” numbered paragraphs “9,” “13,” “20” and “27,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
9. Home and vehicle modification	Fee schedule. <u>See 79.1(17)</u>	For elderly waiver: \$1,010 lifetime maximum.  For intellectual disability waiver: \$5,050 lifetime maximum.  For brain injury, ill and handicapped and physical disability waivers: \$6,060 per year.
13. Assistive devices	Fee schedule. <u>See 79.1(17)</u>	Effective 7/1/11: <del>\$107.30</del> <u>\$110.05</u> per unit.
20. Specialized medical equipment	Fee schedule. <u>See 79.1(17)</u>	\$6,060 per year.
27. Environmental modifications and adaptive devices	Fee schedule. <u>See 79.1(17)</u>	\$6,060 per year.

ITEM 11. Amend subrule 79.1(17) as follows:

**79.1(17) Reimbursement for home- and community-based services home and vehicle modification and equipment.** Payment is made for home and vehicle modifications, assistive devices, specialized medical equipment, and environmental modifications and adaptive devices at the amount of payment to the subcontractor provided in the contract between the supported community living authorized by the department through a quotation, contract, or invoice submitted by the provider and subcontractor. All contracts shall be awarded through competitive bidding, shall be approved by the department, and shall be justified by the consumer's service plan. Payment for completed work shall be made to the supported community living provider.

a. The case manager shall submit the service plan and the contract, invoice or quotations from the providers to the Iowa Medicaid enterprise for prior approval before the modification is initiated or the equipment is purchased. Payment shall not be approved for duplicate items.

b. Whenever possible, three itemized bids for the modification or quotations for equipment purchase shall be presented for review. The amount payable shall be based on the least expensive item that meets the member's medical needs.

c. Payment for most items shall be based on a fee schedule and shall conform to the limitations set forth in subrule 79.1(12).

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) For services and items that are furnished under Part B of Medicare, the fee shall be the lowest charge allowed under Medicare.

(2) For services and items that are furnished only under Medicaid, the fee shall be the lowest charge determined by the department according to the Medicare reimbursement method described in Section 1834(a) of the Social Security Act (42 U.S.C. 1395m), Payment for Durable Medical Equipment.

(3) Payment for supplies with no established Medicare fee shall be at the average wholesale price for the item less 10 percent.

(4) Payment for items with no Medicare fee, Medicaid fee, or average wholesale price shall be made at the manufacturer's suggested retail price less 15 percent.

(5) Payment for items with no Medicare fee, Medicaid fee, average wholesale price, or manufacturer's suggested retail price shall be made at the dealer's cost plus 10 percent. The actual invoice for the item from the manufacturer must be submitted with the claim. Catalog pages or printouts supplied by the provider are not considered invoices.

(6) For selected medical services, supplies, and equipment, including equipment servicing, that generally do not vary significantly in quality from one provider to another, the payment shall be the lowest price for which such devices are widely and consistently available in a locality.

(7) Payment for used equipment shall not exceed 80 percent of the purchase allowance.

(8) No allowance shall be made for delivery, freight, postage, or other provider operating expenses for durable medical equipment, prosthetic devices, or sickroom supplies.

[Filed Emergency 8/15/11, effective 9/1/11]

[Published 9/7/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/7/11.

**ARC 9706B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 28, subsection 11, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments increase reimbursement rates for home- and community-based services (HCBS) to reflect the appropriation of \$1.5 million for state fiscal year 2012 for this purpose. These amendments essentially restore the reductions in the waiver reimbursement limits that were implemented in December 2009 as a result of Executive Order 19. At that time, rate maximums were reduced by 2.5 percent for most waiver services. Maximums for home health aide, nursing, and interim medical monitoring and treatment performed by a home health agency were reduced by 5 percent.

The Council on Human Services adopted these amendments on August 10, 2011.

The Department finds that notice and public participation are impracticable because the legislation makes the change effective July 1, 2011. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2011 Iowa Acts, House File 649, section 28, subsection 11.

These amendments are also published herein under Notice of Intended Action as **ARC 9707B** to allow for public comment.

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

After analysis and review of this rule making, no impact on jobs has been found.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 28, subsection 1(q).

These amendments became effective on August 17, 2011.

The following amendments are adopted.

ITEM 1. Amend subparagraph **79.1(1)“e”(3)** as follows:

(3) The prospective rates paid to both new and established providers are subject to the maximums listed in subrule 79.1(2) and to retrospective adjustment based on the provider’s actual, current costs of operation as shown by financial and statistical reports submitted by the provider, so as not to exceed reasonable and proper costs actually incurred by more than 2.5 percent.

ITEM 2. Amend subrule **79.1(2)**, provider category “HCBS waiver service providers,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
HCBS waiver service providers, including:		Except as noted, limits apply to all waivers that cover the named provider.
1. Adult day care	Fee schedule	For AIDS/HIV, brain injury, elderly, and ill and handicapped waivers effective 7/1/11: <u>Provider’s rate in effect 11/30/09. If no 11/30/09 rate: Veterans Administration contract rate or <del>\$21.57</del> \$22.12 per half-day, <del>\$42.93</del> \$44.03 per full day, or <del>\$64.38</del> \$66.03 per extended day if no Veterans Administration contract.</u>
		For intellectual disability waiver: County contract rate or, effective 7/1/11 in the absence of a contract rate, <u>provider’s rate in effect 11/30/09. If no 11/30/09 rate, <del>\$28.73</del> \$29.47 per half-day, <del>\$57.36</del> \$58.83 per full day, or <del>\$73.13</del> \$75.00 per extended day.</u>
2. Emergency response system:		
Personal response system	Fee schedule	<u>Effective 7/1/11, provider’s rate in effect 11/30/09. If no 11/30/09 rate: Initial one-time fee: <del>\$48.29</del> \$49.53. Ongoing monthly fee: <del>\$37.56</del> \$38.52.</u>
Portable locator system	Fee schedule	<u>Effective 7/1/11, provider’s rate in effect 11/30/09. If no 11/30/09 rate: One equipment purchase: <del>\$300</del> \$307.69. Initial one-time fee: <del>\$48.29</del> \$49.53. Ongoing monthly fee: <del>\$37.56</del> \$38.52.</u>
3. Home health aides	Retrospective cost-related	For AIDS/HIV, elderly, and ill and handicapped waivers effective 7/1/11: Lesser of maximum Medicare rate in effect 11/30/09 or maximum Medicaid rate in effect 11/30/09 less 5%.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

		For intellectual disability waiver <u>effective 7/1/11</u> : Lesser of maximum Medicare rate in effect 11/30/09 or maximum Medicaid rate in effect 11/30/09 <del>less 5%</del> , converted to an hourly rate.
4. Homemakers	Fee schedule	<u>Effective 7/1/11, provider's rate in effect 11/30/09. Maximum of \$19.34. If no 11/30/09 rate: \$19.81 per hour.</u>
5. Nursing care	For elderly and intellectual disability waivers: Fee schedule as determined by Medicare.	For elderly waiver <u>effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: \$80.85 \$82.92 per visit.</u> For intellectual disability waiver <u>effective 7/1/11</u> : Lesser of maximum Medicare rate in effect 11/30/09 or maximum Medicaid rate in effect 11/30/09 <del>less 5%</del> , converted to an hourly rate.
	For AIDS/HIV and ill and handicapped waivers: Agency's financial and statistical cost report and Medicare percentage rate per visit.	For AIDS/HIV and ill and handicapped waivers <u>effective 7/1/11, provider's rate in effect 11/30/09</u> <del>:- Cannot exceed \$80.85. If no 11/30/09 rate: \$82.92</del> per visit.
6. Respite care when provided by:		
Home health agency:		
Specialized respite	Cost-based rate for nursing services provided by a home health agency	<u>Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: Lesser of maximum Medicare rate in effect 11/30/09 or maximum Medicaid rate in effect 11/30/09 less 2.5%, converted to an hourly rate, not to exceed \$296.94 per day.</u>
Basic individual respite	Cost-based rate for home health aide services provided by a home health agency	<u>Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: Lesser of maximum Medicare rate in effect 11/30/09 or maximum Medicaid rate in effect 11/30/09 less 2.5%, converted to an hourly rate, not to exceed \$296.94 per day.</u>
Group respite	Retrospectively limited prospective rates. See 79.1(15)	<u>Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: \$12.79 \$13.12 per hour not to exceed \$296.94 per day.</u>
Home care agency:		
Specialized respite	Retrospectively limited prospective rates. See 79.1(15)	<u>Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: \$32.94 \$33.75 per hour not to exceed \$296.94 per day.</u>

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Basic individual respite	Retrospectively limited prospective rates. See 79.1(15)	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$17.56</del> \$18.01 per hour not to exceed \$296.94 per day.
Group respite	Retrospectively limited prospective rates. See 79.1(15)	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$12.79</del> \$13.12 per hour not to exceed \$296.94 per day.
Nonfacility care:		
Specialized respite	Retrospectively limited prospective rates. See 79.1(15)	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$32.94</del> \$33.75 per hour not to exceed \$296.94 per day.
Basic individual respite	Retrospectively limited prospective rates. See 79.1(15)	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$17.56</del> \$18.01 per hour not to exceed \$296.94 per day.
Group respite	Retrospectively limited prospective rates. See 79.1(15)	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$12.79</del> \$13.12 per hour not to exceed \$296.94 per day.
Facility care:		
Hospital or nursing facility providing skilled care	Fee schedule	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$12.79</del> \$13.12 per hour not to exceed the facility's daily per diem Medicaid rate for skilled nursing facility level of care.
Nursing facility	Fee schedule	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$12.79</del> \$13.12 per hour not to exceed the facility's daily per diem for nursing facility level of care Medicaid rate.
Camps	Retrospectively limited prospective rates. See 79.1(15)	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$12.79</del> \$13.12 per hour not to exceed \$296.94 per day.
Adult day care	Fee schedule	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$12.79</del> \$13.12 per hour not to exceed rate for regular adult day care services.
Intermediate care facility for the mentally retarded	Fee schedule	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$12.79</del> \$13.12 per hour not to exceed the facility's daily per diem for ICF/MR level of care Medicaid rate.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Residential care facilities for persons with mental retardation	Fee schedule	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$12.79</del> <u>\$13.12</u> per hour not to exceed contractual daily <del>per diem</del> rate.
Foster group care	Fee schedule	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$12.79</del> <u>\$13.12</u> per hour not to exceed daily <del>per diem</del> rate for child welfare services.
Child care facilities	Fee schedule	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$12.79</del> <u>\$13.12</u> per hour not to exceed contractual daily <del>per diem</del> rate.
7. Chore service	Fee schedule	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$7.52</del> <u>\$7.71</u> per half hour.
8. Home-delivered meals	Fee schedule	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$7.52</del> <u>\$7.71</u> per meal. Maximum of 14 meals per week.
9. Home and vehicle modification	Fee schedule	For elderly waiver: \$1,010 lifetime maximum.  For intellectual disability waiver: \$5,050 lifetime maximum.  For brain injury, ill and handicapped and physical disability waivers: \$6,060 per year.
10. Mental health outreach providers	Fee schedule	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: On-site Medicaid reimbursement rate for center or provider. Maximum of 1440 units per year.
11. Transportation	Fee schedule	Effective 7/1/11: County contract rate or, in the absence of a contract rate, provider's rate in effect 11/30/09. If no 11/30/09 rate, the rate set by the area agency on aging.
12. Nutritional counseling	Fee schedule	Effective 7/1/11 for non-county contract: Provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$8.04</del> <u>\$8.25</u> per unit.
13. Assistive devices	Fee schedule	Effective 7/1/11: <del>\$107.30</del> <u>\$110.05</u> per unit.
14. Senior companion	Fee schedule	Effective 7/1/11 for non-county contract: Provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$6.44</del> <u>\$6.59</u> per hour.

HUMAN SERVICES DEPARTMENT[441](cont'd)

15. Consumer-directed attendant care provided by:		
Agency (other than an elderly waiver assisted living program)	Fee agreed upon by member and provider	<u>Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: \$19.70 \$20.20 per hour not to exceed the daily rate of \$113.80 \$116.72 per day.</u>
Assisted living program (for elderly waiver only)	Fee agreed upon by member and provider	<u>For elderly waiver only: \$1,089.08 Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: \$1,117 per calendar month. Rate must be When prorated per day for a partial month, at a rate not to exceed \$35.79 \$36.71 per day.</u>
Individual	Fee agreed upon by member and provider	<u>Effective July 1, 2010, \$13.47 per hour not to exceed the daily rate of \$78.56 per day.</u>
16. Counseling		
Individual:	Fee schedule	<u>Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: \$10.52 \$10.79 per unit.</u>
Group:	Fee schedule	<u>Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: \$42.06 \$43.14 per hour.</u>
17. Case management		
	Fee schedule with cost settlement. See 79.1(1)“d.”	<u>For brain injury waiver: Retrospective cost-settled rate. For elderly waiver: Quarterly revision of reimbursement rate as necessary to maintain projected expenditures within the amounts budgeted under the appropriations made for the medical assistance program for the fiscal year.</u>
18. Supported community living		
	Retrospectively limited prospective rates. See 79.1(15)	<u>Effective 7/1/11: \$34.11 \$34.98 per hour, \$76.94 \$78.88 per day not to exceed the maximum daily ICF/MR per diem less 2.5% rate.</u>
19. Supported employment:		
Activities to obtain a job:		
Job development	Fee schedule	<u>Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: \$886.28 \$909 per unit (job placement). Maximum of two units per 12 months.</u>
Employer development	Fee schedule	<u>Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: \$886.28 \$909 per unit (job placement). Maximum of two units per 12 months.</u>
Enhanced job search	Retrospectively limited prospective rates. See 79.1(15)	<u>Effective 7/1/11: Maximum of \$34.11 \$34.98 per hour, and Maximum of 26 hours per 12 months.</u>

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Supports to maintain employment	Retrospectively limited prospective rates. See 79.1(15)	Effective 7/1/11: <del>Maximum of \$34.14</del> <u>\$34.98</u> per hour for all activities other than personal care and services in an enclave setting. <del>Maximum of \$19.31</del> <u>\$19.81</u> per hour for personal care. <del>Maximum of \$6.04</del> <u>\$6.19</u> per hour for services in an enclave setting. <del>Total not to exceed \$2,811.62</del> <u>\$2,883.71</u> per month for total service. Maximum of 40 units per week.
20. Specialized medical equipment	Fee schedule	\$6,060 per year.
21. Behavioral programming	Fee schedule	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$10.52</del> <u>\$10.79</u> per 15 minutes.
22. Family counseling and training	Fee schedule	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$42.06</del> <u>\$43.14</u> per hour.
23. Prevocational services	Fee schedule	For the brain injury waiver effective 7/1/11: <del>\$47.01</del> <u>\$48.22</u> per day, <del>\$23.51</del> <u>\$24.11</u> per half-day, or <del>\$12.88</del> <u>\$13.21</u> per hour.  For the intellectual disability waiver effective 7/1/11: County contract rate or, in absence of a contract rate, <del>\$47.01</del> <u>\$48.22</u> per day, <del>\$23.51</del> <u>\$24.11</u> per half-day, or <del>\$12.88</del> <u>\$13.21</u> per hour.
24. Interim medical monitoring and treatment:		
Home health agency (provided by home health aide)	Cost-based rate for home health aide services provided by a home health agency	Effective 7/1/11: Lesser of maximum Medicare rate in effect 11/30/09 or maximum Medicaid rate in effect 11/30/09 less 5%, converted to an hourly rate.
Home health agency (provided by nurse)	Cost-based rate for nursing services provided by a home health agency	Effective 7/1/11: Lesser of maximum Medicare rate in effect 11/30/09 or maximum Medicaid rate in effect 11/30/09 less 5%, converted to an hourly rate.
Child development home or center	Fee schedule	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$12.79</del> <u>\$13.12</u> per hour.
Supported community living provider	Retrospectively limited prospective rate	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: <del>\$34.14</del> <u>\$34.98</u> per hour, not to exceed the maximum ICF/MR rate per day.
25. Residential-based supported community living	Retrospectively limited prospective rates. See 79.1(15)	Effective 7/1/11: The maximum <del>daily per diem for ICF/MR less 2.5%</del> <u>rate per day.</u>

## HUMAN SERVICES DEPARTMENT[441](cont'd)

26. Day habilitation	Fee schedule	Effective 7/1/11; County contract rate or, in the absence of a contract rate, provider's rate in effect 11/30/09. If no 11/30/09 rate: \$12.88 \$13.21 per hour, \$31.35 \$32.15 per half-day, or \$62.68 \$64.29 per day.
27. Environmental modifications and adaptive devices	Fee schedule	\$6,060 per year.
28. Family and community support services	Retrospectively limited prospective rates. See 79.1(15)	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: \$34.14 \$34.98 per hour.
29. In-home family therapy	Fee schedule	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: \$91.29 \$93.63 per hour.
30. Financial management services	Fee schedule	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: \$64.04 \$65.65 per enrolled member per month.
31. Independent support broker	Rate negotiated by member	Effective 7/1/11, provider's rate in effect 11/30/09. If no 11/30/09 rate: \$14.77 \$15.15 per hour.
32. Self-directed personal care	Rate negotiated by member	Determined by member's individual budget.
33. Self-directed community supports and employment	Rate negotiated by member	Determined by member's individual budget.
34. Individual-directed goods and services	Rate negotiated by member	Determined by member's individual budget.

ITEM 3. Amend subparagraphs **79.1(15)"f"(2)** and **(3)** as follows:

(2) ~~For services rendered July 1, 2010, through June 30, 2011, revenues~~ Revenues exceeding 100 percent of adjusted actual costs by more than 2.5 percent shall be remitted to the department. Payment will be due upon notice of the new rates and retrospective rate adjustment.

(3) Providers who do not reimburse revenues exceeding 100 102.5 percent of actual costs 30 days after notice is given by the department will have the revenues over ~~100~~ 102.5 percent of the actual costs deducted from future payments.

[Filed Emergency 8/15/11, effective 8/17/11]

[Published 9/7/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/7/11.

**ARC 9708B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 28, subsection 11, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments increase the Medicaid dispensing fee for prescribed drugs of \$4.34 by an additional amount based on additional appropriations made in 2011 Iowa Acts, House File 649. For

## HUMAN SERVICES DEPARTMENT[441](cont'd)

state fiscal year 2012, the total dispensing fee will be \$6.20, the usual fee of \$4.34 plus an add-on of \$1.86 to reflect the additional appropriation.

The Council on Human Services adopted these amendments on August 10, 2011.

The Department finds that notice and public participation are impracticable because the legislation took effect on July 1, 2011. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived, as authorized by 2011 Iowa Acts, House File 649, section 28, subsection 11.

These amendments are also published herein under Notice of Intended Action as **ARC 9709B** to allow for public comment.

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

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 28, subsection 1(b).

These amendments became effective on August 17, 2011.

The following amendments are adopted.

ITEM 1. Amend subrule **79.1(2)**, provider category “Prescribed drugs,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Prescribed drugs	See 79.1(8)	<del>\$4.34</del> \$6.20 dispensing fee effective 8/1/11. (See 79.1(8)“a,” “b,” and “e.”)

ITEM 2. Amend paragraph **79.1(8)“g”** as follows:

g. For services rendered on or after ~~July 1, 2010~~ August 1, 2011, the professional dispensing fee is ~~\$4.34~~ \$6.20 or the pharmacy’s usual and customary fee, whichever is lower.

[Filed Emergency 8/15/11, effective 8/17/11]

[Published 9/7/11]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/7/11.

**ARC 9710B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 28, subsection 11, the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 85, “Services in Psychiatric Institutions,” Iowa Administrative Code.

These amendments restore the 5 percent reduction in the maximum Medicaid reimbursement rate for care in a non-state-owned psychiatric medical institution for children (PMIC) that was implemented in December 2009 as a result of Executive Order 19.

The Council on Human Services adopted these amendments on August 10, 2011.

The Department finds that notice and public participation are impracticable because the legislation took effect on July 1, 2011. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

HUMAN SERVICES DEPARTMENT[441](cont'd)

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived, as authorized by 2011 Iowa Acts, House File 649, section 28, subsection 11.

These amendments are also published herein under Notice of Intended Action as **ARC 9711B** to allow for public comment.

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

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 28, subsection 1(i)(2).

These amendments became effective August 17, 2011.

The following amendments are adopted.

ITEM 1. Amend subrule **79.1(2)**, provider category “Psychiatric medical institutions for children,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
Psychiatric medical institutions for children		
1. Inpatient	Retrospective cost-related	<u>Effective 8/1/11:</u> Actual and allowable cost not to exceed a maximum for non-state-owned providers of 103% of patient-day-weighted average costs of non-state-owned providers located within Iowa less 5%.
2. Outpatient day treatment	Fee schedule	<u>Effective 8/1/11:</u> Fee schedule in effect 11/30/09 less 5%.

ITEM 2. Amend paragraph **85.25(1)“c”** as follows:

c. For services rendered ~~July 1, 2010, through June 30, on or after August 1, 2011~~, rates paid shall be adjusted to 100 percent of the facility’s actual and allowable average costs per patient day, based on the cost information submitted pursuant to paragraphs 85.25(1) “a” and “b,” subject to the upper limit provided in 441—subrule 79.1(2) for non-state-owned facilities. Before rate adjustment, providers shall be paid a prospective interim rate equal to the previous year’s retrospectively calculated unit-of-service rate.

[Filed Emergency 8/15/11, effective 8/17/11]

[Published 9/7/11]

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**ARC 9712B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a), the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

These amendments eliminate reimbursement for the costs of graduate medical education in the calculation of Medicaid reimbursement for acute hospital inpatient and outpatient services provided

## HUMAN SERVICES DEPARTMENT[441](cont'd)

by hospitals outside of Iowa. 2011 Iowa Acts, House File 649, passed by the Eighty-Fourth General Assembly allows the Department to implement the Medicaid cost containment strategies recommended by Governor Branstad. This change is one of the recommended strategies.

The Council on Human Services adopted these amendments on August 10, 2011.

The Department finds that notice and public participation are impracticable because the Department's appropriation for the fiscal year beginning July 1, 2011, assumes the implementation of the cost containment strategies recommended by the Governor without a delay for notice and public comment. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

These amendments are also published herein under Notice of Intended Action as **ARC 9713B** to allow for public comment.

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

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

These amendments became effective September 1, 2011.

The following amendments are adopted.

ITEM 1. Amend subparagraph **79.1(5)"m"(3)** as follows:

(3) If a hospital qualifies for reimbursement for direct medical education or indirect medical education under Medicare guidelines, it shall be reimbursed according to paragraph 79.1(5)"y." Out-of-state hospitals do not qualify for direct medical education or indirect medical education payments pursuant to paragraph 79.1(5)"y."

ITEM 2. Amend paragraph **79.1(5)"y"** as follows:

*y. Graduate medical education and disproportionate share fund.* Payment shall be made to all hospitals qualifying for direct medical education, indirect medical education, or disproportionate share payments directly from the graduate medical education and disproportionate share fund. The requirements to receive payments from the fund, the amounts allocated to the fund, and the methodology used to determine the distribution amounts from the fund are as follows:

(1) Qualifying for direct medical education. ~~Hospitals~~ Iowa hospitals qualify for direct medical education payments if direct medical education costs that qualify for payment as medical education costs under the Medicare program are contained in the hospital's base year cost report and in the most recent cost report submitted before the start of the state fiscal year for which payments are being made. Out-of-state hospitals do not qualify for direct medical education payments.

(2) and (3) No change.

(4) Qualifying for indirect medical education. ~~Hospitals~~ Iowa hospitals qualify for indirect medical education payments from the fund when they receive a direct medical education payment from Iowa Medicaid and qualify for indirect medical education payments from Medicare. Qualification for indirect medical education payments is determined without regard to the individual components of the specific hospital's teaching program, state ownership, or bed size. Out-of-state hospitals do not qualify for indirect medical education payments.

(5) to (10) No change.

ITEM 3. Amend paragraph **79.1(16)"k"** as follows:

*k. Payment to out-of-state hospitals.* Out-of-state hospitals providing care to members of Iowa's Medicaid program shall be reimbursed in the same manner as Iowa hospitals, except ~~that APC payment amounts for out-of-state hospitals may be based on either the Iowa statewide base APC rate or the Iowa blended base APC rate for the out-of-state hospital~~ as provided in subparagraphs (1) and (2).

(1) No change.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(2) If an out-of-state hospital qualifies for reimbursement for direct medical education under Medicare guidelines, it shall qualify for such reimbursement from the Iowa Medicaid program for services to Iowa Medicaid members. Out-of-state hospitals do not qualify for direct medical education payments pursuant to paragraph 79.1(16)“v.”~~

ITEM 4. Amend paragraph **79.1(16)“v”** as follows:

v. *Graduate medical education and disproportionate share fund.* Payment shall be made to all hospitals qualifying for direct medical education directly from the graduate medical education and disproportionate share fund. The requirements to receive payments from the fund, the amount allocated to the fund and the methodology used to determine the distribution amounts from the fund are as follows:

(1) Qualifying for direct medical education. ~~Hospitals~~ Iowa hospitals qualify for direct medical education payments if direct medical education costs that qualify for payment as medical education costs under the Medicare program are contained in the hospital's base year cost report and in the most recent cost report submitted before the start of the state fiscal year for which payments are being made. Out-of-state hospitals do not qualify for direct medical education payments.

(2) and (3) No change.

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**ARC 9714B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a), the Department of Human Services amends Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” Iowa Administrative Code.

This amendment precludes increased Medicaid payments for inpatient hospital services based on hospital-acquired conditions for which increased payments are not allowed under the Medicare program. Legislation passed by the Eighty-Fourth General Assembly allows the Department to implement Medicaid cost containment strategies recommended by Governor Branstad. This change is one of those strategies. The change will align Medicaid and Medicare reimbursement policy and will be required for Medicaid upon implementation of the Affordable Care Act, Public Law 111-148, Section 2702.

The Council on Human Services adopted this amendment on August 10, 2011.

The Department finds that notice and public participation are impracticable because the Department's appropriation for the fiscal year beginning July 1, 2011, assumes the implementation of the cost containment strategies recommended by the Governor without a delay for notice and public comment. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of this amendment should be waived, as authorized by 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

This amendment is also published herein under Notice of Intended Action as **ARC 9715B** to allow for public comment.

This amendment does not provide for waivers in specified situations because the savings assumed in the Department's appropriations will not be achieved if waivers are provided. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

This amendment became effective September 1, 2011.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

The following amendment is adopted.

Adopt the following **new** paragraph **79.1(5)“ab”**:

*ab. Nonpayment for preventable conditions.* Preventable conditions identified pursuant to this rule that develop during inpatient hospital treatment shall not be considered in determining reimbursement for such treatment.

(1) Coding. All diagnoses included on an inpatient hospital claim must include one of the following codes indicating whether the condition was present or developing at the time of the order for inpatient admission:

## Present on Admission (POA) Indicator Codes

<u>Code</u>	<u>Explanation</u>
Y	The condition was present or developing at the time of the order for inpatient admission.
N	The condition was not present or developing at the time of the order for inpatient admission.
U	Documentation is insufficient to determine whether the condition was present or developing at the time of the order for inpatient admission.
W	Clinically undetermined. The provider is clinically unable to determine whether or not the condition was present or developing at the time of the order for inpatient admission.

(2) Payment processing. Claims will be processed according to the DRG methodology without consideration of any diagnosis identified by the Secretary of the United States Department of Health and Human Services pursuant to Section 1886(d)(4)(D)(iv) of the Social Security Act (42 U.S.C. 1395ww(d)(4)(D)(iv)) if the condition was not present or developing at the time of the order for inpatient admission.

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**ARC 9719B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a), the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment lowers Medicaid reimbursement for physician services when the services are provided in a health care facility setting instead of the physician's office. This reduction is consistent with similar changes that have been made in the Medicare program. Legislation passed by the Eighty-Fourth General Assembly allows the Department to implement the Medicaid cost containment strategies recommended by Governor Branstad. This change is one of the recommended strategies.

The rationale for this change is that a physician's expense in rendering a service in a facility setting is less than it would be in an office setting. When services are rendered in the physician's office, the cost of the service reflects not just the physician's time, but also the various support and auxiliary services involved in maintaining the office and providing services to patients. When services are provided in another facility, these expenses are borne by the facility and are reflected in the facility's reimbursement.

The Iowa Medicaid Enterprise has identified nearly 1,800 procedure codes that have lower Medicare reimbursement when services are provided in a facility and has calculated the percentage differential in the two reimbursement amounts for each code. The Iowa Medicaid Enterprise will apply that percentage differential to the Iowa Medicaid physician fee schedule for the same procedure code to arrive at the reduced Medicaid payment for the service when the service is rendered in a facility setting.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

The Council on Human Services adopted this amendment on August 10, 2011.

The Department finds that notice and public participation are impracticable because the Department's appropriation for the fiscal year beginning July 1, 2011, assumes the implementation of the cost containment strategies recommended by the Governor without a delay for notice and public comment. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of this amendment should be waived, as authorized by 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

This amendment is also published herein under Notice of Intended Action as **ARC 9721B** to allow for public comment.

This amendment does not provide for waivers in specified situations because the savings assumed in the Department's appropriations will not be achieved if waivers are provided. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

This amendment became effective September 1, 2011.

The following amendment is adopted.

Adopt the following **new** paragraph **79.1(7)"b"**:

*b. Payment reduction for services rendered in facility settings.* The fee schedule amount paid to physicians based on paragraph 79.1(7)"a" shall be reduced by an adjustment factor as determined by the department. For the purpose of this provision, a "facility" place of service (POS) is defined as any of the following:

- (1) Hospital inpatient unit (POS 21).
- (2) Hospital outpatient unit (POS 22).
- (3) Hospital emergency room (POS 23).
- (4) Ambulatory surgical center (POS 24).
- (5) Skilled nursing facility (POS 31).
- (6) Inpatient psychiatric facility (POS 51).
- (7) Community mental health center (POS 53).
- (8) Comprehensive inpatient rehabilitation (POS 61).

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**ARC 9722B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a), the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments:

- Reduce or eliminate Medicaid reimbursement for nonemergency services rendered in a hospital emergency room. The amount of reduction will depend on whether a member was referred to the emergency room by medical personnel.
- Implement a \$3 copayment from the Medicaid member for treatment of a nonemergency medical condition in a hospital emergency room (the same charge as for a physician visit). Copayment will not be charged if the member is admitted to the hospital for inpatient care.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to reduce inappropriate use of hospital emergency rooms for treatment of nonemergency medical conditions. Legislation passed by the Eighty-Fourth General Assembly allows the Department to implement the Medicaid cost containment strategies recommended by Governor Branstad. These changes are part of those recommended strategies.

The Council on Human Services adopted these amendments on August 1, 2011.

The Department finds that notice and public participation are impracticable because the Department's appropriation for the fiscal year beginning July 1, 2011, assumes the implementation of the cost containment strategies recommended by the Governor without a delay for notice and public comment. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

These amendments are also published herein under Notice of Intended Action as **ARC 9723B** to allow for public comment.

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

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

These amendments became effective September 1, 2011.

The following amendments are adopted.

ITEM 1. Amend paragraph **79.1(13)"g"** as follows:

g. Copayment charges are not applicable for a member receiving inpatient care in a hospital, nursing facility, state mental health institution, or other medical institution if the person is required, as a condition of receiving services in the institution, to spend for costs of necessary medical care all but a minimal amount of income for personal needs.

ITEM 2. Adopt the following **new** paragraph **79.1(13)"n"**:

n. The member shall pay a \$3 copayment for each visit to a hospital emergency room for treatment that does not meet the criteria for an emergency service as defined in paragraph 79.1(13)"k." This \$3 copayment shall not apply if the visit to the emergency room results in a hospital admission.

ITEM 3. Amend subparagraph **79.1(16)"c"(4)**, table of payment status indicators, row "V," as follows:

Indicator	Item, Code, or Service	OPPS Payment Status
V	Clinic or emergency department visit	<p>If covered by Iowa Medicaid, the service is paid under OPPS APC with separate APC payment, subject to limits on nonemergency services provided in an emergency room pursuant to <u>79.1(16)"r."</u></p> <p>If not covered by Iowa Medicaid, the service is not paid under OPPS APC or any other Medicaid payment system.</p>

ITEM 4. Adopt the following **new** paragraph **79.1(16)"r"**:

r. *Services delivered in the emergency room.* Payment to a hospital for assessment of any Medicaid member in an emergency room shall be made pursuant to fee schedule. Payment treatment of a Medicaid member in an emergency room shall be made as follows:

(1) If the emergency room visit results in an inpatient hospital admission, the treatment provided in the emergency room is paid for as part of the payment for the inpatient services provided.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(2) If the emergency room visit does not result in an inpatient hospital admission but involves emergency services as defined in paragraph 79.1(13)“k,” payment for treatment provided in the emergency room shall be made at the full APC payment for the treatment provided.

(3) If the emergency room visit does not result in an inpatient hospital admission and does not involve emergency services as defined in paragraph 79.1(13)“k,” payment for treatment provided in the emergency room depends on whether the member had a referral to the emergency room and on whether the member is participating in the MediPASS program.

1. For members not participating in the MediPASS program who were referred to the emergency room by appropriate medical personnel and for members participating in the MediPASS program who were referred to the emergency room by their MediPASS primary care physician, payment for treatment provided in the emergency room shall be made at 75 percent of the APC payment for the treatment provided.

2. For members not participating in the MediPASS program who were not referred to the emergency room by appropriate medical personnel, payment for treatment provided in the emergency room shall be made at 50 percent of the APC payment for the treatment provided.

3. For members participating in the MediPASS program who were not referred to the emergency room by their MediPASS primary care physician, no payment will be made for treatment provided in the emergency room.

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**ARC 9724B**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a), the Department of Human Services amends Chapter 80, “Procedure and Method of Payment,” Iowa Administrative Code.

This amendment requires providers who bill using paper claim forms to submit both the crossover claim form and the Explanation of Medicare Benefits (EOMB) when billing Medicaid for dually eligible members. Submission of both the claim form and the denied EOMB from Medicare will provide essential claim information, such as diagnosis codes and procedure modifiers, so that claims can be processed properly. This change is expected to eliminate the manual data entry of over 20,000 claim forms per month and associated data entry errors that delay payment.

2011 Iowa Acts, House File 649, allows the Department to implement the Medicaid cost containment strategies recommended by Governor Branstad. This change is one of the recommended strategies. This change is part of a larger effort to improve processing of Medicare crossover claims that will generate combined savings estimated at \$275,000 annually.

The Council on Human Services adopted this amendment on August 10, 2011.

The Department finds that notice and public participation are impracticable because the Department’s appropriation for the fiscal year beginning July 1, 2011, assumes the implementation of the cost containment strategies recommended by the Governor without a delay for notice and public comment. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of this amendment should be waived, as authorized by 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

This amendment is also published herein under Notice of Intended Action as **ARC 9725B** to allow for public comment.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment does not provide for waivers in specified situations because the savings assumed in the Department's appropriations will not be achieved if waivers are provided. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

This amendment became effective September 1, 2011.

The following amendment is adopted.

Amend paragraph **80.2(2)“h”** as follows:

*h.* ~~Providers who send an Explanation of Medicare Benefits or a crossover claim billing claims for Medicare beneficiaries that do not cross over electronically to the Iowa Medicaid enterprise are exempt from filing these forms for those beneficiaries.~~ shall submit:

(1) Form 470-4707, Medicare Crossover Invoice (Institutional), along with the Explanation of Medicare Benefits (EOMB) for institutional services.

(2) Form 470-4708, Medicare Crossover Invoice (Professional), along with the Explanation of Medicare Benefits (EOMB) for professional services.

[Filed Emergency 8/16/11, effective 9/1/11]

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**ARC 9726B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 10, subsection 20(a), the Department of Human Services amends Chapter 81, "Nursing Facilities," Iowa Administrative Code.

These amendments change the Department's procedures for implementation of the federal preadmission screening and annual resident review (PASARR) requirements for nursing facilities. These requirements, which are contained in 42 CFR Part 483, Subpart C, apply to all persons seeking care in a Medicaid-certified facility, regardless of the source of payment for that care.

PASARR regulations require that persons seeking to enter nursing facilities be reviewed to screen for mental retardation, a related condition, or mental illness (Level I review). If one of these conditions is indicated, an evaluation must be conducted to determine whether the person actually needs nursing facility care, needs specialized services for mental retardation or mental illness, or needs both nursing care and specialized services (Level II review). The state mental health authority (the Department's Division of Mental Health and Disability Services) must approve the person's evaluation and plan of care to ensure that the person is receiving appropriate care and treatment.

The Department has contracted with Ascend Management Innovations, LLC, to perform the evaluations required for Level II reviews. These amendments list conditions that temporarily or permanently exempt a person from Level II review. The amendments also provide that the Department will not approve payment for a person's nursing facility care until a Level I review and (if indicated) a Level II review are completed. This provision is expected to result in cost avoidance for the state and is included in Governor Branstad's list of cost containment recommendations.

The Council on Human Services adopted these amendments on August 10, 2011.

The Department finds that notice and public participation are impracticable because the Department's appropriation for the fiscal year beginning July 1, 2011, assumes the implementation of the cost containment strategies recommended by the Governor without a delay for notice and public comment. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

## HUMAN SERVICES DEPARTMENT[441](cont'd)

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived, as authorized by 2011 Iowa Acts, House File 649, section 10, subsection 20(a).

These amendments are also published herein under Notice of Intended Action as **ARC 9727B** to allow for public comment.

These amendments do not provide for waivers in specified situations since reviews are required by federal Medicaid regulations. However, the Department does have a general rule on exceptions at 441—1.8(17A,217).

After analysis and review of this rule making, no impact on jobs has been found.

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

These amendments became effective September 1, 2011.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions in rule **441—81.1(249A)**:

“*Level I review*” means screening to identify persons suspected of having mental illness or mental retardation as defined in 42 CFR 483.102 as amended to October 1, 2010.

“*Level II review*” means the evaluation of a person identified in a Level I review to determine whether nursing facility services and specialized services are needed.

“*PASARR*” means the preadmission screening and annual review of persons with mental illness, mental retardation or a related condition who live in or seek entry to a Medicaid-certified nursing facility, as required by 42 CFR Part 483, Subpart C, as amended to October 1, 2010.

ITEM 2. Amend subrule 81.3(3) as follows:

**81.3(3) *Screening Preadmission review.*** ~~All persons, regardless of the source of payment, seeking admission to a nursing facility shall also be screened by the IME medical services unit to determine if mental illness, mental retardation, or a related condition is present. The Iowa Medicaid program will cover the cost of this screening through the managed mental health contractor. The IME medical services unit shall complete a Level I review for all persons seeking admission to a Medicaid-certified nursing facility, regardless of the source of payment for the person’s care. When a Level I review identifies evidence for the presence of mental illness or mental retardation, the department’s contractor for PASARR evaluations shall complete a Level II review before the person is admitted to the facility.~~

*a. Exceptions to Level II review.* Persons in the following circumstances may be exempted from Level II review based on a categorical determination that in that circumstance, admission to or residence in a nursing facility is normally needed and the provision of specialized services for mental illness, mental retardation, or related conditions is normally not needed.

(1) The person’s attending physician certifies that the person is terminally ill with death expected within six months, the person requires nursing care or supervision due to the person’s physical condition, and the person is not a danger to self or others. If the person’s nursing facility stay exceeds six months, a Level II review must be completed.

(2) The severity of the person’s illness results in impairment so severe that the person could not be expected to benefit from specialized services, and the person does not present a danger to self or others. This category includes persons who are comatose, who function at brain-stem level, who are ventilator-dependent, or who have diagnoses such as Parkinson’s disease, Huntington’s chorea, amyotrophic lateral sclerosis, chronic obstructive pulmonary disease (COPD), or congestive heart failure (CHF).

(3) The person is suffering from delirium. Exemptions made on a basis of delirium are valid until the delirium clears or for seven days, whichever is sooner.

(4) The person is in an emergency situation that requires protective services with placement in the nursing facility. A Level II review must be completed if the admission lasts more than seven days.

(5) The admission is for the purpose of providing respite to the person’s caregiver. If the nursing facility stay exceeds 30 days, a Level II review must be completed.

(6) The person has dementia in combination with mental retardation or a related condition.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(7) The person has been approved for specialized services in another facility based on a previous Level II evaluation, the specialized services still meet the person's needs, and the receiving facility agrees to provide the specialized services.

(8) The person is transferring directly from receiving acute hospital inpatient care and requires nursing facility services for the same acute physical illness for which hospital care was received, and the person's attending physician certifies before the admission that the person is likely to require less than 30 days of nursing facility services. If the person is later found to require more than 30 days of nursing facility care, a Level II review must be completed within 40 calendar days of the person's admission date.

(9) The person:

1. Is transferring to a nursing facility directly from receiving acute hospital inpatient care, and
2. Requires nursing facility services for convalescence from the same acute physical illness for which the person received hospital care, and
3. Is clearly sufficiently psychiatrically and behaviorally stable enough for nursing facility admission, and
4. Before entering the facility, has been certified by the attending physician as likely to require less than 60 days of nursing facility services.

b. Outcome of Level II review. The Level II review shall determine whether the person seeking admission:

(1) Needs specialized services for mental illness as defined in paragraph 81.13(14) "b," using the procedures set forth in 42 CFR 483.134 as amended to October 1, 2010; or

(2) Needs specialized services for mental retardation or a related condition as defined in paragraph 81.13(14) "c," using the procedures set forth in 42 CFR 483.136 as amended to October 1, 2010.

~~a. c. The department's division of mental health and disability services or its designee shall review each Level II evaluation and plan for obtaining needed specialized services before the person's admission to a nursing facility to determine whether the nursing facility is an appropriate placement. Final approval for initial admissions and continued stay of persons with mental illness, mental retardation, or a related condition is determined by the department of human services, division of mental health and disability services.~~

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

ITEM 3. Amend rule 441—81.7(249A) as follows:

**441—81.7(249A) Continued review.**

**81.7(1) *Level of care.*** The IME medical services unit shall review Medicaid members' need of continued care in nursing facilities, pursuant to the standards and subject to the appeals process in subrule 81.3(1).

**81.7(2) *PASARR.*** Within the fourth calendar quarter after the previous review, the PASARR contractor shall review all nursing facility residents admitted pursuant to paragraph 81.3(3) "c" to determine:

a. Whether nursing facility services continue to be appropriate for the resident, as opposed to care in a more specialized facility, and

b. Whether the resident needs specialized services for mental illness or mental retardation as described in paragraph 81.3(3) "b."

This rule is intended to implement Iowa Code sections ~~249A.2(6) and 249A.3(2) "a."~~ 249A.2(1), 249A.3(3), and 249A.4.

ITEM 4. Rescind and reserve paragraph **81.13(9) "f."**

ITEM 5. Amend subrule 81.13(14) as follows:

**81.13(14) *Specialized rehabilitative services.*** When indicated, specialized services shall be provided to residents as follows:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

*a. ~~Provision of Specialized rehabilitative services.~~* Specialized rehabilitative services shall be provided by qualified personnel under the written order of a physician. If specialized rehabilitative services such as, but not limited to, physical therapy, speech-language pathology, and occupational therapy, and mental health rehabilitative services for mental illness and mental retardation, are required in the resident's comprehensive plan of care, the facility shall:

- (1) Provide the required services; or
- (2) Obtain the required services from an outside provider of specialized rehabilitative services.

*b. ~~Qualifications: Specialized services for mental illness.~~* Specialized rehabilitative services shall be provided under the written order of a physician by qualified personnel. "Specialized services for mental illness" means services provided in response to an exacerbation of a resident's mental illness that:

- (1) Are beyond the normal scope and intensity of nursing facility responsibility;
- (2) Involve treatment other than routine nursing care, supportive therapies such as activity therapy, and supportive counseling by nursing facility staff;
- (3) Are provided through a professionally developed plan of care with specific goals and interventions;
- (4) May be provided only by a specialized licensed or certified practitioner;
- (5) Are expected to result in specific, identified improvements in the resident's psychiatric status to the level before the exacerbation of the resident's mental illness; and

(6) May include:

1. Acute inpatient psychiatric treatment. When inpatient psychiatric treatment may be prevented through specialized services provided in the nursing facility, services provided in the nursing facility are preferred.

2. Initial psychiatric evaluation to determine a resident's diagnosis and to develop a plan of care.

3. Follow-up psychiatric services by a psychiatrist to evaluate resident response to psychotropic medications, to modify medication orders and to evaluate the need for ancillary therapy services.

4. Psychological testing required for a specific differential diagnosis that will result in the adoption of appropriate treatment services.

5. Individual or group psychotherapy as part of a plan of care addressing specific symptoms.

6. Any clinically appropriate service which is available through the Iowa plan for behavioral health and for which the member meets eligibility criteria.

*c. ~~Specialized services for mental retardation or a related condition.~~* "Specialized services for mental retardation or a related condition" means services that:

(1) Are beyond the normal scope and intensity of nursing facility responsibility;

(2) Involve treatment other than routine nursing care, supportive therapies such as activity therapy, and supportive counseling by nursing facility staff;

(3) Are provided through a professionally developed plan of care with specific goals and interventions;

(4) Must be supervised by a qualified mental retardation professional; and

(5) May include:

1. A functional assessment of maladaptive behaviors.

2. Development and implementation of a behavioral support plan.

3. Community living skills training for members who desire to live in a community setting and for whom community living is appropriate as determined by the Level II evaluation. Training may include adaptive behavior skills, communication skills, social skills, personal care skills, and self-advocacy skills.

[Filed Emergency 8/16/11, effective 9/1/11]

[Published 9/7/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/7/11.

**ARC 9728B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 35, subsections 6(d) and 7, the Department of Human Services hereby amends Chapter 92, "IowaCare," Iowa Administrative Code.

Federally qualified health centers designated as IowaCare medical home providers have expressed concern about their limited ability to provide medically necessary care to IowaCare members. Federally qualified health centers without on-site laboratory or radiology services have to pay outside sources in order to provide those services to IowaCare members. Also, IowaCare does not cover home health services, durable medical equipment or rehabilitation and therapy services that may be needed by a member recovering from an inpatient stay. Failure to provide these services may result in readmission to the hospital.

In response to these concerns, the Eighty-Fourth General Assembly has created two new capped funding pools, a care coordination pool and a laboratory test and radiology pool, to help medical homes defray the cost for medically necessary care not otherwise covered under IowaCare. These amendments:

- Establish covered services to be reimbursed through the new funding pools;
- Establish protocols for referral of IowaCare members to another provider;
- Make a technical correction to clarify that members are assigned to, rather than enrolled in, medical homes; and
- Require IowaCare providers to develop a process to improve communication and resolve care disputes when referring members for specialty and hospital care.

The Council on Human Services adopted these amendments on August 10, 2011.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are contrary to the public interest because the General Assembly appropriated these funds to meet specified needs of IowaCare patients. The public interest would not be served if this funding was withheld to provide time for notice and public participation.

The Department finds that these amendments confer a benefit on IowaCare members who need care not offered by their medical home by providing funding streams to pay for that care. 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 also published herein under Notice of Intended Action as **ARC 9729B** to allow for public comment.

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).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 249J and 2011 Iowa Acts, House File 649, section 35, subsections 6 and 7.

These amendments became effective on September 1, 2011.

The following amendments are adopted.

ITEM 1. Amend paragraph **92.8(6)"c"** as follows:

c. If an IowaCare member resides in a designated county near a designated medical home provider, the department shall ~~enroll~~ assign the member ~~with~~ to that provider. ~~A If an IowaCare member who is enrolled with assigned to a medical home provider chooses to go to another provider without a referral from the medical home:~~

(1) ~~Shall utilize the medical home provider for covered services available from that provider~~ The service is not covered by the IowaCare program, and

(2) ~~Must receive a referral from the medical home provider to another IowaCare provider for any services not available from the medical home~~ The provider may bill the member according to the provider's established criteria for billing other patients.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend subrule 92.8(7) as follows:

**92.8(7) ~~Emergency services~~ Services from nonparticipating providers.**

a. A nonparticipating provider hospital may be reimbursed for covered IowaCare services subject to the following conditions and limitations:

(1) to (4) No change.

~~(5) The treating nonparticipating provider has consulted with the IowaCare provider network hospital and the providers jointly agree that the conditions for payment are met.~~

~~(6) (5) Before submitting a medical claim for reimbursement, the treating nonparticipating provider has requested and received authorization for payment from the Iowa Medicaid enterprise medical services unit. The request shall include the claim listing the emergency and inpatient services and documentation of the consultation with the IowaCare network provider.~~

b. No change.

c. Care coordination pool. A care coordination pool is established to provide payment for medically necessary services provided to IowaCare members for continuation of care provided by a participating IowaCare hospital. Reimbursement is available from designated care coordination pool funding subject to the following conditions:

(1) Payment may be made for continuing care that is related to an IowaCare member's hospital services as determined in a referral from the participating IowaCare hospital.

(2) Payment for continuing care is available to providers that are enrolled in the Iowa medical assistance program, regardless of whether the provider is a participating provider for IowaCare and regardless of the member's county of residence or medical home assignment.

(3) A provider of continuing care that does not participate in the IowaCare program must include information regarding the referral on the claim form.

(4) Payment shall be made only for services that are not otherwise covered under the IowaCare program. Payment shall not be made for services that would normally be provided by the IowaCare provider to other non-IowaCare patients.

(5) The type, scope, and duration of payable services shall be limited as determined by the department. Payable services are limited to:

1. Durable medical equipment.

2. Home health services.

3. Rehabilitation and therapy services, including intravenous antibiotics and parenteral therapy delivered at home.

(6) Types of items or services that are not covered include, but are not limited to:

1. Adult diapers.

2. Air compressors.

3. Bedside commodes.

4. Blood pressure kits or machines.

5. Cardiac event monitors.

6. Continuous passive motion machines.

7. Continuous positive air pressure (CPAP) machines.

8. Dental care (nonsurgical).

9. Eyeglasses, contact lenses, and eye prostheses.

10. Gel shoe inserts.

11. Hearing aids.

12. Heated oxygen.

13. Laboratory tests and radiology procedures.

14. Oral supplemental formula.

15. Outpatient pharmaceuticals not specifically identified in 92.8(7) "c"(5) above.

16. Ted hose, Sigvaris stockings, or Jobst stockings.

17. Tennis shoes.

18. Transcutaneous electrical nerve stimulation (TENS) units.

19. Transportation.

HUMAN SERVICES DEPARTMENT[441](cont'd)

20. Work boots.

(7) All other medical assistance program policies affecting the payable services shall apply, including those regarding prior authorization and level of care determination.

(8) Payment is limited to the amount of available funds designated for the care coordination pool.

d. Laboratory test and radiology pool. A funding pool is established to provide payment for medically necessary laboratory tests and radiology services provided to enrolled IowaCare members when authorized by a federally qualified health center that has been designated by the department as part of the IowaCare regional provider network. Payment from the pool shall be subject to the following conditions and limitations:

(1) Payment may be made only for laboratory tests or radiology services which the participating federally qualified health center does not otherwise have the means to provide on site.

(2) Each participating federally qualified health center shall designate no more than four laboratory testing facilities and no more than four radiology facilities to which the center will refer IowaCare patients for these services. The designated providers must participate in the Iowa medical assistance program. Payment shall be made only to the designated providers.

(3) The designated provider must obtain a referral from the participating federally qualified health center for the services and must include information regarding the referral on the claim form.

(4) All other medical assistance policies for coverage of laboratory and radiology services shall apply, including requirements for prior authorization.

(5) Payment is limited to the amount of available funds designated for the laboratory test and radiology pool. If the amount appropriated for the pool is exhausted, laboratory tests and radiology services ordered by a participating federally qualified health center shall be provided or coordinated by the center.

ITEM 3. Adopt the following **new** subrule 92.8(8):

**92.8(8) Referral protocols.** When an IowaCare primary care provider refers the member to an IowaCare specialty provider, the following conditions shall apply:

*a.* By January 1, 2012, IowaCare providers shall ensure that referral and patient access processes for IowaCare members are no more restrictive than the processes required for any other payor.

*b.* After an IowaCare provider makes a referral, the IowaCare provider receiving the referral shall report the following information to the referring provider in a manner chosen by the provider receiving the referral:

(1) The date an appointment has been scheduled. The appointment date shall be reported to the referring provider within 15 calendar days of receiving the referral. If the referral is denied, the receiving provider shall offer a consultation by telephone, fax, E-mail, or Internet regarding the reason for the denial.

(2) If authorized by the IowaCare member, the outcome of the appointment, including whether the appointment was kept, the treatment plan, and any follow-up instructions. This report shall be made no later than 15 calendar days following the appointment date.

*c.* IowaCare providers shall work together to address any communication or coordination issues that arise. By October 1, 2011, IowaCare providers shall jointly develop and implement:

(1) A process to resolve disputes regarding care needs, payment and referrals that includes regular meetings between providers.

(2) A process to identify and address quality improvements with a goal to improve coordination of care between primary, specialty and hospital care. This process shall be monitored by the department but be managed and staffed by the providers.

[Filed Emergency 8/16/11, effective 9/1/11]

[Published 9/7/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/7/11.

**ARC 9720B**

**NATURAL RESOURCE COMMISSION[571]**

**Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 91, "Waterfowl and Coot Hunting Seasons," Iowa Administrative Code.

These rules give the regulations for hunting waterfowl and coot and include season dates, bag limits, possession limits, shooting hours, and areas open to hunting. The amendments make annual adjustments to the season dates to comply with federal regulations and to ensure that the seasons open on a weekend.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 18, 2011, as **ARC 9506B**. A public hearing was held on June 7, 2011. A dozen comments were received from the public during the comment period. Most supported the proposed season dates, but some asked that the opening of the duck season in the south zone be moved up one week. Although a survey of hunter preferences indicated that slightly more hunters would prefer to hunt earlier in the fall rather than later, a majority also prefer that the seasons for the two zones open on different dates; therefore, no changes were made as a result of these comments. The only change in the adopted amendments is in 91.3(2) and 91.3(3) and reflects a change in the federal regulations, which added two days to the length of the white-fronted goose season.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and that these amendments should be made effective August 19, 2011, as the amendments confer a benefit by establishing a September 3 start date to the goose season in the urban zones.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, and 481A.48. These amendments became effective August 19, 2011.

The following amendments are adopted.

ITEM 1. Amend subrules 91.1(1) to 91.1(3) as follows:

**91.1(1) Zone boundaries.** The north duck hunting zone is that part of Iowa north of a line beginning on the ~~Nebraska-Iowa border at~~ South Dakota-Iowa border at Interstate 29, southeast to Woodbury County Road D38, east to Woodbury County Road K45, southeast to State Highway 175, east to State Highway 37, southeast to State Highway 183, northeast to State Highway 141, east to U.S. Highway 30, and along U.S. Highway 30 to the Iowa-Illinois border. The south duck hunting zone is the remainder of the state.

**91.1(2) Season dates - north zone.** For all ducks: September ~~18~~ 17 through September ~~22~~ 21 and October ~~16~~ 15 through December ~~9~~ 8.

**91.1(3) Season dates - south zone.** For all ducks: September ~~18~~ 17 through September ~~22~~ 21 and October ~~23~~ 22 through December ~~16~~ 15.

ITEM 2. Amend subrules 91.3(1) to 91.3(3), 91.3(7) and 91.3(9) to 91.3(11) as follows:

**91.3(1) Zone boundaries.** The north goose hunting zone is that part of Iowa north of a line beginning on the ~~Nebraska-Iowa border at~~ South Dakota-Iowa border at Interstate 29, southeast to Woodbury County Road D38, east to Woodbury County Road K45, southeast to State Highway 175, east to State Highway 37, southeast to State Highway 183, northeast to State Highway 141, east to U.S. Highway 30, and along U.S. Highway 30 to the Iowa-Illinois border. The south goose hunting zone is the remainder of the state.

**91.3(2) Season dates - north zone.** Canada geese and brant: September ~~25~~ 24 through October ~~10~~ 9 and October ~~16~~ 15 through January ~~5, 2011~~ 4, 2012. White-fronted geese: September ~~25~~ 24 through December ~~5~~ 6. Light geese (white and blue-phase snow geese and Ross' geese): September ~~25~~ 24 through January ~~9, 2011~~ 8, 2012.

**91.3(3) Season dates - south zone.** Canada geese and brant: October ~~2~~ 1 through October ~~17~~ 16 and October ~~23~~ 22 through January ~~12, 2011~~ 11, 2012. White-fronted geese: October ~~2~~ 1 through December

## NATURAL RESOURCE COMMISSION[571](cont'd)

~~12~~ 13. Light geese (white and blue-phase snow geese and Ross' geese): October ~~2~~ 1 through January ~~14, 2011~~ 13, 2012.

**91.3(7)** *Light goose conservation order season.* Only light geese (white and blue-phase snow geese and Ross' geese) may be taken under a conservation order from the U.S. Fish and Wildlife Service from January ~~15, 2011~~ 14, 2012, through April 15, ~~2011~~ 2012.

a. to e. No change.

**91.3(9)** *Cedar Rapids/Iowa City goose hunting zone.*

a. *Season dates.* September 4 ~~3~~ through September ~~12~~ 11.

b. to d. No change.

**91.3(10)** *Des Moines goose hunting zone.*

a. *Season dates.* September 4 ~~3~~ through September ~~12~~ 11.

b. to d. No change.

**91.3(11)** *Cedar Falls/Waterloo goose hunting zone.*

a. *Season dates.* September 4 ~~3~~ through September ~~12~~ 11.

b. to d. No change.

ITEM 3. Amend rule 571—91.6(481A) as follows:

**571—91.6(481A) Youth waterfowl hunt.** A special youth waterfowl hunt will be held on October ~~2 and 3, 2010~~ 1 and 2, 2011, in the north duck hunting zone and October ~~9 and 10, 2010~~ 8 and 9, 2011, in the south duck hunting zone. Youth hunters must be residents of Iowa as defined in Iowa Code section 483A.1A and less than 16 years old. Each youth hunter must be accompanied by an adult 18 years old or older. The youth hunter does not need to have a hunting license or stamps. The adult must have a valid hunting license and habitat stamp if normally required to have them to hunt and a state waterfowl stamp. Only the youth hunter may shoot ducks and coots. The adult may hunt for any other game birds for which the season is open. The daily bag and possession limits are the same as for the regular waterfowl season, as defined in rule 571—91.1(481A). All other hunting regulations in effect for the regular waterfowl season apply to the youth hunt.

[Filed Emergency After Notice 8/16/11, effective 8/19/11]

[Published 9/7/11]

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**ARC 9693B**

**PHARMACY BOARD[657]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendment relates to the responsibilities of the pharmacies when a pharmacy closes. Those responsibilities include notifications by the closing pharmacy to the Board and the federal Drug Enforcement Administration (DEA) at least 30 days prior to the pharmacy closing and the content of those notifications; notification to the pharmacist in charge of the closing pharmacy at least 40 days prior to the pharmacy closing and including the pharmacist in charge in the notification and closing processes; notification to patients of the closing pharmacy at least 30 days prior to the date of closing and addressing direct communication to patients and the posting of signs or other public notices; notification to the pharmacist in charge of the receiving pharmacy at least 30 days prior to the pharmacy closing; and requiring cancellation or revocation of all authorizations to utilize the DEA's online controlled substances ordering system (CSOS) on behalf of the closing pharmacy. The amendment also requires that the closing pharmacy ensure the transfer of all patient records to a pharmacy that is held to the same standards of confidentiality as the closing pharmacy and that agrees to act as custodian for

## PHARMACY BOARD[657](cont'd)

the closing pharmacy's records for the retention periods required under federal and state laws, rules, and regulations.

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

The amendment was adopted during the August 10, 2011, teleconference meeting of the Board of Pharmacy.

The Board finds, pursuant to Iowa Code section 17A.4(3), that notice and public participation are unnecessary and impracticable due to the immediate need for this amendment in order to ensure that the previously Adopted and Filed amendment to subrule 8.35(7) published as Item 4 in **ARC 9526B** in the June 1, 2011, Iowa Administrative Bulletin will not become effective. The Administrative Rules Review Committee, at its meeting on June 14, 2011, imposed a 70-day delay on the effective date of subrule 8.35(7) as published in Item 4 of **ARC 9526B** to provide time for the interested parties to come to agreement on the provisions of this subrule. The amendment adopted herein, which rescinds subrule 8.35(7) and adopts a new subrule in lieu thereof, is the result of those discussions and negotiations and has been agreed to by all parties to that process. Numerous comments were received and considered by the Board prior to the adoption of the prior amendment of 8.35(7), and those same comments were reviewed and considered with the adoption of this amendment.

The Board finds, pursuant to Iowa Code subsection 17A.5(2)“b”(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator on August 11, 2011. This amendment confers a benefit to pharmacists, pharmacy owners, and patients by establishing requirements for closing a pharmacy, ensuring that all parties affected by a pharmacy closing are provided adequate advance notification of the closing and ensuring that pharmacy owners and pharmacists are aware of their responsibilities to patients and regulators when a pharmacy closes.

This amendment became effective August 11, 2011.

After analysis and review of this rule making, no impact on jobs has been found.

This amendment is intended to implement Iowa Code section 155A.13.

The following amendment is adopted.

Rescind subrule 8.35(7) and adopt the following **new** subrule in lieu thereof:

**8.35(7) Closing pharmacy.** A closing pharmacy shall ensure that all patient and prescription records are transferred to another pharmacy that is held to the same standards of confidentiality as the closing pharmacy and that agrees to act as custodian of the records for the appropriate retention period for each record type as required by federal or state laws, rules, or regulations. A pharmacy shall not execute a sale or closing of a pharmacy unless there exists an adequate period of time prior to the pharmacy closing for delivery of the notifications to the pharmacist in charge, the board, the Drug Enforcement Administration (DEA), and pharmacy patients as required by this subrule. However, the provisions of this subrule regarding prior notifications to the board, the DEA, and patients shall not apply in the case of a board-approved emergency or unforeseeable closure, including but not limited to emergency board action, foreclosure, fire, or natural disaster.

*a. Pharmacist in charge notification.* At least 40 days prior to the effective date of the sale of a pharmacy, the pharmacist in charge of the closing pharmacy, if that individual is not an owner of the closing pharmacy, shall be notified of the proposed sale. The owner of the closing pharmacy may direct the pharmacist in charge to maintain information regarding the pending closure of the pharmacy confidential until public notifications are required 30 days prior to the pharmacy closing. The pharmacist in charge of the closing pharmacy shall provide input and direction to the pharmacy owner regarding the responsibilities of the closing pharmacy, including the notifications, deadlines, and time lines established by this subrule. The pharmacist in charge of the closing pharmacy shall prepare patient notifications pursuant to paragraph 8.35(7)“d.” At least 30 days prior to the effective date of the sale of a pharmacy, the pharmacist in charge of the purchasing or receiving pharmacy, if that individual is not an owner of the pharmacy, shall be notified of the pending transaction.

## PHARMACY BOARD[657](cont'd)

*b. Board and DEA notifications.* At least 30 days prior to the closing of a pharmacy, including a closing by sale of a pharmacy, a written notice shall be sent to the board and to the Drug Enforcement Administration (DEA) notifying those agencies of the intent to discontinue business or to sell the pharmacy and including the anticipated date of closing. These prior notifications shall include the name, address, DEA registration number, Iowa pharmacy license number, and Iowa controlled substances Act (CSA) registration number of the closing pharmacy and of the pharmacy to which prescription drugs will be transferred. Notifications shall also include the name, address, DEA registration number, Iowa pharmacy license number, and CSA registration number of the location at which prescription files, patient profiles, and controlled substance receipt and disbursement records will be maintained.

*c. Terms of sale or purchase.* If the closing is due to the sale of the pharmacy, a copy of the sale or purchase agreement, not including information regarding the monetary terms of the transaction, shall be submitted to the board upon the request of the board. The agreement shall include a written assurance from the closing pharmacy to the purchasing pharmacy that the closing pharmacy has given or will be giving notice to its patients as required by this subrule.

*d. Patient notification.* At least 30 days prior to closing, a closing pharmacy shall make a reasonable effort to notify all patients who had a prescription filled by the closing pharmacy within the last 18 months that the pharmacy intends to close, including the anticipated closing date.

(1) Written notification shall identify the pharmacy that will be receiving the patient's prescriptions and records. The notification shall advise patients that if they have any questions regarding their prescriptions and records that they may contact the closing pharmacy. If the closing pharmacy receives no contact from the patient within the 30-day notification period prior to the pharmacy closing, all patient information will be transferred to the receiving pharmacy. The notification shall also advise patients that after the date of closing patients may contact the pharmacy to which the prescriptions and records have been transferred.

(2) Written notification shall be delivered to each patient at the patient's last address on file with the closing pharmacy by direct mail or personal delivery and also by public notice. Public notice refers to the display, in a location and manner clearly visible to patients, of signs in pharmacy pickup locations including drive-through prescription pickup lanes, on pharmacy or retail store entry and exit doors, or at pharmacy prescription counters. In addition, notice may be posted on the pharmacy's Web site, displayed on a marquee or electronic sign, communicated via automated message on the pharmacy's telephone system, or published in one or more local newspapers or area shopper publications.

*e. Patient communication by receiving pharmacy.* A pharmacy receiving the patient records of another pharmacy shall not contact the patients of the closing pharmacy until after the transfer of those patient records from the closing pharmacy to the receiving pharmacy and after the closure of the closing pharmacy.

*f. Prescription drug inventory.* A complete inventory of all prescription drugs being transferred shall be taken as of the close of business. The inventory shall serve as the ending inventory for the closing pharmacy as well as a record of additional or starting inventory for the pharmacy to which the drugs are transferred. A copy of the inventory shall be included in the records of each licensee.

(1) DEA Form 222 is required for transfer of Schedule II controlled substances.

(2) The inventory of controlled substances shall be completed pursuant to the requirements in 657—10.35(124,155A).

(3) The inventory of all noncontrolled prescription drugs may be estimated.

(4) The inventory shall include the name, strength, dosage form, and quantity of all prescription drugs transferred.

(5) Controlled substances requiring destruction or other disposal shall be transferred in the same manner as all other drugs. The new owner is responsible for the disposal of these substances as provided in rule 657—10.18(124).

*g. Surrender of certificates and forms.* The pharmacy license certificate and CSA registration certificate of the closing or selling pharmacy shall be returned to the board office within ten days of closing or sale. The DEA registration certificate and all unused DEA Forms 222 shall be returned to the DEA within ten days of closing. All authorizations to utilize the DEA's online controlled substances

## PHARMACY BOARD[657](cont'd)

ordering system (CSOS) and all digital certificates issued for the purpose of ordering controlled substances for the closing pharmacy shall be canceled or revoked within ten days of closing.

*h. Signs at closed pharmacy location.* A location that no longer houses a licensed pharmacy shall not display any sign, placard, or other notification, visible to the public, which identifies the location as a pharmacy. A sign or other public notification that cannot feasibly be removed shall be covered so as to conceal the identification as a pharmacy. Nothing in this paragraph shall prohibit the display of a public notice to patients, as required in paragraph 8.35(7) "d," for a reasonable period not to exceed six months following the pharmacy closing.

[Filed Emergency 8/11/11, effective 8/11/11]

[Published 9/7/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/7/11.

**ARC 9743B****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 12, "Fees," Iowa Administrative Code.

When the Professional Service license was created, the fee for the license was not included in Chapter 12. These amendments address that oversight.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 29, 2011, as **ARC 9570B**. A public hearing on the amendments was held on Wednesday, July 20, 2011. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice.

After analysis and review of this rule making, no adverse impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 272.

These amendments will become effective October 12, 2011.

The following amendments are adopted.

ITEM 1. Adopt the following **new** paragraph "19" in rule **282—12.1(272)**:

19. Professional service license shall be \$85.

ITEM 2. Adopt the following **new** paragraph "20" in rule **282—12.2(272)**:

20. The renewal of the professional service license shall be \$85.

[Filed 8/19/11, effective 10/12/11]

[Published 9/7/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/7/11.

**ARC 9730B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 238.16, the Department of Human Services amends Chapter 108, "Licensing and Regulation of Child-Placing Agencies," Iowa Administrative Code.

These amendments strengthen the licensing requirements for child-placing agencies in the area of supervised apartment living placement services. The changes include:

- Requiring a description of education and community activity options available to be included in the agency program statement that is given to all children in supervised apartment placement.
- Requiring the agency to document its findings that the proposed living situation is safe; is accessible to the child's school, work, and activities; and is reasonably priced and that the agency program will meet the child's needs.
- Removing the requirement that the child's combination of school and work must be equivalent to a full-time commitment, given the scarcity of jobs for persons of this age and skill level.
- Requiring the agency to involve the child's family in the development of the child's service plan and specifying the elements that the service plan must include.
- Requiring that agency staff be present in a cluster-site arrangement at any time when a child is in the living unit and be available to the children in placement 24 hours per day, seven days per week.
- Requiring agency staff to document their personal observation that the living situation allows for the child's social and emotional needs to be met, has a telephone and a working smoke detector, and presents no reasonable cause for believing that the child's mode of living presents unacceptable risks to the child's health or safety.

These changes were identified in the program review conducted to prepare the Department's Request for Proposals ACFS-11-115 for purchase of services to children in supervised apartment living foster

## HUMAN SERVICES DEPARTMENT[441](cont'd)

care. The Department finds that these changes offer basic protections that should be available to all children in a supervised apartment placement operated by a child-placing agency.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on June 15, 2011, as **ARC 9563B**. 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 August 10, 2011.

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).

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code chapter 238.

These amendments shall become effective on November 1, 2011.

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 [108.10] is being omitted. These amendments are identical to those published under Notice as **ARC 9563B**, IAB 6/15/11.

[Filed 8/16/11, effective 11/1/11]

[Published 9/7/11]

[For replacement pages for IAC, see IAC Supplement 9/7/11.]

**ARC 9718B****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 94, "Nonresident Deer Hunting," Iowa Administrative Code.

Chapter 94 gives the regulations for nonresident deer hunting and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation and reporting requirements.

The amendments:

1. Modify the blaze orange requirement for blinds during the shotgun season so that the visible orange is a minimum size, not a specific shape, and clarify the definition of a blind for this chapter.
2. Clarify that antlerless deer are tagged on a leg and antlered deer are tagged on the main beam of the antler. This change will help keep the tag from pulling off accidentally during transport.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 1, 2011, as **ARC 9542B**. A public hearing was held on June 21, 2011. No comments were received from the public. At the request of a member of the Administrative Rules Review Committee, the definition of a blind was changed from the Notice to clarify the intent of this rule making.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.1, 483A.8 and 483A.24.

These amendments shall become effective October 12, 2011.

The following amendments are adopted.

ITEM 1. Amend subrule 94.7(6) as follows:

**94.7(6) *Hunting from blinds.*** No person shall use a blind for hunting deer during the regular gun deer seasons as defined in 94.2(2), unless such blind exhibits a solid blaze orange marking, which is a minimum of 144 square inches in size and is visible in all directions with a minimum height of 12 inches and a minimum width of 12 inches. Such blaze orange shall be affixed directly on or directly on top of the blind. For the purposes of this subrule, the term "blind" is defined as a place of concealment constructed, an enclosure used for concealment while hunting, constructed either wholly or partially from man-made materials, and used by a person who is hunting for the purpose of hiding from sight. A blind is not a

## NATURAL RESOURCE COMMISSION[571](cont'd)

naturally occurring landscape feature or an arrangement of natural or agricultural plant material that a hunter uses for concealment. In addition to the requirements in this subrule, hunters using blinds must also satisfy the requirements of wearing blaze orange as prescribed in Iowa Code section 481A.122.

ITEM 2. Amend rule 571—94.9(483A) as follows:

**571—94.9(483A) Transportation tag.** A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to ~~the carcass~~ one leg of each antlerless deer or on the main beam between two points, if present, on one of the antlers of an antlered deer, in such a manner that the tag cannot be removed without mutilating or destroying the tag. The tag shall be attached to the carcass of the deer within 15 minutes of the time the deer carcass is killed located after being taken, or before the carcass of the deer is moved in any manner is moved to be transported by any means from the place where the deer was taken, whichever first occurs first. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to all deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility, or until the deer has been processed for consumption.

[Filed 8/16/11, effective 10/12/11]

[Published 9/7/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/7/11.

**ARC 9717B**

**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 106, "Deer Hunting by Residents," Iowa Administrative Code.

Chapter 106 gives the regulations for deer hunting by residents and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of take, and transportation and reporting requirements.

The amendments:

1. Modify the blaze orange requirement for blinds during the shotgun season so that the visible orange is a minimum size, not a specific shape, and clarify the definition of a blind for this chapter.
2. Clarify that antlerless deer are tagged on a leg and antlered deer are tagged on the main beam of the antler. This change will keep the tag from pulling off accidentally during transport.
3. Clarify that a person may not tag a deer with a tag purchased after the deer was taken.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 29, 2011, as **ARC 9587B**. A public hearing was held on July 19, 2011. No comments were received from the public. At the request of a member of the Administrative Rules Review Committee, the definition of a blind was changed from the Notice to clarify the intent of this rule making.

After analysis and review of this rule making, no impact on jobs has been found.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.8C, 483A.24, and 483A.24B.

These amendments shall become effective October 12, 2011.

The following amendments are adopted.

ITEM 1. Amend subrule 106.7(8) as follows:

**106.7(8) Hunting from blinds.** No person shall use a blind for hunting deer during the regular gun deer seasons as defined in ~~106.2(3)~~ 106.2(2), unless such blind exhibits a solid blaze orange marking which is a minimum of 144 square inches in size and is visible in all directions with a minimum height of 12 inches and a minimum width of 12 inches. Such blaze orange shall be affixed directly on or directly

## NATURAL RESOURCE COMMISSION[571](cont'd)

on top of the blind. For the purposes of this subrule, the term “blind” is defined as ~~a place of concealment constructed~~, an enclosure used for concealment while hunting, constructed either wholly or partially from man-made materials, and used by a person who is hunting for the purpose of hiding from sight. A blind is not a naturally occurring landscape feature or an arrangement of natural or agricultural plant material that a hunter uses for concealment. In addition to the requirements in this subrule, hunters using blinds must also satisfy the requirements of wearing blaze orange as prescribed in Iowa Code section 481A.122.

ITEM 2. Amend rule 571—106.9(481A) as follows:

**571—106.9(481A) Transportation tag.** A transportation tag bearing the license number of the licensee, year of issuance, and date of kill properly shown shall be visibly attached to ~~the carcass~~ one leg of each antlerless deer or on the main beam between two points, if present, on one of the antlers of an antlered deer in such a manner that the tag cannot be removed without mutilating or destroying the tag. This tag shall be attached to the carcass of the deer within 15 minutes of the time the deer carcass is killed located after being taken or before the carcass is moved ~~in any manner~~, to be transported by any means from the place where the deer was taken, whichever occurs first. No person shall tag a deer with a transportation tag issued to another person or with a tag that was purchased after the deer was taken. During the youth/disabled hunter season, bow season, early muzzleloader season and late muzzleloader season, the hunter who killed the deer must tag the deer by using the transportation tag issued in that person’s name. During the first and second regular gun seasons and the November and January antlerless-deer-only seasons, anyone present in the hunting party may tag a deer with a tag issued in that person’s name. This tag shall be proof of possession and shall remain affixed to the carcass until such time as the animal is processed for consumption. The head, and antlers if any, shall remain attached to the deer while being transported by any means whatsoever from the place where taken to the processor or commercial preservation facility or until the deer has been processed for consumption.

[Filed 8/16/11, effective 10/12/11]

[Published 9/7/11]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/7/11.

AGENCY	RULE	DELAY
Natural Resource Commission[571]	97.6 [IAB 8/10/11, <b>ARC 9674B</b> ]	August 17, 2011, effective date of the last sentence of 97.6 delayed until adjournment of the 2012 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held August 16, 2011. [Pursuant to §17A.8(9)]