IOWA ADMINISTRATIVE BULLETIN

Published Biweekly VOLUME XXXV NUMBER 25
June 12, 2013 Pages 1901 to 1956

CONTENTS IN THIS ISSUE

Pages 1909 to 1954 include **ARC 0777C** to **ARC 0792C**

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

Telephone: (515)281-3355

Fax: (515)281-5534

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
2013

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

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
1	**Wednesday, June 19, 2013**	**July 10, 2013**
2	**Friday, July 5, 2013**	**July 24, 2013**
3	**Friday, July 19, 2013**	**August 7, 2013**

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

CREDIT UNION DIVISION[189]

Voting procedures, amend ch 3; adopt ch 12; rescind chs 16, 19 IAB 5/29/13 **ARC 0769C**	Conference Room, Division Offices 200 E. Grand Ave. Des Moines, Iowa	June 18, 2013 1 p.m.

EDUCATIONAL EXAMINERS BOARD[282]

Teaching endorsements for health, music and physical education, 13.28(8), 13.28(13), 13.28(14) IAB 5/29/13 **ARC 0762C**	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	June 19, 2013 1 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality, 22.1(2), 22.8, 22.103(2), 28.1 IAB 6/12/13 **ARC 0785C**	Conference Rooms Air Quality Bureau Office 7900 Hickman Rd. Windsor Heights, Iowa	July 15, 2013 1 p.m.

LABOR SERVICES DIVISION[875]

Federal occupational safety and health standards for general industry and construction—adoption by reference, 10.20, 26.1 IAB 5/29/13 **ARC 0752C**	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	June 19, 2013 2:30 p.m. (If requested)
Alarm bell in automatic passenger elevators, 72.25 IAB 5/29/13 **ARC 0753C**	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	June 19, 2013 1:30 p.m. (If requested)

PROFESSIONAL LICENSURE DIVISION[645]

Hearing aid dispensers, amendments to chs 121 to 124 IAB 6/12/13 **ARC 0792C**	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	July 2, 2013 10 to 11 a.m.

PUBLIC SAFETY DEPARTMENT[661]

Electrical installations on farms, 551.2, 552.1 IAB 6/12/13 **ARC 0791C**	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	July 18, 2013 10 a.m.

UTILITIES DIVISION[199]

Pole attachment procedures, 25.4 IAB 6/12/13 **ARC 0784C**	Board Hearing Room 1375 E. Court Ave. Des Moines, Iowa	July 12, 2013 8:30 a.m.

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.

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGING, DEPARTMENT ON[17]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
- Agricultural Development Authority[25]
- Soil Conservation Division[27]

ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF INDUSTRY COUNCIL, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
CITIZENS' AIDE[141]
CIVIL RIGHTS COMMISSION[161]
COMMERCE DEPARTMENT[181]
- Alcoholic Beverages Division[185]
- Banking Division[187]
- Credit Union Division[189]
- Insurance Division[191]
- Professional Licensing and Regulation Bureau[193]
    - Accountancy Examining Board[193A]
    - Architectural Examining Board[193B]
    - Engineering and Land Surveying Examining Board[193C]
    - Landscape Architectural Examining Board[193D]
    - Real Estate Commission[193E]
    - Real Estate Appraiser Examining Board[193F]
    - Interior Design Examining Board[193G]
- Savings and Loan Division[197]
- Utilities Division[199]

CORRECTIONS DEPARTMENT[201]
- Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]
- Arts Division[222]
- Historical Division[223]

EARLY CHILDHOOD IOWA STATE BOARD[249]
ECONOMIC DEVELOPMENT AUTHORITY[261]
- City Development Board[263]

IOWA FINANCE AUTHORITY[265]
EDUCATION DEPARTMENT[281]
- Educational Examiners Board[282]
- College Student Aid Commission[283]
- Higher Education Loan Authority[284]
- Iowa Advance Funding Authority[285]
- Libraries and Information Services Division[286]
- Public Broadcasting Division[288]
- School Budget Review Committee[289]

EGG COUNCIL, IOWA[301]
EMPOWERMENT BOARD, IOWA[349]
ENERGY INDEPENDENCE, OFFICE OF[350]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
HUMAN RIGHTS DEPARTMENT[421]
- Community Action Agencies Division[427]
- Criminal and Juvenile Justice Planning Division[428]
- Deaf Services Division[429]
- Persons With Disabilities Division[431]

FEMA DR-4114-IA

AGENCY	PROGRAM	ELIGIBLE APPLICANTS	TYPES OF PROJECTS
Iowa Homeland Security and Emergency Management Division (HSEMD)	**Hazard Mitigation Grant Program (HMGP)** Authorized by §203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5133, as amended by §102 of the Disaster Mitigation Act of 2000 (DMA)	• State Agencies and Local Governments. • Federally recognized Indian Tribal governments, to include state recognized Indian Tribes and Authorized Tribal Organizations. • Private Non Profit (PNP) Organizations or institutions which operate a PNP facility as defined in 44 Code of Federal Regulations (CFR), Section 206.221(e). • All applicants must be participating in the NFIP if they have been identified as having a Special Flood Hazard Area. The Community must not be on probation, suspended or withdrawn from the NFIP. • All Applicants for a project grant MUST have a FEMA-approved local hazard mitigation plan. **Application Process:** - Potential project & planning applicants must complete a Notice of Interest (NOI) Form located on the HSEMD website at: http://www.iowahomelandsecurity.org/grants/HMA.html. - NOI Form must be e-mailed to: hsemd.mitigation@iowa.gov. - NOIs will be selected for full application development based on funding availability, the State's priority, and an initial eligibility review. **Deadline to submit an NOI is August 15, 2013.** **For additional information please contact:** **Dan Schmitz 515-725-9369** **Dennis Harper 515-725-9348** **Iowa Homeland Security and Emergency Management Division** **7105 NW 70th Avenue** **Camp Dodge, Bldg. W4** **Johnston, Iowa 50131**	**Eligible Project Types** Projects may be of any nature that will result in protection to public or private property, including but not limited to: • Acquisition or relocation of hazardprone property for conversion to open space in perpetuity • Construction of safe rooms (tornado and severe wind shelters) • Structural and non-structural retrofitting of existing buildings and facilities (including designs and feasibility studies when included as part of the construction project) for wildfire, seismic, wind or flood hazards (e.g., elevation, flood-proofing, storm shutters, hurricane clips) • Minor structural hazard control or protection projects that may include vegetation management, storm water management (e.g., culverts, floodgates, retention basins), or shoreline/landslide stabilization • Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities and do not constitute a section of a larger flood control system • Development of multi-jurisdictional hazard mitigation plans and plan updates **Planning Application** The outcome of a mitigation planning grant award must be a FEMA-approved hazard mitigation plan that complies with the requirements of 44 CFR Part 201. The planning grant deliverable can be a new hazard mitigation plan or an update of an already FEMA-approved hazard mitigation plan.

ADMINISTRATIVE SERVICES DEPARTMENT

Public Notice

NOTICE OF OFFICIAL PUBLICATION RATE INCREASE FOR THE FISCAL YEAR COMMENCING JULY 1, 2013, AND ENDING JUNE 30, 2014

In accordance with Iowa Code section 618.11, the Iowa Department of Administrative Services ITE Infrastructure Services/Printing Administrator hereby publishes the lineage rate* for newspaper publications of any order, citation, or other publication required or allowed by law (also known as official publications) for the period commencing on July 1, 2013, and ending on June 30, 2014, in the following amounts:

* Lineage rate: "…each line of eight point type two inches in length, or its equivalent." (Iowa Code section 618.11.)

One insertion = 46.2 cents
Each subsequent insertion = 31.3 cents

The rate becomes effective on July 1, 2013. The rate was determined by applying the formula specified in the statute. According to the federal Department of Labor, Bureau of Labor Statistics, the consumer price index for all urban consumers increased 1.1% from May 2012 to May 2013. The March index was the most recent index available as of May 20, 2013, the date on which this notice was submitted for publication.

Pursuant to Iowa Code section 618.11, this notice is exempt from the rule-making process in Iowa Code chapter 17A.

Questions with respect to this notice may be directed to:

Matthew Behrens, ITE Interim Chief Operating Officer
Iowa Department of Administrative Services
1305 E. Walnut
Des Moines, Iowa 50319
Telephone: (515)281-0768
E-mail: Matt.Behrens@iowa.gov

ARC 0786C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

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 717F.2(1)"a," the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 77, "Wild Animals," Iowa Administrative Code.

The proposed amendments provide an exemption for certain cats from the definition of "dangerous wild animal." Crosses between a domestic cat and a bengal or savannah would be exempted if a

separation of at least four filial generations exists. The proposed amendments also update citations and implementation sentences for the provisions.

Any interested person may make written suggestions or comments on the proposed amendments on or before July 2, 2013. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to Margaret.Thomson@IowaAgriculture.gov.

The proposed amendments are subject to the Department's general waiver provision.

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

These amendments are intended to implement Iowa Code section 717F.1(5)"b" as amended by 2013 Iowa Acts, Senate File 247.

The following amendments are proposed.

ITEM 1. Amend rules **21—77.1(82GA,SF564,SF601)** to **21—77.14(82GA,SF564,SF601)**, parenthetical implementation statute, as follows:

(~~82GA,SF564,SF601~~ 717F)

ITEM 2. Amend rule **21—77.1(717F)**, definition of "Dangerous wild animal," as follows:

"Dangerous wild animal" means any of the following:

1. to 11. No change.

"Dangerous wild animal" includes an animal which is the offspring of an animal listed in paragraphs "1" to "11" and another animal listed in those paragraphs or any other animal. It also includes animals which are the offspring of each subsequent generation. However, a dangerous wild animal does not include the offspring of a domestic dog and a wolf, or the offspring from each subsequent generation in which at least one parent is a domestic dog. A dangerous wild animal does not include the offspring of a domestic cat and another member of the family felidae classified as a bengal or savannah as long as the bengal or savannah is the fourth or later filial generation of offspring.

ITEM 3. Amend subparagraph **77.6(2)"c"(7)** as follows:

(7) A copy of a current liability insurance policy as required in rule ~~77.4(82GA,SF564,SF601)~~ 21—77.4(717F). The person shall submit a copy of the current liability policy to the department each year.

ITEM 4. Amend **21—Chapter 77**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 717F as amended by ~~2007~~ 2013 Iowa Acts, Senate ~~Files 564 and 601~~ File 247.

ARC 0780C

COLLEGE STUDENT AID COMMISSION[283]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 261.3, the Iowa College Student Aid Commission hereby gives Notice of Intended Action to amend Chapter 36, "Governor Terry E. Branstad Iowa State Fair Scholarship Program," Iowa Administrative Code.

The rules in Chapter 36 describe the administration of the Governor Terry E. Branstad Iowa State Fair Scholarship Program. This amendment proposes the elimination of the requirement for recipients to provide references.

Interested persons may submit comments orally or in writing by 4:30 p.m. on or before July 2, 2013, to the Executive Director, Iowa College Student Aid Commission, 5th Floor, 603 East 12th Street, Des Moines, Iowa 50319-9017; fax (515)725-3401.

The Commission does not intend to grant waivers under the provisions of these rules.

After analysis and review of this rule making, the Commission finds that there is no impact on jobs.

This amendment is intended to implement Iowa Code chapter 261.

The following amendment is proposed.

Amend subrule 36.1(2) as follows:

36.1(2) *Eligibility for scholarship.*

a. An applicant must be an Iowa resident who has graduated from an accredited secondary school in Iowa.

b. An applicant for assistance under this program must enroll at an eligible institution.

c. An applicant must release test scores, rank in class, grade point average, and need analysis information to the commission on forms specified by the commission, by the deadline date determined by the commission. In addition, each applicant must provide the following information, as stated in the application instructions: essay, description of state fair participation, description of school and community activities, and description of community services~~, and references~~.

ARC 0785C

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 (Commission) hereby gives Notice of Intended Action to amend Chapter 22, "Controlling Pollution," and Chapter 28, "Ambient Air Quality Standards," Iowa Administrative Code.

The purpose of the proposed amendments is for the Commission and the Department of Natural Resources (Department) to revise the administrative rules as necessary to allow for implementation of new and revised air quality standards, also known as National Ambient Air Quality Standards or NAAQS. In consultation with stakeholders, the Commission and the Department are seeking to make the changes necessary to maintain air quality and protect the public health, while minimizing the regulatory impact to the extent possible.

Summary of Rule Changes

As part of the Department's implementation of the new federally mandated NAAQS for fine particulate matter ($PM_{2.5}$), lead, and sulfur dioxide (SO_2), the Commission is proposing to revise a subset of the air construction permit exemptions and Title V "insignificant activities" specified in Chapter 22 to set appropriate emissions thresholds and operating conditions to sufficiently protect public health. The Commission is also proposing to revise the spray booth "permit by rule" specified in Chapter 22 to sufficiently protect public health by adding content limits for lead-containing spray materials. Additionally, the Commission is proposing to revise Chapter 28 to adopt by reference the new NAAQS for SO_2 and to remove the use of PM_{10} (particulate matter with a diameter of 10 microns or less) as a surrogate for the annual standard of the $PM_{2.5}$ NAAQS.

During the period from 2006 through 2010, the U.S. Environmental Protection Agency (EPA) revised the NAAQS for $PM_{2.5}$, lead, and SO_2. In each instance, EPA strengthened the NAAQS for these pollutants based on reviews of the latest public health information and scientific data. The Commission already adopted the new lead NAAQS in a previous rule making (see **ARC 8215B**, IAB 10/7/09).

Also in previous rule makings, the Commission adopted changes to the Prevention of Significant Deterioration (PSD) program and to stack test methods necessary to implement the new $PM_{2.5}$ NAAQS (see **ARC 0260C**, IAB 8/8/12, and **ARC 0330C**, IAB 9/9/12, respectively).

The amendments proposed in this rule making will set appropriate thresholds for new or modified equipment emitting lower levels of $PM_{2.5}$ or lead to be exempt from construction permitting. Additionally, these amendments will update emissions thresholds for $PM_{2.5}$ and lead for Title V insignificant activities (facilities are not required to pay Title V fees for insignificant activities). The proposed amendments impact any owner or operator of a facility with new or modified equipment emitting $PM_{2.5}$ or lead if that owner or operator wishes to use the exemptions or insignificant activities provisions.

$PM_{2.5}$ NAAQS

EPA first created an air quality standard in 1997 for $PM_{2.5}$ in order to protect the public from the adverse impacts of $PM_{2.5}$ on human health. EPA strengthened the 24-hour averaged $PM_{2.5}$ standard in 2006 based on reviews of the latest public health information and scientific data, reducing the acceptable level of $PM_{2.5}$ that humans can be exposed to from 65 micrograms per cubic meter of air ($\mu g/m^3$) to 35 $\mu g/m^3$ of air.

In an effort to better address a wide range of concerns and issues about $PM_{2.5}$, the Department formed a workgroup in 2010 for stakeholders to provide input and explore approaches for implementing the $PM_{2.5}$ NAAQS in Iowa. The Department has traditionally requested stakeholder input when implementing a new standard. This approach was formalized in 2010 with the enactment of Iowa Code section 455B.134(14).

The workgroup consisted of approximately 120 members, with representative stakeholder participation from industry and business, trade groups and associations, environmental groups, and local and state agencies. Many of the proposed amendments included in this rule making related to $PM_{2.5}$ are based on recommendations of the workgroup.

The Department's final report to the Governor and General Assembly, "Implementing the PM2.5 Ambient Air Quality Standard in the State of Iowa," is available at http://www.iowadnr.gov/portals/idnr/uploads/air/insidednr/stakeholder/pm25/pm25_implementation_report.pdf?amp;tabid=1567.

Lead NAAQS

On October 15, 2008, EPA finalized new NAAQS for lead. The level of the standard was revised from 1.5 $\mu g/m^3$ of air to 0.15 $\mu g/m^3$ of air. The Department has determined that some of the exemptions from construction permitting specified in administrative rules are not sufficiently protective of the lead NAAQS. To provide regulatory flexibility, the Department seeks, to the extent possible, to retain the availability of the construction permit exemptions. The proposed amendments to the exemptions from construction permitting will provide the opportunity for owners and operators of lower-emitting lead sources to be exempt from the requirement to apply for construction permits.

SO_2 NAAQS

On June 3, 2010, EPA finalized revisions to the primary SO_2 NAAQS to strengthen the standard to adequately protect public health. Specifically, EPA established a new 1-hour SO_2 NAAQS at a level of 75 parts per billion (ppb). EPA also revoked both the existing 24-hour and annual primary SO_2 NAAQS.

As required by Iowa Code section 455B.134(14), the Department solicited input from stakeholders at its quarterly air quality client contact meetings and issued a report to the Governor and the General Assembly. The Department discussed the new SO_2 NAAQS and possible rule changes with stakeholders at its air quality client contact meetings in February, May, and September 2012. The Department's final report to the Governor and General Assembly, "Review of Emission Limitations and Standards for the Revised NO2 and SO2 National Ambient Air Quality Standards," is available from the Department upon request.

To provide regulatory flexibility, the Department seeks, to the extent possible, to retain the availability of the construction permit exemptions for low-emitting sources of SO_2.

In this rule making, the Commission is proposing the following amendments:

Item 1 amends subrule 22.1(2) to modify the requirements for several of the specific exemptions from the requirement to obtain an air construction permit. The amendment adds emission thresholds for $PM_{2.5}$ to existing exemptions and adds operating limits to other exemptions that will limit $PM_{2.5}$ emissions from those activities to sufficiently protect public health. The amendment also revises emission thresholds and operating limits for lead to sufficiently protect public health. The amendment will allow owners and operators of activities with low emissions to continue to be exempt from the requirement to obtain an air construction permit.

The amendment will revise the construction permit exemptions (set out in lettered paragraphs in subrule 22.1(2)) as they apply to new or modified equipment, operations, or facilities as follows:

- Fuel-burning equipment for indirect heating or cooling (paragraph "b"): Removes coal as an allowed fuel, adds operating limits for used oil and for vegetative matter ("biomass," such as seeds and pellets). (The PM2.5 Stakeholder Workgroup recommended removing coal from this exemption.)
- Incinerators and pyrolysis cleaning furnaces (paragraph "e"): Removes incinerators from the exemption, changes the description of "pyrolysis units" to "paint clean-off ovens," and limits the exemption to combustible materials that do not contain lead.
- One pound per hour exemption (paragraph "i"): Discontinues use of this exemption for new or modified equipment. (The PM2.5 Stakeholder Workgroup made this recommendation.)
- Small unit exemption (paragraph "w"): Adds allowable emission rates for $PM_{2.5}$ and lowers the allowable emission rates for lead. (The PM2.5 Stakeholder Workgroup provided this recommendation.)
- Production welding (paragraph "ff"): Revises quantity limits on electrodes to limit emissions of $PM_{2.5}$ and lead. (The PM2.5 Stakeholder Workgroup developed the new formula.)
- Soldering (paragraph "gg"): Adds operating limits for lead-containing solder.
- Research and development (paragraph "kk"): Revises the allowable actual emission levels for $PM_{2.5}$ and lead to correspond to the levels proposed for the small unit exemption (paragraph "w"). (The PM2.5 Stakeholder Workgroup recommended the emission limits for $PM_{2.5}$.)

The changes to subrule 22.1(2) in Item 1 will apply only to new facilities and new or modified emission units constructed, installed or modified after the effective date of the adopted amendment. The changes will not apply retroactively to existing equipment.

If the changes proposed in Item 1 are not adopted, smaller facilities (minor sources) would not be sufficiently restricted from using the construction permit exemptions and would potentially consume air resources. Consumption of air resources could potentially limit larger industrial facilities from making desired changes.

Item 2 amends rule 567—22.8(455B), which specifies the requirements for the permit by rule for spray booths. The amendment adds maximum lead content limits for lead-containing sprayed materials. The proposed changes apply to new facilities or new uses of lead spray materials for operations constructed or installed after the effective date of the adopted amendment.

Item 3 amends subrule 22.103(2) to modify the requirements for insignificant activities for the Title V operating permit. The proposed changes to insignificant activities correspond to the changes proposed for the construction permit exemptions described in Item 1. Although owners and operators are required to include insignificant activities in the Title V application, activities that meet the conditions in subrule 22.103(2) do not need to be included in the Title V facility's annual emissions inventory and are not assessed any Title V fees. The proposed changes will affect Title V permit applications, modifications and renewals after the effective date of the adopted amendment.

Item 4 amends rule 567—28.1(455B) to adopt by reference the revised NAAQS for SO_2 and to remove the use of PM_{10} as a surrogate for the annual $PM_{2.5}$ NAAQS. The Department adopted the revised NAAQS for lead in a previous rule making.

Jobs Impact Statement

After analysis and review of this rule making, the Department has determined that jobs could be impacted. However, these proposed amendments are implementing federally mandated regulations. This rule making does not impose on Iowa businesses any regulations not required by federal law.

The Department is minimizing the impact of the federal regulations to the greatest extent possible by establishing exemption levels for $PM_{2.5}$ and lead. Further, existing equipment emitting $PM_{2.5}$ or lead

that is in place on or before the effective date of the adopted amendments will be unaffected by these amendments. Only new or modified equipment put in place after the effective date of these amendments will be affected.

In consultations with stakeholders in the PM2.5 Stakeholder Workgroup, air quality client contact meetings and many other forums, the Department identified equipment and activities emitting low levels of $PM_{2.5}$ or lead that could be exempt from the requirement to obtain an air construction permit. Additionally, the Department identified insignificant activities emitting low levels of $PM_{2.5}$ or lead that could be excluded from annual Title V fee calculations.

To qualify for an exemption or insignificant activity status, owners and operators of low-emitting equipment may need to perform calculations or keep additional records, which may require additional expenditures or resources. However, the Department expects that any potential cost impact or jobs impact will be less than the impacts associated with preparing a construction permit application or Title V permit application or with paying annual Title V fees.

Any person may make written suggestions or comments on the proposed amendments on or before July 15, 2013. Written comments should be sent to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324; faxed to (515)242-5094; or sent by e-mail to christine.paulson@dnr.iowa.gov.

A public hearing will be held on Monday, July 15, 2013, at 1 p.m. in the conference rooms at the Department's Air Quality Bureau office located at 7900 Hickman Road, Windsor Heights, Iowa. The Department must receive all comments no later than 4:30 p.m. on July 15, 2013.

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 to advise of any specific needs.

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

The following amendments are proposed.

ITEM 1. Amend subrule 22.1(2) as follows:

22.1(2) *Exemptions.* The requirement to obtain a permit in ~~567—~~subrule 22.1(1) is not required for the equipment, control equipment, and processes listed in this subrule. The permitting exemptions in this subrule do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. Equipment, control equipment, or processes subject to rule 567—22.4(455B) and 567—Chapter 33, prevention of significant deterioration requirements, or rule 567—22.5(455B), special requirements for nonattainment areas, may not use the exemptions from construction permitting listed in this subrule. Equipment, control equipment, or processes subject to 567—subrule 23.1(2), new source performance standards (40 CFR Part 60 NSPS); 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR Part 61 NESHAP); 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 63 NESHAP); or 567—subrule 23.1(5), emission guidelines, may still use the exemptions from construction permitting listed in this subrule provided that a permit is not needed to create federally enforceable limits that restrict potential to emit. If equipment is permitted under the provisions of rule 567—22.8(455B), then no other exemptions shall apply to that equipment.

Records shall be kept at the facility for exemptions that have been claimed under the following paragraphs: 22.1(2)*"a"* (for equipment > 1 million Btu per hour input), 22.1(2)*"b,"* 22.1(2)*"e,"* 22.1(2)*"r"* or 22.1(2)*"s."* The records shall contain the following information: the specific exemption claimed and a description of the associated equipment. These records shall be made available to the department upon request.

The following paragraphs are applicable to paragraphs 22.1(2)*"g"* and *"i."* A facility claiming to be exempt under the provisions of paragraph 22.1(2)*"g"* or *"i"* shall provide to the department the information listed below. If the exemption is claimed for a source not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project. If the exemption is claimed for a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the

information listed below shall be provided to the department within 60 days of March 20, 1996. After that date, if the exemption is claimed by a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the source shall not operate until the information listed below is provided to the department:

- A detailed emissions estimate of the actual and potential emissions, specifically noting increases or decreases, for the project for all regulated pollutants (as defined in rule 567—22.100(455B)), accompanied by documentation of the basis for the emissions estimate;
- A detailed description of each change being made;
- The name and location of the facility;
- The height of the emission point or stack and the height of the highest building within 50 feet;
- The date for beginning actual construction and the date that operation will begin after the changes are made;
- A statement that the provisions of rules 567—22.4(455B) and 567—22.5(455B) and 567—Chapter 33 do not apply; and
- A statement that the accumulated emissions increases associated with each change under paragraph 22.1(2)*"i,"* when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction on the particular change commences), have not exceeded significant levels, as defined in 40 CFR 52.21(b)(23) as amended through ~~March 12, 1996,~~ October 20, 2010, and adopted in rule 567—22.4(455B), and will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. This statement shall be accompanied by documentation for the basis of these statements.

The written statement shall contain certification by a responsible official as defined in rule 567—22.100(455B) of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

a. No change.

b. Fuel-burning equipment for indirect heating or cooling with a capacity of less than 1 million Btu per hour input per combustion unit when burning ~~coal,~~ untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil provided that the unit and the fuel meet the conditions specified in this paragraph. Used oils meeting the specification from 40 CFR 279.11 as amended through May 3, 1993, are acceptable fuels for this exemption. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3,600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that fuel usage is less than the exemption thresholds. Owners and operators of units constructed, installed, reconstructed, or modified on or before [effective date of adopted amendment] burning coal, used oils, untreated wood, untreated seeds or pellets, or other untreated vegetative materials that qualified for this exemption may continue to claim this exemption after [effective date of adopted amendment] without being restricted to the maximum heat input or throughput specified in this paragraph.

c. and *d.* No change.

e. Incinerators and pyrolysis cleaning furnaces with a rated refuse burning capacity of less than 25 pounds per hour constructed, installed, reconstructed or altered on or before [effective date of adopted amendment]. Pyrolysis cleaning furnace exemption is limited to those units that use only natural gas or propane. Salt bath units are not included in this exemption. Incinerators or pyrolysis cleaning furnaces constructed, installed, reconstructed, or modified after [effective date of adopted amendment] shall not qualify for this exemption. After [effective date of adopted amendment], only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify for this exemption.

f. to *h.* No change.

i. Construction, installation, reconstruction, or modification ~~or alteration to~~ of equipment on or before [effective date of adopted amendment] which will not result in a net emissions increase (as defined in paragraph 22.5(1)*"f"*) of more than 1.0 lb/hr of any regulated air pollutant (as defined in rule 567—22.100(455B)). Emission reduction achieved through the installation of control equipment, for which a construction permit has not been obtained, does not establish a limit to potential emissions.

Hazardous air pollutants (as defined in rule 567—22.100(455B)) are not included in this exemption except for those listed in Table 1. Further, the net emissions rate INCREASE must not equal or exceed the values listed in Table 1.

Table 1

Pollutant	Ton/year
Lead	0.6
Asbestos	0.007
Beryllium	0.0004
Vinyl Chloride	1
Fluorides	3

This exemption is ONLY applicable to vertical discharges with the exhaust stack height 10 or more feet above the highest building within 50 feet. If a construction permit has been previously issued for the equipment or control equipment, the conditions of the construction permit remain in effect. In order to use this exemption, the facility must comply with the information submission to the department as described above.

The department reserves the right to require proof that the expected emissions from the source which is being exempted from the air quality construction permit requirement, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. If the department finds, at any time after a change has been made pursuant to this exemption, evidence of violations of any of the department's rules, the department may require the source to submit to the department sufficient information to determine whether enforcement action should be taken. This information may include, but is not limited to, any information that would have been submitted in an application for a construction permit for any changes made by the source under this exemption, and air quality dispersion modeling.

Equipment constructed, installed, reconstructed, or modified after [effective date of adopted amendment] shall not qualify for this exemption.

j. to *v.* No change.

w. Small unit exemption.

(1) "Small unit" means any emission unit and associated control (if applicable) that emits less than the following:

1. ~~40~~ 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year of lead or lead compounds for equipment constructed, installed, reconstructed or modified on or before [effective date of adopted amendment]);
2. 5 tons per year of sulfur dioxide;
3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide;
6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 2.5 tons per year of ~~PM10~~ PM_{10}; ~~or~~
8. ~~5 tons per year of hazardous air pollutants (as defined in rule 567—22.100(455B)).~~ 0.52 tons per year of $PM_{2.5}$ (does not apply to units constructed, installed, reconstructed, or modified on or before [effective date of adopted amendment]); or
9. 5 tons per year of hazardous air pollutants (as defined in rule 567—22.100(455B)).

For the purposes of this exemption, "emission unit" means any part or activity of a stationary source that emits or has the potential to emit any pollutant subject to regulation under the Act. This exemption applies to existing and new or modified "small units."

An emission unit that emits hazardous air pollutants (as defined in rule 567—22.100(455B)) is not eligible for this exemption if the emission unit is required to be reviewed for compliance with 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR 61, NESHAP), or 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR 63, NESHAP).

An emission unit that emits air pollutants that are not regulated air pollutants as defined in rule 567—22.100(455B) shall not be eligible to use this exemption.

(2) to (5) No change.

(6) For the purposes of this paragraph, "substantial small unit" means a small unit which emits more than the following amounts, as documented in the exemption justification document:

1. ~~30~~ 2 pounds per year of lead and lead compounds expressed as lead (30 pounds per year of lead or lead compounds for equipment constructed, installed, reconstructed, or modified on or before [effective date of adopted amendment]);

2. 3.75 tons per year of sulfur dioxide;

3. 3.75 tons per year of nitrogen oxides;

4. 3.75 tons per year of volatile organic compounds;

5. 3.75 tons per year of carbon monoxide;

6. 3.75 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));

7. 1.875 tons per year of ~~PM10~~ PM_{10}; ~~or~~

8. ~~3.75 tons per year of any hazardous air pollutant or 3.75 tons per year of any combination of hazardous air pollutants.~~ 0.4 tons per year of $PM_{2.5}$ (does not apply to units constructed, installed, reconstructed, or modified on or before [effective date of adopted amendment]); or

9. 3.75 tons per year of any hazardous air pollutant or 3.75 tons per year of any combination of hazardous air pollutants.

An emission unit is a "substantial small unit" only for those substances for which annual emissions exceed the above-indicated amounts.

(7) No change.

(8) "Cumulative notice threshold" means the total combined emissions from all substantial small units using the small unit exemption which emit at the facility the following amounts, as documented in the exemption justification document:

1. 0.6 tons per year of lead and lead compounds expressed as lead;

2. 40 tons per year of sulfur dioxide;

3. 40 tons per year of nitrogen oxides;

4. 40 tons per year of volatile organic compounds;

5. 100 tons per year of carbon monoxide;

6. 25 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));

7. 15 tons per year of ~~PM10~~ PM_{10}; ~~or~~

8. ~~10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.~~ 10 tons per year of $PM_{2.5}$ (does not apply to units constructed, installed, reconstructed, or modified on or before [effective date of adopted amendment]); or

9. 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.

x. to *ee.* No change.

ff. Production welding.

(1) Consumable electrode.

1. Welding operations constructed, installed, reconstructed, or modified on or before [effective date of adopted amendment] using a consumable electrode, provided that the consumable ~~electrodes~~ electrode used ~~fall~~ falls within American Welding Society specification A5.18/A5.18M

for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 200,000 pounds per year for GMAW and 28,000 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years.

For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of 1380x - 19,200 or 200,000 for GMAW, or

Y = the greater of 187x - 2,600 or 28,000 for SMAW or FCAW

Where ~~x~~ "x" is the minimum distance to the property line in feet~~,~~ and "Y" is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

2. Welding operations constructed, installed, reconstructed, or modified after [effective date of adopted amendment] using a consumable electrode, provided that the consumable electrode used falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 1,600 pounds per year for GMAW and 12,500 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years.

For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of 84x - 1,200 or 1,600 for GMAW, or

Y = the greater of 11x - 160 or 12,500 for SMAW or FCAW

Where "x" is the minimum distance to the property line in feet and "Y" is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

(2) No change.

gg. Electric hand soldering, wave soldering, and electric solder paste reflow ovens constructed, installed, reconstructed or modified on or before [effective date of adopted amendment]. Electric hand soldering, wave soldering, and electric solder paste reflow ovens constructed, installed, reconstructed, or modified after [effective date of adopted amendment] shall be limited to 37,000 pounds or less per year of lead-containing solder. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that use of lead-containing solder is less than the exemption thresholds.

hh. to *jj.* No change.

kk. Equipment related to research and development activities at a stationary source, provided that:

(1) Actual emissions from all research and development activities at the stationary source based on a 12-month rolling total are less than the following levels:

~~40~~ 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year for all research and development activities commenced on or before [effective date of adopted amendment]);

5 tons per year of sulfur dioxide;

5 tons per year of nitrogen ~~dioxides~~ oxides;

5 tons per year of volatile organic compounds;

5 tons per year of carbon monoxide;

5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp) as amended through November 29, 2004);

2.5 tons per year of ~~PM10~~ PM_{10}; ~~and~~

0.52 tons per year of $PM_{2.5}$ (does not apply to research and development activities commenced on or before [effective date of adopted amendment]); and

5 tons per year of hazardous pollutants (as defined in rule 567—22.100(455B)); and

(2) and (3) No change.

ll. to *oo.* No change.

ITEM 2. Amend rule 567—22.8(455B) as follows:

567—22.8(455B) Permit by rule.

22.8(1) *Permit by rule for spray booths.* Spray booths which comply with the requirements contained in this rule will be deemed to be in compliance with the requirements to obtain an air construction permit and an air operating permit. Spray booths which comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source limits for regulated air pollutants and hazardous air pollutants as defined in 567—22.100(455B).

a. Definition. "Sprayed material" is material sprayed from spray equipment when used in the surface coating process in the spray booth, including but not limited to paint, solvents, and mixtures of paint and solvents.

b. Facilities which facilitywide spray one gallon per day or less of sprayed material are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1)*"e"* to the department and keep records of daily sprayed material use. Any spray booth or associated equipment constructed, installed, reconstructed, or modified after [effective date of adopted amendment] shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment constructed, installed, reconstructed, or modified after [effective date of adopted amendment] that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep safety data sheets (SDS) or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)*"e."*

c. Facilities which facilitywide spray more than one gallon per day but never more than three gallons per day are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1)*"e"* to the department, keep records of daily sprayed material use, and vent emissions from a spray booth(s) through a stack(s) which is at least 22 feet tall, measured from ground level. Any spray booth or associated equipment constructed, installed, reconstructed, or modified after [effective date of adopted amendment] shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment constructed, installed, reconstructed, or modified after [effective date of adopted amendment] that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep safety data sheets (SDS) or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)*"e."*

d. and *e.* No change.

22.8(2) Reserved.

ITEM 3. Amend subrule 22.103(2) as follows:

22.103(2) *Insignificant activities which must be included in Title V operating permit applications.*

a. The following are insignificant activities based on potential emissions:

An emission unit which has the potential to emit less than:

5 tons per year of any regulated air pollutant, except:

2.5 tons per year of ~~PM-10~~ PM_{10},

0.52 tons per year of $PM_{2.5}$ (does not apply to units constructed, installed, reconstructed, or modified on or before [effective date of adopted amendment]),

~~40~~ 2 lbs per year of lead or lead compounds (40 lbs per year for units constructed, installed, reconstructed, or modified on or before [effective date of adopted amendment]),

2500 lbs per year of any combination of hazardous air pollutants except high-risk pollutants,

1000 lbs per year of any individual hazardous air pollutant except high-risk pollutants,

250 lbs per year of any combination of high-risk pollutants, or

100 lbs per year of any individual high-risk pollutant.

The definition of "high-risk pollutant" is found in rule 567—22.100(455B).

b. The following are insignificant activities:

(1) Fuel-burning equipment for indirect heating and reheating furnaces using natural or liquefied petroleum gas with a capacity of less than 10 million Btu per hour input per combustion unit.

(2) Fuel-burning equipment for indirect heating constructed, installed, reconstructed, or modified on or before [effective date of adopted amendment] with a capacity of less than 1 million Btu per hour input per combustion unit when burning coal, untreated wood, or fuel oil.

Fuel-burning equipment for indirect heating constructed, installed, reconstructed, or modified after [effective date of adopted amendment] with a capacity of less than 1 million Btu per hour input per combustion unit when burning untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil provided that the unit and the fuel meet the condition specified in this subparagraph (22.103(2)*"b"*(2)). Used oils meeting the specification from 40 CFR 279.11 as amended through May 3, 1993, are acceptable fuels. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels.

(3) Incinerators with a rated refuse burning capacity of less than 25 pounds per hour constructed, installed, reconstructed, or modified on or before [effective date of adopted amendment]. Incinerators constructed, installed, reconstructed, or modified after [effective date of adopted amendment] shall not qualify as an insignificant activity. After [effective date of adopted amendment], only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify as an insignificant activity.

(4) to (6) No change.

ITEM 4. Amend rule 567—28.1(455B) as follows:

567—28.1(455B) Statewide standards. The state of Iowa ambient air quality standards shall be the National Primary and Secondary Ambient Air Quality Standards as published in 40 Code of Federal Regulations Part 50 (1972) and as amended at 38 Federal Register 22384 (September 14, 1973), 43 Federal Register 46258 (October 5, 1978), 44 Federal Register 8202, 8220 (February 9, 1979), 52 Federal Register 24634-24669 (July 1, 1987), 62 Federal Register 38651-38760, 38855-38896 (July 18, 1997), 71 Federal Register 61144-61233 (October 17, 2006), 73 Federal Register 16436-16514 (March 27, 2008), 73 Federal Register 66964-67062 (November 12, 2008), ~~and~~ 75 Federal Register 6474-6537 (February 9, 2010), ~~except that the annual PM_{10} standard specified in 40 CFR Section 50.6(b) shall continue to be applied for purposes of implementation of new source permitting provisions in 567 IAC Chapters 22 and 33~~ and 75 Federal Register 35520-35603 (June 22, 2010). The department shall implement these rules in a time frame and schedule consistent with implementation schedules in federal laws~~,~~ and regulations ~~and guidance documents~~.

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

ARC 0790C

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 and 2001 Iowa Acts, chapter 192, section 4(6), the Department of Human Services proposes to amend Chapter 54, "Facility Participation," Iowa Administrative Code.

These amendments provide clarification of the treatment of related-party compensation in the setting of rates for residential care facilities (RCFs). The amendments also clarify the Department's treatment of legal, accounting, consulting, and other professional fees, including association dues, and penalties and fines. These amendments change which cost report is to be submitted, what is required to be submitted to the Department with the cost report, and how the cost report is to be submitted. The amendments also more clearly define the timing for submitting an amended cost report and clarify the Department's position on the penalty period for late submission of cost reports. The amendments also change language to reflect current operations of the Iowa Medicaid Enterprise.

Any interested person may make written comments on the proposed amendments on or before July 2, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because 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.

The following amendments are proposed.

ITEM 1. Amend rule 441—54.1(249) as follows:

441—54.1(249) Application and contract agreement. Each facility desiring to participate in the state supplementary assistance program must enter into a contract with the department of human services and agree to the provisions as enumerated in Form ~~PA-1108-6~~ 470-0443, Application and Contract Agreement for Residential Care Facilities. The effective date of the contract shall be the first of the month that the Application and Contract Agreement for Residential Care Facilities, signed by the administrator of the facility, is received by the department. No payment shall be made for care provided before the effective date of the contract. The contract shall be in effect until the department ceases to participate in the program, until either party gives 60 days' notice of termination in writing to the other party, or until there is a change in ownership. The facility shall notify the department within 30 days of a change in ownership, a change in the number of beds or a change in administrator.

This rule is intended to implement Iowa Code section 249.12.

ITEM 2. Amend rule 441—54.2(249) as follows:

441—54.2(249) Maintenance of case records. A facility must maintain a case folder for each individual residing in the facility which contains the following:

1. Contract between the facility and the resident on Form ~~PA-2365-6~~ 470-0477, RCF Admission Agreement.
2. Physician's statement certifying that the resident does not require nursing services.

3. Proof of expenditures from resident's "personal needs" allowance.

This rule is intended to implement Iowa Code section 249.12.

ITEM 3. Amend rule 441—54.3(249), introductory paragraph, as follows:

441—54.3(249) Financial and statistical report. All facilities wishing to participate in the program shall submit a Financial and Statistical Report, Form ~~AA-4036-0~~ 470-0030, to the department. The reports shall be based on the following rules.

ITEM 4. Amend subrule 54.3(3) as follows:

54.3(3) *Submission of reports.* The report shall be ~~submitted to~~ received by the ~~department of human services~~ Iowa Medicaid enterprise provider cost audit and rate-setting unit no later than three months after the close of the facility's established fiscal year. If the residential care facility is associated with a nursing facility, the cost report shall be due no later than five months after the close of the provider's reporting year.

a. The financial and statistical report shall be submitted in an electronic format approved by the department.

b. The submission shall include a working trial balance that corresponds to all financial data contained on the cost report. The working trial balance must provide sufficient detail to enable the Iowa Medicaid enterprise provider cost audit and rate-setting unit to reconcile accounts reported on the general ledger to those on the financial and statistical report. For reporting costs that are not directly assigned to the residential care facility in the working trial balance, an allocation method must be identified for each line, including the statistics used in the calculation. Reports submitted without a working trial balance shall be considered incomplete, and the facility shall be subject to the rate reductions set forth in paragraph 54.3(3)*"d."*

c. If the financial statements have been compiled, reviewed or audited by an outside firm, a copy of the compilation, review or audit, including notes, for the reporting period shall be included with the submission of the financial and statistical report.

d. Failure to timely submit the complete report ~~within the three-month period~~ shall reduce payment to 75 percent of the current rate.

(1) The reduced rate shall be effective the first day of the fourth month following the facility's fiscal year end and shall remain in effect until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate-setting unit.

(2) The reduced rate shall be paid for no longer than three months, after which time no further payments shall be made until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate-setting unit.

e. Amended reports. The department, in its sole discretion, may reopen a review of a financial and statistical report at any time. No other entity or person has the right to request that the department or its contractor reopen a review of a financial and statistical report, or submit an amended financial and statistical report for review by the department, after the facility is notified of its per diem payment rate following a review of a financial and statistical report.

f. When a residential care facility continues to include in the total costs an item or items which had in a prior period been removed through an adjustment made by the department or its contractor, the contractor shall recommend to the department that the per diem be reduced to 75 percent of the current payment rate for the entire quarter beginning the first day of the fourth month after the facility's fiscal year end. If the adjustment has been contested and is still in the appeals process, the facility may include the cost, but must include sufficient detail so the Iowa Medicaid enterprise provider cost audit and rate-setting unit can determine if a similar adjustment is needed in the current period. The department may, after considering the seriousness of the offense, make the reduction.

g. Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the Iowa Medicaid enterprise when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

ITEM 5. Amend subparagraph **54.3(11)"h"(1)** as follows:

(1) Compensation means the total benefit received by the owner or immediate relative for ~~the~~ services rendered ~~to the facility~~. ~~It includes salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor; the cost of assets and services which the proprietor receives from the facility; and deferred compensation.~~ Compensation includes all remuneration, paid currently or accrued, for managerial, administrative, professional and other services rendered during the period. Compensation shall include all items that should be reflected on IRS Form W-2, Wage and Tax Statement, including, but not limited to, salaries, wages, and fringe benefits; the cost of assets and services received; and deferred compensation. Fringe benefits shall include, but are not limited to, costs of leave, employee insurance, pensions and unemployment plans. If the facility's fiscal year end does not correlate to the period of the W-2, a reconciliation between the latest issued W-2 and current compensation shall be required to be disclosed to the Iowa Medicaid enterprise provider cost audit and rate-setting unit. Employer portions of payroll taxes associated with amounts of compensation that exceed the maximum allowed compensation shall be considered unallowable for reimbursement. All compensation paid to related parties, including payroll taxes, shall be required to be reported to the Iowa Medicaid enterprise provider cost audit and rate-setting unit with the submission of the financial and statistical report. If it is determined that there have been undisclosed related-party salaries, the cost report shall be determined to have been submitted incomplete and the facility shall be subject to the penalties set forth in paragraph 54.3(3)*"d."*

ITEM 6. Adopt the following **new** subparagraph **54.3(11)"h"(5)**:

(5) The maximum allowed compensation for employees as set forth in subparagraph 54.3(11)*"h"*(4) shall be adjusted by the percentage of the average work week that the employee devoted to business activity at the residential care facility for the fiscal year of the financial and statistical report. The time devoted to the business shall be disclosed on the financial and statistical report and shall correspond to any amounts reported to the Medicare fiscal intermediary. If an owner's or immediate relative's time is allocated to the facility from another entity (e.g., home office), the compensation limit shall be adjusted by the percentage of total costs of the entity allocated to the facility. In no case shall the amount of salary for one employee allocated to multiple facilities be more than the maximum allowed compensation for that employee had the salary been allocated to only one facility.

ITEM 7. Rescind paragraph **54.3(11)"n"** and adopt the following **new** paragraph in lieu thereof:

n. Reasonable legal, accounting, consulting and other professional fees, including association dues, are allowable costs if the fees are related to patient care. Legal, accounting, consulting and other professional fees, including association dues, described by the following are not considered to be patient-related and therefore are not allowable expenses:

(1) Any fees or portion of fees used or designated for lobbying.

(2) Nonrefundable and unused retainers.

(3) Fees paid by the facility for the benefit of employees.

(4) Legal fees, expenses related to expert witnesses, accounting fees and other consulting fees incurred in an administrative or judicial proceeding. EXCEPTION: Facilities may report the reasonable costs incurred in an administrative or judicial proceeding if all of the following conditions are met. Recognition of any costs will be in the fiscal period when a final determination in the administrative or judicial proceeding is made.

1. The costs have actually been incurred and paid,

2. The costs are reasonable expenditures for the services obtained,

3. The facility has made a good-faith effort to settle the disputed issue before the completion of the administrative or judicial proceeding, and

4. The facility prevails on the disputed issue.

ITEM 8. Adopt the following **new** paragraphs **54.3(11)"o"** and **"p"**:

o. Penalties or fines imposed by federal or state agencies are not allowable expenses.

p. Penalties, fines or fees imposed for insufficient funds or delinquent payments are not allowable expenses.

ITEM 9. Amend subrule 54.8(1) as follows:

54.8(1) *Audit of financial and statistical report.* Authorized representatives of the department of human services or the Department of Health and Human Services shall have the right, upon proper identification, to audit, using generally accepted auditing procedures, the general financial records of a facility to determine if expenses reported on the Financial and Statistical Report, Form ~~AA-4036-0~~ 470-0030, are reasonable and proper according to the ~~rules~~ conditions set forth in rule 441—54.3(249). These audits may be done either on the basis of an on-site visit to the facility, ~~their~~ to the facility's central accounting office, or ~~office(s)~~ to an office of ~~their agent(s)~~ the facility's agent.

a. When a proper per diem rate cannot be determined, through generally accepted and customary auditing procedures, the auditor shall examine and adjust the report to arrive at what appears to be an acceptable rate and shall recommend to the department of human services that the indicated per diem be reduced to 75 percent of the established payment rate for the ensuing six-month period and if the situation is not remedied on the subsequent Financial and Statistical Report, Form ~~AA-4036-0~~ 470-0030, the health facility shall be suspended and eventually canceled from the residential care facility program, or

b. No change.

ARC 0789C

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 and 2001 Iowa Acts, chapter 192, section 4(6), the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 81, "Nursing Facilities," Iowa Administrative Code.

The purpose of these amendments is to provide clarification for the treatment of prescription drugs, X-ray, lab, and related-party compensation in the setting of rates for nursing facilities (NFs). The amendments also clarify the Department's treatment of legal, accounting, consulting and other professional fees, including association dues, management fees, penalties and fines, and therapy expenses. These amendments change what is required to be submitted to the Department with the cost report, change the timing for submission of the cost report, better define the timing for submitting an amended cost report, and clarify the Department's position regarding the penalty period for late submission of cost reports. This rule making also includes a proposed amendment to elaborate on Medicaid's ability to recoup outstanding debts of facilities whose ownership changes. Also, the Department is proposing changes to language in the rules to reflect current operations of the Iowa Medicaid Enterprise.

Any interested person may make written comments on the proposed amendments on or before July 2, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because 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.

The following amendments are proposed.

ITEM 1. Amend subparagraph **78.19(1)"a"(1)** as follows:

(1) Services are provided in the ~~recipient's~~ member's home or in a care facility (other than a hospital) by a speech therapist, physical therapist, or occupational therapist employed by or contracted by the agency. Services provided to a ~~recipient~~ member residing in a ~~nursing facility or~~ residential care facility are payable when the facility submits a signed statement ~~is submitted signed by the facility~~ that the facility does not have these services available. The statement need only be submitted at the start of care unless the situation changes. Payment will not be made to a rehabilitation agency for therapy provided to a ~~recipient~~ member residing in a nursing facility or an intermediate care facility for ~~the mentally retarded~~ persons with an intellectual disability since these facilities are responsible for providing or paying for services required by ~~recipients~~ members.

ITEM 2. Amend subrule **79.1(2)**, provider categories "Home health agencies," Occupational therapists," "Physical therapists," and "Rehabilitation agencies," as follows:

Provider category	Basis of reimbursement	Upper limit
Home health agencies		
1. Skilled nursing, physical therapy, occupational therapy, home health aide, and medical social services; home health care for maternity patients and children	Retrospective cost-related. For members living in a nursing facility, see 441—paragraph 81.6(11)*"r."*	Lesser of maximum Medicare rate in effect 6/30/12 or maximum Medicaid rate in effect 6/30/12 plus 2%.
2. Private-duty nursing and personal care for ~~persons~~ members aged 20 or under	No change.	No change.
3. Administration of vaccines	No change.	No change.
Occupational therapists	Fee schedule. For members residing in a nursing facility, see 441—paragraph 81.6(11)*"r."*	No change.
Physical therapists	Fee schedule. For members residing in a nursing facility, see 441—paragraph 81.6(11)*"r."*	No change.
Rehabilitation agencies	Fee schedule. For members residing in a nursing facility, see 441—paragraph 81.6(11)*"r."*	No change.

ITEM 3. Rescind the definition of "Department's accounting firm" in rule **441—81.1(249A)**.

ITEM 4. Amend rule **441—81.1(249A)**, definition of "Direct care component," as follows:

"Direct care component" means the portion of the Medicaid reimbursement rates that is attributable to the salaries and benefits of registered nurses, licensed practical nurses, certified nursing assistants, rehabilitation nurses, and contracted nursing services. "Direct care component" also includes costs related to therapy services provided to residents during inpatient stays and not billed to another payor source.

ITEM 5. Amend rule 441—81.6(249A), introductory paragraph, as follows:

441—81.6(249A) Financial and statistical report and determination of payment rate. With the exception of hospital-based nursing facilities that are Medicare-certified and provide only the skilled level of care, herein referred to as Medicare-certified hospital-based nursing facilities, all facilities in Iowa wishing to participate in the program shall submit a Financial and Statistical Report, Form 470-0030, to the ~~department's accounting firm~~ Iowa Medicaid enterprise provider cost audit and rate-setting unit. All Medicare-certified hospital-based nursing facilities shall submit a copy of their Medicare cost report ~~to the department's accounting firm. Costs for patient care services shall be reported, divided into the subcategories of "Direct Patient Care Costs" and "Support Care Costs." Costs associated with food and dietary wages shall be included in the "Support Care Costs" subcategory. The~~

~~financial and statistical report shall be submitted in an electronic format approved by the department~~. These reports shall be based on the following rules.

ITEM 6. Amend subrule 81.6(2) as follows:

81.6(2) *Accounting procedures.* Financial information shall be based on that appearing in the audited financial ~~statement~~ statements of the facility. If the financial statements have been compiled, reviewed or audited by an outside firm, a copy of the compilation, review or audit, including notes, for the reporting period shall be included with the submission of the financial and statistical report. Adjustments to convert to the accrual basis of accounting shall be made when the records are maintained on other accounting bases.

a. Facilities which are a part of a larger health facility extending short-term, intensive, or other health care not generally considered nursing care may submit a cost apportionment schedule prepared in accordance with recognized methods and procedures. A schedule shall be required when necessary for a fair presentation of expense attributable to nursing facility patients.

b. Costs for patient care services shall be divided into the subcategories of "direct patient care costs" and "support care costs." Costs associated with food and dietary wages shall be included in the "support care costs" subcategory.

ITEM 7. Amend subrule 81.6(3) as follows:

81.6(3) *Submission of reports.* All nursing facilities, except the Iowa Veterans Home, shall submit reports ~~to the department's accounting firm no later than three months after the close of the facility's established fiscal year~~ electronically, in a format approved by the department, to the Iowa Medicaid enterprise provider cost audit and rate-setting unit not later than the last day of the fifth calendar month after the close of the provider's reporting year. The Iowa Veterans Home shall submit the report ~~to the department's accounting firm~~ electronically, in a format approved by the department, no later than three months after the close of each six-month period of the facility's established fiscal year. The annual financial report shall coincide with the fiscal year used by the provider to report federal income taxes for the operation unless the provider requests in writing that a different reporting period be used. Such a request shall be submitted within 60 days after the initial certification of a provider. The option to change the reporting period may be exercised only one time by a provider, and the reporting period shall coincide with the fiscal year end for Medicare cost-reporting purposes. If a reporting period other than the tax year is established, audit trails between the periods are required, including reconciliation statements between the provider's records and the annual financial report.

a. Nursing facilities that are certified to provide Medicare-covered skilled nursing facility services are required to submit a copy of their Medicare cost report that covers their most recently completed historical reporting period as submitted to the Medicare fiscal intermediary.

b. The submission shall include a working trial balance that corresponds to all financial data contained on the cost report. The working trial balance must provide sufficient detail to enable the Iowa Medicaid enterprise provider cost audit and rate-setting unit to reconcile accounts reported on the general ledger to those on the financial and statistical report. For reporting costs that are not directly assigned to the nursing facility in the working trial balance, an allocation method must be identified for each line, including the statistics used in the calculation. Reports submitted without a working trial balance shall be considered incomplete, and the facility shall be subject to the rate reductions set forth in paragraph 81.6(3)*"e."*

c. If the financial statements have been compiled, reviewed or audited by an outside firm, a copy of the compilation, review or audit, including notes, for the reporting period shall be included with the submission of the financial and statistical report as set forth in subrule 81.6(2).

d. For nursing facilities, except the Iowa Veterans Home, an extension of the five-month filing period shall not be granted unless one is granted for the filing of the Medicare cost report. If the Medicare filing deadline for submitting the Medicare cost report is delayed by the Medicare fiscal intermediary, the Medicaid cost report and all required forms shall be submitted on the date Medicare requires submission of its report. Notice of the extension shall be presented to the department within ten days of a decision by Medicare.

e. A complete submission shall include all of the items identified in this subrule. Failure to submit a complete report that meets the requirements of this rule within ~~this~~ the stated time shall reduce payment to 75 percent of the current rate.

(1) The reduced rate shall be effective the first day of the sixth month following the provider's fiscal year end and shall remain in effect until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate-setting unit.

(2) The reduced rate shall be paid for no longer than three months, after which time no further payments will be made until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate-setting unit.

f. When a nursing facility continues to include in the total costs an item or items which had in a prior period been removed through an adjustment made by the department or its contractor, the contractor shall recommend to the department that the per diem be reduced to 75 percent of the current payment rate for the entire quarter beginning the first day of the fourth month after the facility's fiscal year end. If the adjustment has been contested and is still in the appeals process, the provider may include the cost, but must include sufficient detail so that the Iowa Medicaid enterprise provider cost audit and rate-setting unit can determine if a similar adjustment is needed in the current period. The department may, after considering the seriousness of the offense, make the reduction.

g. Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the Iowa Medicaid enterprise when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

h. A facility may change its fiscal year one time in any two-year period. If the facility changes its fiscal year, the facility shall notify the ~~department's accounting firm~~ Iowa Medicaid enterprise cost audit and rate-setting unit 60 days prior to the first date of the change.

ITEM 8. Amend paragraph **81.6(10)"a"** as follows:

a. Routine daily services shall represent the established charge for daily care. Routine daily services ~~are those services which~~ include room, board, nursing services, therapies, and such services as supervision, feeding, pharmaceutical consulting, over-the-counter drugs, incontinency, and similar services, for which the associated costs are in nursing service. Routine daily services shall not include:

(1) Laboratory or X-ray services, unless the service is provided by facility staff using facility equipment, and

(2) Prescription (legend) drugs.

ITEM 9. Amend subparagraph **81.6(11)"e"(3)** as follows:

(3) ~~Each~~ At the time of annual contract renewal with the Iowa department of transportation, each facility which supplies transportation services as defined in Iowa Code section ~~601J.1, subsection 1,~~ 324A.1 shall provide current documentation of compliance with or exemption from public transit coordination requirements as found in Iowa Code ~~chapter 601J~~ section 324A.5 and ~~820—[09,A] chapter 2~~ 761—Chapter 910 of the Iowa department of ~~transportation~~ transportation's rules ~~at the time of annual contract renewal~~. Failure to cooperate in obtaining or in providing the required documentation of compliance or exemption after receipt from the Iowa department of transportation~~, public transit division~~ shall~~,~~ result in disallowance of vehicle costs and other costs associated with transporting residents.

ITEM 10. Amend subparagraph **81.6(11)"h"(1)** as follows:

(1) Compensation means the total benefit received by the owner or immediate relative for services rendered. ~~It includes salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor or immediate relative; the cost of assets and services which the proprietor or immediate relative receives from the facility; and deferred compensation.~~ Compensation includes all remuneration, paid currently or accrued, for managerial, administrative, professional and other services rendered during the period. Compensation shall include all items that should be reflected on IRS Form W-2, Wage and Tax Statement, including, but not limited to, salaries, wages, and fringe benefits; the cost of assets and services received; and

deferred compensation. Fringe benefits shall include, but are not limited to, costs of leave, employee insurance, pensions and unemployment plans. If the facility's fiscal year end does not correlate to the period of the W-2, a reconciliation between the latest issued W-2 and current compensation shall be required to be disclosed to the Iowa Medicaid enterprise provider cost audit and rate-setting unit. Employer portions of payroll taxes associated with amounts of compensation that exceed the maximum allowed compensation shall be considered unallowable for reimbursement. All compensation paid to related parties, including payroll taxes, shall be required to be reported to the Iowa Medicaid enterprise provider cost audit and rate-setting unit with the submission of the financial and statistical report. If it is determined that there have been undisclosed related-party salaries, the cost report shall be determined to have been submitted incomplete and the facility shall be subject to the penalties set forth in paragraph 81.6(3)*"e."*

ITEM 11. Adopt the following **new** subparagraph **81.6(11)"h"(7)**:

(7) The maximum allowed compensation for anyone working for another entity (e.g., home office) that allocates cost to the nursing facility and is involved in ownership of the facility or allocating entity or who is an immediate relative of an owner of the facility or allocating entity is 60 percent of the amount allowed for the administrator. An employee working for another entity that allocates cost to the nursing facility is considered to be involved in ownership of a facility when that individual has ownership interest of 5 percent or more of the home office or the nursing facility.

ITEM 12. Adopt the following **new** subparagraph **81.6(11)"h"(8)**:

(8) The maximum allowed compensation for employees as set forth in subparagraphs 81.6(11)*"h"*(4) to 81.6(11)*"h"*(7) shall be adjusted by the percentage of the average work week that the employee devoted to business activity at the nursing facility for the fiscal year of the financial and statistical report. The time devoted to the business shall be disclosed on the financial and statistical report and shall correspond to any amounts reported to the Medicare fiscal intermediary. In the case that an owner's or immediate relative's time is allocated to the facility from another entity (e.g., home office), the compensation limit shall be adjusted by the percentage of total costs of the entity allocated to the nursing facility. In no case shall the amount of salary for one employee allocated to multiple nursing facilities be more than the maximum allowed compensation for that employee had the salary been allocated to only one facility.

ITEM 13. Amend paragraph **81.6(11)"i"** as follows:

i. Management fees paid to a related party shall be limited on the same basis as the owner administrator's salary, but shall have the amount paid the resident administrator deducted. When the parent company can separately identify accounting costs, the costs are allowed.

ITEM 14. Rescind paragraph **81.6(11)"o"** and adopt the following **new** paragraph in lieu thereof:

o. Reasonable legal, accounting, consulting and other professional fees, including association dues, are allowable costs if the fees are related to patient care. Legal, accounting, consulting and other professional fees, including association dues, described by the following are not considered to be patient-related and therefore are unallowable:

(1) Any fees or portion of fees used or designated for lobbying.

(2) Nonrefundable and unused retainers.

(3) Fees paid by the facility for the benefit of employees.

(4) Legal fees, expenses related to expert witnesses, accounting fees and other consulting fees incurred in an administrative or judicial proceeding. EXCEPTION: Facilities may report the reasonable costs incurred in an administrative or judicial proceeding if all of the conditions below are met. Recognition of any costs will be in the fiscal period when a final determination in the administrative or judicial proceeding is made.

1. The costs have actually been incurred and paid,

2. The costs are reasonable expenditures for the services obtained,

3. The facility has made a good-faith effort to settle the disputed issue before the completion of the administrative or judicial proceeding, and

4. The facility prevails on the disputed issue.

ITEM 15. Adopt the following **new** paragraphs **81.6(11)"q"** to **"t"**:

q. Prescription (legend) drug costs are excluded from services covered as part of the nursing facility per diem rate as set forth in paragraph 81.10(5)*"c."* The Iowa Medicaid program will provide direct payment for drugs covered pursuant to 441—subrule 78.1(2) to relieve the facility of payment responsibility. As Medicaid reimburses pharmacy providers only for the cost and dispensation of legend drugs included on the Medicaid preferred drug list, no drug costs will be recognized for other payor sources.

r. Therapy services provided to Medicaid members by nursing facilities are included in the established rate as a direct care cost and subject to the normalization process and quarterly case-mix index adjustments.

(1) Under no circumstances shall therapies for Medicaid members residing in a nursing facility be billed to Medicaid through any provider other than the nursing facility. Therapy services for nursing facility residents that are reimbursed by other payment sources shall not be reimbursed by Medicaid.

(2) For purposes of determining allowable therapy costs, the Iowa Medicaid enterprise provider cost audit and rate-setting unit shall adjust each provider's reported cost of therapy services, including any employee benefits prorated based on total salaries and wages, to account for nonfacility patients including patients with costs paid by Medicare. Such adjustments shall be applied to each cost report in order to remove reported costs attributable to therapy services reimbursed for non-inpatient services. When the costs of the services are not determinable, an adjustment shall be calculated based on an allocation of reported therapy revenues and shall be subject to field audit verification.

s. Penalties or fines imposed by federal, state or local agencies are not allowable expenses.

t. Penalties, fines or fees imposed for insufficient funds or delinquent payments are not allowable expenses.

ITEM 16. Amend paragraph **81.6(12)"a"** as follows:

a. A participating facility contemplating termination of participation or negotiating a change of ownership shall provide the department of human services with at least 60 days' prior notice. A transfer of ownership or operation terminates the participation agreement. A new owner or operator shall establish that the facility meets the conditions for participation and enter into a new agreement. The person responsible for transfer of ownership or for termination is responsible for submission of a final financial and statistical report through the date of the transfer. The new owner shall be responsible for all Medicaid debts incurred by the previous owner, including those incurred due to changes in rates, fines, penalties and quality assurance fees, from the first day of the quarter until the date the change occurs. No payment to the new owner will be made until formal notification is received. The following situations are defined as a transfer of ownership:

(1) to (4) No change.

ITEM 17. Rescind subrule 81.6(13) and adopt the following **new** subrule in lieu thereof:

81.6(13) *Amended reports.* The department, in its sole discretion, may reopen a review of a financial and statistical report at any time. No other entity or person has the right to request that the department or its contractor reopen a review of a financial and statistical report, or submit an amended financial and statistical report for review by the department, after the facility is notified of its per diem summary and adjustments following a review of a financial and statistical report. Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the Iowa Medicaid enterprise when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

ITEM 18. Amend subrule 81.6(15) as follows:

81.6(15) *Payment to new owner.* An existing facility with a new owner shall continue to be reimbursed using the previous owner's per diem rate adjusted quarterly for changes in the Medicaid average case-mix index. The facility shall submit a financial and statistical report for the period from

beginning of actual operation under new ownership to the end of the facility's fiscal year. Subsequent financial and statistical reports shall be submitted annually for a 12-month period ending with the facility's fiscal year. The facility shall notify the ~~department's accounting firm~~ Iowa Medicaid enterprise provider cost audit and rate-setting unit of the date ~~its~~ the facility's fiscal year will end.

ARC 0788C

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 and 2001 Iowa Acts, chapter 192, section 4(6), the Department of Human Services proposes to amend Chapter 82, "Intermediate Care Facilities for Persons With an Intellectual Disability," Iowa Administrative Code.

These amendments provide clarification of the treatment of related-party compensation in the setting of rates for intermediate care facilities for persons with an intellectual disability (ICF/ID). The amendments also serve to clarify the Department's treatment of legal, accounting, consulting and other professional fees, including association dues, and penalties and fines. These amendments change what is required to be submitted to the Department with the cost report and how the cost report is to be submitted, better define the timing for submitting an amended cost report, and clarify the Department's policy on the penalty period for late submission of cost reports. The Department is also making changes to language to reflect current operations of the Iowa Medicaid Enterprise.

Any interested person may make written comments on the proposed amendments on or before July 2, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because 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.

The following amendments are proposed.

ITEM 1. Amend subrule 82.5(3) as follows:

82.5(3) *Submission of reports.* The facility's cost report shall be ~~submitted to~~ received by the ~~department~~ Iowa Medicaid enterprise provider cost audit and rate-setting unit no later than ~~September 30 each~~ three months after the end of the facility's established fiscal year except as described in subrule 82.5(14).

a. The submission shall include a working trial balance that corresponds to all financial data contained on the cost report. The working trial balance must provide sufficient detail to enable the Iowa Medicaid enterprise provider cost audit and rate-setting unit to reconcile accounts reported on the general ledger to those on the financial and statistical report. For reporting costs that are not directly assigned to the facility in the working trial balance, an allocation method must be identified for each line, including the statistics used in the calculation. Reports submitted without a working trial balance shall be considered incomplete, and the facility shall be subject to the rate reductions set forth in paragraph 82.5(3)*"c."*

b. If the financial statements have been compiled, reviewed or audited by an outside firm, a copy of the compilation, review or audit, including notes, for the reporting period shall be included with the submission of the financial and statistical report.

c. Failure to timely submit the complete report ~~within this time~~ shall reduce payment to 75 percent of the current rate.

(1) The reduced rate shall be effective October 1 and shall remain in effect until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate-setting unit.

(2) The reduced rate shall be paid for no longer than three months, after which time no further payments will be made until the first day of the month after the delinquent report is received by the Iowa Medicaid enterprise provider cost audit and rate-setting unit.

d. Amended reports. The department, in its sole discretion, may reopen a review of a financial and statistical report at any time. No other entity or person has the right to request that the department or its contractor reopen a review of a financial and statistical report, or submit an amended financial and statistical report for review by the department, after the facility is notified of its per diem payment rate following a review of a financial and statistical report.

e. When an intermediate care facility for persons with an intellectual disability continues to include in the total costs an item or items which had in a prior period been removed through an adjustment made by the department or its contractor, the contractor shall recommend to the department that the per diem be reduced to 75 percent of the current payment rate for the entire quarter beginning the first day of the fourth month after the facility's fiscal year end. If the adjustment has been contested and is still in the appeals process, the facility may include the cost, but must include sufficient detail so the Iowa Medicaid enterprise provider cost audit and rate-setting unit can determine if a similar adjustment is needed in the current period. The department may, after considering the seriousness of the offense, make the reduction.

f. Nothing in this subrule relieves a facility of its obligation to immediately inform the department that the facility has retained Medicaid funds to which the facility is not entitled as a result of any cost report process. A facility shall notify the Iowa Medicaid enterprise when the facility determines that funds have been incorrectly paid or when an overpayment has been detected.

ITEM 2. Amend subparagraph **82.5(11)"e"(1)** as follows:

(1) Compensation means the total benefit received by the owner or immediate relative for services rendered. ~~It includes salary amounts paid for managerial, administrative, professional, and other services; amounts paid by the facility for the personal benefit of the proprietor or immediate relative; the cost of assets and services which the proprietor or immediate relative receives from the facility; and deferred compensation.~~ Compensation includes all remuneration, paid currently or accrued, for managerial, administrative, professional and other services rendered during the period. Compensation shall include all items that should be reflected on IRS Form W-2, Wage and Tax Statement, including, but not limited to, salaries, wages, and fringe benefits; the cost of assets and services received; and deferred compensation. Fringe benefits shall include, but are not limited to, costs of leave, employee insurance, pensions and unemployment plans. If the facility's fiscal year end does not correlate to the period of the W-2, a reconciliation between the latest issued W-2 and current compensation shall be required to be disclosed to the Iowa Medicaid enterprise provider cost audit and rate-setting unit. Employer portions of payroll taxes associated with amounts of compensation that exceed the maximum allowed compensation shall be considered unallowable for reimbursement. All compensation paid to related parties, including payroll taxes, shall be required to be reported to the Iowa Medicaid enterprise provider cost audit and rate-setting unit with the submission of the financial and statistical report. If it is determined that there have been undisclosed related-party salaries, the cost report shall be determined to have been submitted incomplete and the facility shall be subject to the penalties set forth in paragraph 82.5(3)*"c."*

ITEM 3. Adopt the following **new** subparagraph **82.5(11)"e"(7)**:

(7) The maximum allowed compensation for employees as set forth in subparagraphs 82.5(11)*"e"*(4) to 82.5(11)*"e"*(6) shall be adjusted by the percentage of the average work week that the employee devoted to business activity at the intermediate care facility for persons with an intellectual disability for the fiscal year of the financial and statistical report. The time devoted to the business

shall be disclosed on the financial and statistical report and shall correspond to any amounts reported to the Medicare fiscal intermediary. If an owner's or immediate relative's time is allocated to the facility from another entity (e.g., home office), the compensation limit shall be adjusted by the percentage of total costs of the entity allocated to the facility. In no case shall the amount of salary for one employee allocated to multiple facilities be more than the maximum allowed compensation for that employee had the salary been allocated to only one facility.

ITEM 4. Rescind paragraph **82.5(11)"m"** and adopt the following **new** paragraph in lieu thereof:

m. Reasonable legal, accounting, consulting and other professional fees, including association dues, are allowable costs if the fees are related to patient care. Legal, accounting, consulting and other professional fees, including association dues, described by the following are not considered to be patient-related and therefore are not allowable expenses:

(1) Any fees or portion of fees used or designated for lobbying.

(2) Nonrefundable and unused retainers.

(3) Fees paid by the facility for the benefit of employees.

(4) Legal fees, expenses related to expert witnesses, accounting fees and other consulting fees incurred in an administrative or judicial proceeding. EXCEPTION: Facilities may report the reasonable costs incurred in an administrative or judicial proceeding if all of the following conditions are met. Recognition of any costs will be in the fiscal period when a final determination in the administrative or judicial proceeding is made.

1. The costs have actually been incurred and paid,
2. The costs are reasonable expenditures for the services obtained,
3. The facility has made a good-faith effort to settle the disputed issue before the completion of the administrative or judicial proceeding, and
4. The facility prevails on the disputed issue.

ITEM 5. Adopt the following **new** paragraphs **82.5(11)"n"** and **"o"**:

n. Penalties or fines imposed by federal or state agencies are not allowable expenses.

o. Penalties, fines or fees imposed for insufficient funds or delinquent payments are not allowable expenses.

ARC 0787C

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 237A.5, the Department of Human Services proposes to amend Chapter 109, "Child Care Centers," and Chapter 110, "Child Development Homes," Iowa Administrative Code.

These amendments update provider immunization requirements for both child care centers and child development homes. The amendments require all child care providers to have a signed statement, new Form 470-5152, from a licensed physician, stating they are free from communicable disease, are in good health, and should not be prevented from providing child care services. Form 470-5152 will serve as documentation of a conversation between a physician and child care provider in which current Advisory Committee on Immunization Practices (ACIP) immunization guidelines are reviewed and the risks and benefits associated with the provider's receiving such immunizations are discussed.

These amendments also change the Department's form required for authorizing mandated state record checks for child development home providers. There are currently two forms listed in the rules; however,

due to previous changes in the rules and in the Iowa Code, both of these forms are no longer necessary and are causing confusion for Department staff and child care providers. A new form has been developed that will replace both of the old forms. As a result of the change, the requirements for provider file documentation for child development home providers have been updated.

These amendments also correct an erroneous reference in subparagraph 110.5(2)"d"(5).

Finally, these amendments add a new form addressing the currently mandated documentation of the health of pets in registered child development homes.

Any interested person may make written comments on the proposed amendments on or before July 2, 2013. Comments should be directed to Harry Rossander, Bureau of Policy Coordination, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by e-mail to policyanalysis@dhs.state.ia.us.

These amendments do not provide for waivers in specified situations because Iowa Code section 237A.5 dictates all providers must have good health as evidenced by a report following a preemployment physical examination taken within six months prior to beginning employment. The examination shall include communicable disease tests by a licensed physician as defined in Iowa Code section 135C.1 and shall be repeated every three years. 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 237A.5.

The following amendments are proposed.

ITEM 1. Amend paragraph **109.9(1)"d"** as follows:

d. A physical examination report. Personnel shall have good health as evidenced by a preemployment physical examination~~, including~~. Acceptable physical examinations shall be documented on Form 470-5152, Child Care Provider Physical Examination Report. The examination shall include any necessary testing for communicable diseases ~~which shall include testing for tuberculosis.~~; shall include a discussion regarding current Advisory Committee on Immunization Practices (ACIP)-recommended vaccinations; shall be performed within six months prior to beginning employment by a licensed medical doctor, doctor of osteopathy, ~~physician's~~ physician assistant or advanced registered nurse practitioner; and shall be repeated at least every three years ~~after initial employment~~.

ITEM 2. Amend paragraph **110.5(1)"q"** as follows:

q. Providers shall inform parents of the presence of any pet in the home.

(1) Each dog or cat in the household shall undergo an annual health examination by a licensed veterinarian ~~and be issued a veterinary health certificate~~. Acceptable veterinary examinations shall be documented on Form 470-5153, Veterinary Health Certificate. This ~~certificate~~ examination shall verify that the animal's routine immunizations, particularly rabies, are current and that the animal ~~is free~~ shows no evidence of endoparasites (~~e.g.,~~ roundworms, hookworms, whipworms) and ectoparasites (~~e.g.,~~ fleas, mites, ticks, lice).

(2) Each pet bird in the household shall be purchased from a dealer licensed by the Iowa department of agriculture and land stewardship and shall be examined by a veterinarian to verify that it is free of infectious diseases. Acceptable veterinary examinations shall be documented on Form 470-5153, Veterinary Health Certificate. Children shall not handle pet birds.

(3) to (5) No change.

ITEM 3. Amend subrule 110.5(2) as follows:

110.5(2) Provider files. A provider file shall be maintained and shall contain the following:

~~*a.* A physician's signed statement that the provider and members of the provider's household are free of diseases or disabilities that would prevent good child care. This statement shall:~~

~~(1) Be obtained at the time of the first registration and at least every two years thereafter on all members of the provider's household that may be present when children are in the home.~~

~~(2) Include immunization or immune status for measles, mumps, rubella, diphtheria, tetanus, and polio. Providers may consult with their physician regarding recommendations for varicella, influenza, pneumonia, hepatitis A, and hepatitis B immunizations.~~

a. A physical examination report. Providers and all members of a provider's household shall have good health as evidenced by a preregistration physical examination. Acceptable physical examinations shall be documented on Form 470-5152, Child Care Provider Physical Examination Report. The examination shall include any necessary testing for communicable diseases; shall include a discussion regarding current Advisory Committee on Immunization Practices (ACIP)-recommended vaccinations; shall be performed within six months prior to registration by a licensed medical doctor, doctor of osteopathy, physician assistant or advanced registered nurse practitioner; and shall be repeated at least every three years.

b. Certificates or other documentation from the department verifying ~~required training as set forth in subrule 110.5(11).~~ the following:

(1) Required training as set forth in subrule 110.5(11).

(2) Completion of all record checks as required in subrule 110.7(3), at initial application, at each application for change and at each application for renewal.

c. An individual file for each staff assistant that contains:

(1) ~~A completed Form 595-1396, DHS Criminal History Record Check~~ Documentation from the department confirming the record checks required under subrule 110.7(3) have been completed and authorizing or conditionally limiting the person's involvement with child care.

~~(2) A completed Form 470-0643, Request for Child Abuse Information.~~

~~(3)~~ (2) A ~~physician's signed statement~~ completed Form 470-5152, Child Care Provider Physical Examination Report, that meets the requirements of paragraph 110.5(2)*"a."*

~~(4)~~ (3) Certification of a minimum of two hours of approved training relating to the identification and reporting of child abuse, completed within six months of employment and every five years thereafter, as required by Iowa Code section 232.69.

d. An individual file for each substitute that contains:

(1) ~~A completed Form 595-1396, DHS Criminal History Record Check~~ Documentation from the department confirming the record checks required under subrule 110.7(3) have been completed and authorizing or conditionally limiting the person's involvement with child care.

~~(2) A completed Form 470-0643, Request for Child Abuse Information.~~

~~(3)~~ (2) A ~~physician's signed statement~~ completed Form 470-5152, Child Care Provider Physical Examination Report, that meets the requirements of paragraph 110.5(2)*"a."*

~~(4)~~ (3) Certification of a minimum of two hours of approved training relating to the identification and reporting of child abuse, completed within six months of employment and every five years thereafter, as required by Iowa Code section 232.69.

~~(5)~~ (4) Certification in first aid that meets the requirements of ~~subparagraph 110.5(2)*"b"*(2).~~ paragraph 110.5(11)*"b."*

ARC 0782C

LAW ENFORCEMENT ACADEMY[501]

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 80B.11(1)"c"(3), the Iowa Law Enforcement Academy hereby gives Notice of Intended Action to amend Chapter 8, "Mandatory In-Service Training Requirements," and Chapter 10, "Reserve Peace Officers," Iowa Administrative Code.

The rules in Chapters 8 and 10 describe the requirements for mandatory in-service training for certified officers and reserve officers. This rule making adds subrules to comply with 2012 Iowa Acts, Senate File 2312, which amended Iowa Code section 80B.11(1)"c"(3) to set forth additional requirements for mandatory mental health training. Chapters 8 and 10 are also being amended to update the description of the firearms training requirements to more accurately describe the current training program.

Any interested person may make written suggestions or comments on the proposed amendments on or before July 2, 2013. Written comments should be directed to Russell Rigdon, Iowa Law Enforcement Academy, P.O. Box 130, Johnston, Iowa 50131. Comments may be submitted by fax to (515)242-5471 or by e-mail to russell.rigdon@iowa.gov.

After a review of this rule making, the fiscal impact of the amendments cannot be anticipated. The addition of subrules 8.1(4) and 10.206(4) will require the additional expenditures of funds by the agencies affected, but the exact amount of the cost cannot be calculated at this time. It is expected that some affected agencies will conduct the mandatory mental health training through an in-house training program, while others will contract with an outside agency for the training. The cost of the individual trainings as well as travel expenses will vary from agency to agency so an accurate estimate is not possible at this time. The amendments to subrules 8.1(1), 10.1(2) and 10.206(1) and rule 501—10.5(80D) should have no fiscal impact as these amendments merely memorialize the already-existing firearms training required by the Iowa Law Enforcement Academy.

After review of this rule making, no adverse impact on jobs is anticipated.

These amendments are intended to implement Iowa Code section 80B.11(1).

The following amendments are proposed.

ITEM 1. Amend subrule 8.1(1) as follows:

8.1(1) *Firearms training.* A regular law enforcement officer must qualify with all duty ~~handguns~~ firearms annually on a course of fire using targets approved by the Iowa law enforcement academy and must successfully fire a minimum score as established by the Iowa law enforcement academy. This ~~rule~~ subrule applies to only those law enforcement officers who are authorized to carry ~~handguns~~ firearms by ~~their~~ the officers' employing agency.

ITEM 2. Adopt the following **new** subrule 8.1(4):

8.1(4) *Mental health training.* In addition to the requirements of subrules 8.1(1), 8.1(2) and 8.1(3), a regular law enforcement officer must receive mental health in-service training from a course of study approved by the Iowa law enforcement academy.

a. Initial in-service training. Effective [insert effective date when filed], each regular law enforcement officer shall complete within one year a minimum of 4 hours of mental health training from a course of study approved by the Iowa law enforcement academy council. Successful completion of Mental Health First Aid or Crisis Intervention (Memphis Model or similar model) training after January 1, 2011, shall satisfy the initial requirement.

b. Annual in-service training. Effective [insert effective date when filed], each regular law enforcement officer shall complete a minimum of 1 hour per year, or 4 hours every 4 years, of mental health training from a course of study approved by the Iowa law enforcement academy council. This annual in-service training is separate from and in addition to any other in-service training requirements set forth in this chapter, including the initial in-service mental health training required in paragraph 8.1(4)*"a."*

ITEM 3. Amend subrule 10.1(2) as follows:

10.1(2) Individuals who have been certified through training by the Iowa law enforcement academy as regular officers may be certified to carry weapons as reserve officers without repeating the required reserve officer's weapons training under the following conditions:

a. The academy certification through training was acquired through a school in which firearms training was required; and

(1) The individual is serving as a regular officer for another department at the time of appointment as a reserve officer, or

LAW ENFORCEMENT ACADEMY[501](cont'd)

(2) The individual has served as a regular officer within the two years immediately preceding appointment as a reserve officer.

b. Verification must also be provided to the council that the officer has fired a qualifying score of 80 percent or higher on a ~~tactical revolver~~ firearm course using targets approved by the academy within the past 12 months. This verification must be provided by an academy-trained and -certified firearms instructor.

ITEM 4. Amend rule 501—10.5(80D) as follows:

501—10.5(80D) Annual qualification. All reserve peace officers who are certified to carry firearms must qualify with all duty ~~handguns~~ firearms annually on a course of fire using targets approved by the Iowa law enforcement academy under the supervision of an academy-certified firearms instructor and must successfully fire a minimum score as established by the academy.

ITEM 5. Amend subrule 10.206(1) as follows:

10.206(1) *Firearms training.* A certified reserve peace officer who is authorized to carry firearms must qualify with all duty ~~handguns~~ firearms annually on a course of fire using targets approved by the Iowa law enforcement academy and must successfully fire a minimum score as established by the Iowa law enforcement academy. This subrule applies only to those reserve peace officers who are authorized to carry firearms by ~~their~~ the officers' appointing agency.

ITEM 6. Adopt the following **new** subrule 10.206(4):

10.206(4) *Mental health training.* In addition to the requirements of subrules 10.206(1) and 10.206(2), a certified reserve peace officer must receive mental health in-service training from a course of study approved by the Iowa law enforcement academy.

a. Initial in-service training. Effective [insert effective date when filed], each certified reserve peace officer shall complete within one year a minimum of 4 hours of mental health training from a course of study approved by the Iowa law enforcement academy council. Successful completion of Mental Health First Aid or Crisis Intervention (Memphis Model or similar model) training after January 1, 2011, shall satisfy the initial requirement.

b. Annual in-service training. Effective [insert effective date when filed], each certified reserve peace officer shall complete a minimum of 1 hour per year, or 4 hours every four years, of mental health training from a course of study approved by the Iowa law enforcement academy council. This annual in-service training is separate from and in addition to any other in-service training requirements set forth in this chapter, including the initial in-service mental health training required in paragraph 10.206(4)*"a."*

ARC 0792C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Hearing Aid Dispensers hereby gives Notice of Intended Action to amend Chapter 121, "Licensure of Hearing Aid Dispensers," Chapter 122, "Continuing Education for Hearing Aid Dispensers," Chapter 123, "Practice of Hearing Aid Dispensing," and Chapter 124, "Discipline for Hearing Aid Dispensers," Iowa Administrative Code.

These proposed amendments revise the definition of the national examination and the examination requirements to be consistent with changes in the national examination; clarify the services required of a licensed hearing aid dispenser following a client medical examination and provide a technical correction in the definition of a sales receipt; remove online programs from the independent study

requirements pertaining to continuing education; and modify the requirement for listing the business address in advertisements to be consistent with the requirement for the display of license.

Any interested person may make written comments on the proposed amendments no later than July 8, 2013, addressed to Sharon Dozier, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; e-mail sharon.dozier@idph.iowa.gov.

A public hearing will be held on July 2, 2013, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

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

These amendments are intended to implement Iowa Code chapters 154A and 272C and Iowa Code sections 147.34 and 147.36.

The following amendments are proposed.

ITEM 1. Amend rule **645—121.1(154A)**, definition of "National examination," as follows:

"National examination" means the ~~written~~ standardized licensing examination of the International Hearing Society (IHS) or its successor organization.

ITEM 2. Amend subrule 121.4(3) as follows:

121.4(3) Each application shall be accompanied by the ~~appropriate fees, which include the following:~~ application fee payable to the Board of Hearing Aid Dispensers. The board shall also receive the examination fee payable to the International Hearing Society for any examination held prior to the implementation of the on-line examination.

~~*a.* Application fee payable to the Board of Hearing Aid Dispensers; and~~

~~*b.* Examination fee payable to the International Hearing Society.~~

ITEM 3. Amend subrule 121.4(4) as follows:

121.4(4) Examination score results must be received from the ~~testing service~~ International Hearing Society.

ITEM 4. Rescind rule 645—121.5(154A) and adopt the following **new** rule in lieu thereof:

645—121.5(154A) Examination requirements. The following criteria shall apply to the national standardized licensing examination:

121.5(1) Applicants must pass the national standardized licensing examination. The passing score is the score established by the International Hearing Society.

121.5(2) The applicant shall not take the examination more than three times. If the applicant fails a third examination, the applicant is required to submit a request to the board with a proposed course of study. The board will determine whether the request will be granted.

ITEM 5. Amend subrule 121.6(5) as follows:

121.6(5) Provides official verification of one of the following:

a. A passing score on the national examination. For the written ten-part examination, the passing score is 70 percent ~~on~~ in each subject or 75 percent overall. The International Hearing Society ~~sets~~ establishes the passing score for the ~~five-part competency examination~~ national standardized licensing examination;

b. and *c.* No change.

ITEM 6. Amend paragraph **122.3(2)"b"** as follows:

b. A maximum of 8 hours of credit may be obtained by independent study~~, including on-line instruction~~. Independent study hours are subject to the requirements stated in the rules in this chapter and in 645—Chapter 4.

ITEM 7. Amend rule **645—123.1(154A)**, definition of "Sales receipt," as follows:

"Sales receipt" means a written record that is provided to a person who purchases a hearing aid~~, that complies~~. The sales receipt must be in compliance with ~~theses~~ these rules~~,~~ and ~~that is~~ be signed by the

purchaser and the licensed hearing aid dispenser. The requirements for the sales receipt may be found in rule 645—123.3(154A).

ITEM 8. Rescind rule 645—123.2(154A) and adopt the following **new** rule in lieu thereof:

645—123.2(154A) Requirements prior to sale of a hearing aid.

123.2(1) Except as otherwise stated in these rules, no hearing aid shall be sold to an individual 18 years of age or older unless the individual:

a. Provides a health history to a licensed hearing aid dispenser who is responsible for reducing the history to written form;

b. Presents a physician statement verifying that a medical evaluation, preferably by a physician specializing in diseases of the ear, has been done within the previous six months and stating the individual's hearing loss and that the individual may benefit from a hearing aid. In lieu of this requirement, the individual may verify in writing that the individual has been informed that it is in the individual's best health interests to obtain a medical evaluation by a licensed physician specializing in diseases of the ear, or if no such licensed physician is available in the community, then a duly licensed physician, and that the individual chooses to waive said evaluation; and

c. Is given a hearing examination that utilizes appropriate established procedures and instrumentation for the measurement of hearing and the fitting of hearing aids and that includes, but is not limited to, an assessment of the following: air conduction; bone conduction; masking capability; speech reception thresholds; speech discrimination; uncomfortable loudness levels (UCL) and most comfortable levels (MCL).

123.2(2) Any medical evaluation completed by a licensed physician in accordance with these rules requires all of the following prior to the sale of a hearing aid to an individual: receipt of the physician statement and clearance for amplification; and completion by the licensed hearing aid dispenser of a current written health history and hearing examination that includes all of the procedures required in these rules, unless the physician order specifies otherwise. In the event an audiogram is provided by the physician, this testing requirement is waived. All records provided to the licensed hearing aid dispenser shall be maintained in the individual's records in accordance with the record-keeping requirements in these rules.

123.2(3) Whenever any of the following conditions are found to exist either from observations by the licensed hearing aid dispenser or person holding a temporary permit or on the basis of information furnished by a prospective hearing aid user, the hearing aid dispenser or person holding a temporary permit shall, prior to fitting and selling a hearing aid to any individual, suggest to that individual in writing that the individual's best interests would be served if the individual would consult a licensed physician specializing in diseases of the ear, or if no such licensed physician is available in the community, then a duly licensed physician:

a. Visible congenital or traumatic deformity of the ear.

b. History of, or active drainage from the ear within the previous 90 days.

c. History of sudden or rapidly progressive hearing loss within the previous 90 days.

d. Acute or chronic dizziness.

e. Unilateral hearing loss of sudden or recent onset within the previous 90 days.

f. Significant air-bone gap (greater than or equal to 15dB ANSI 500, 1000 and 2000 Hz. average).

g. Obstruction of the ear canal, by structures of undetermined origin, such as foreign bodies, impacted cerumen, redness, swelling, or tenderness from localized infections of the otherwise normal ear canal.

123.2(4) Testing shall not be required in cases in which replacement hearing aids of the same make or model are sold within one year of the original sale, unless a medical evaluation occurs during this period, which requires compliance with the requirements stated in 123.2(2).

123.2(5) Except as otherwise provided in these rules, for individuals younger than 18 years of age, all of the requirements stated in these rules are applicable. In addition, the following are required:

a. Written authorization of a parent or legal guardian consenting to the services covered in these rules, and

b. An original signature on all documents required by law or these rules to be signed, including but not limited to, all sales transactions and receipts, required notifications, and warranty agreements.

123.2(6) For individuals 12 years of age or younger, all of the requirements stated in these rules are applicable. In addition, the parent or legal guardian must first present a written, signed recommendation for a hearing aid from a licensed physician specializing in otolaryngology. The recommendation must have been made within the preceding six months. In the event of a lost or damaged hearing aid, a replacement of an identical hearing aid may be provided within one year, unless a medical evaluation occurs during this period, which requires compliance with the requirements stated in 123.2(2).

ITEM 9. Amend subrule 124.2(6) as follows:

124.2(6) Failure to place all of the following in an advertisement relating to hearing aids:

a. Hearing aid dispenser's name.

b. Hearing aid dispenser's ~~office~~ address of primary site of practice.

c. Hearing aid dispenser's telephone number.

ARC 0791C

PUBLIC SAFETY DEPARTMENT[661]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 103.6, the Electrical Examining Board hereby gives Notice of Intended Action to amend Chapter 551, "Electrical Inspection Program—Definitions," and Chapter 552, "Electrical Inspection Program—Permits and Inspections," Iowa Administrative Code.

The Electrical Examining Board is authorized to adopt administrative rules governing all aspects of the state electrical inspection program and of the licensing of electricians and electrical contractors. The proposed amendments update rules regarding electrical inspection of farm property.

A public hearing on these proposed amendments will be held on July 18, 2013, at 10 a.m. in the first floor public conference room (Room 125) of the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Otherwise, any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail to Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; or by electronic mail to admrule@dps.state.ia.us by 4:30 p.m. on July 17, 2013.

The Electrical Examining Board's rules, promulgated in 2009, required permits and inspections for electrical installations on farm property. Governor Branstad filed an objection to the existing rules on January 23, 2012, and the rules were challenged in a judicial review action by two individual farmers in 2012. A decision by the Iowa district court on January 16, 2013, concluded that the statute was ambiguous and that the existing rules were invalid. As a result of that court ruling, the Board proposes amendments to the existing rules in order to comply with the district court's ruling.

The Board had interpreted the Iowa Code to include farms within the definition of "commercial installation." In the judicial review action, the district court concluded that this interpretation was not supported by the language of the statute. The Board has proposed to change the definition of "farm" and clarify that, although permit and inspection requirements generally do not apply to farm property, the other statutory provisions regarding residences and "commercial" activities (such as a retail facility open to the public) are subject to permit and inspection requirements. Finally, farmers may choose to seek a permit or inspection, so the proposed amendments also contemplate a voluntary request by the property owner.

Rules of the Electrical Examining Board are subject to the waiver provisions of rule 661—501.5(103). The Board does not have authority to waive requirements established by statute.

After analysis and review of this rule making, there is likely to be a positive impact on jobs. The cost of inspections can be used for other activities, which is likely to have a positive impact on jobs.

These amendments are intended to implement Iowa Code sections 103.23 and 103.24.

The following amendments are proposed.

ITEM 1. Amend rule **661—551.2(103)**, definitions of "Commercial installation" and "Farm," as follows:

"Commercial installation" means an installation intended for commerce, but does not include a residential installation or a farm installation.

"Farm" means land, buildings and structures used for agricultural purposes including but not limited to the storage, handling, and drying of grain and the care, feeding, and housing of livestock. An electrical installation on a farm does not include a residential installation for a residence located on or in proximity to a farm.

ITEM 2. Amend rule 661—552.1(103) as follows:

661—552.1(103) Required permits and inspections.

552.1(1) Permits and inspections are required for any of the following electrical installations that are initiated on or after February 1, 2009:

a. All new electrical installations for commercial or industrial applications, including installations both inside and outside buildings, and for public-use buildings and facilities and any installation at the request of the owner.

b. All new electrical installations for residential applications in excess of single-family residential applications.

c. All new electrical installations for single-family residential applications requiring new electrical service equipment.

d. Any existing electrical installation observed during inspection which constitutes an electrical hazard. Existing installations shall not be deemed to constitute electrical hazards if the wiring was originally installed in accordance with the electrical code in force at the time of installation and has been maintained in that condition.

e. Inspections of alarm system installations, rules for which are intended to be adopted as new 661—Chapter 560.

552.1(2) New electrical installations on a farm, whether inside or outside of a building or structure, shall not require a permit or an inspection.

552.1(3) ~~EXCEPTION 1:~~ Installations in political subdivisions which perform electrical inspections and which are inspected by the political subdivision are not required to be inspected by the state electrical inspection program. Any installation which is subject to inspection and is on property owned by the state or an agency of the state shall be inspected by the state electrical inspection program. However, a county shall not perform electrical inspections on a farm or farm residence. An electrical installation on a farm or farm residence which is located outside the corporate limits of any municipal corporation (city) shall not be inspected by a political subdivision~~, shall require a state electrical permit, and may be subject to a state electrical inspection, unless the installation is subject to Exception 2 or Exception 3~~.

552.1(4) ~~EXCEPTION 2:~~ Any electrical work which is limited to routine maintenance shall not require an inspection.

552.1(5) ~~EXCEPTION 3:~~ Neither a permit nor an inspection is required for an electrical installation which meets all of the following criteria:

~~1.~~ *a.* The installation is legally performed by a master electrician, journeyman electrician, or apprentice electrician working under the direct supervision of a master or journeyman electrician.

~~2.~~ *b.* The installation to be performed does not in any way involve work within an existing or new switchboard or panel board.

~~3.~~ *c.* The installation to be performed does not involve over-current protection of more than 30 amperes.

~~4.~~ *d.* The installation to be performed does not involve any electrical line-to-ground circuit of more than 277 volts, single phase.

~~552.1(2)~~ 552.1(6) The owner of a property on which multiple electrical installations may be performed during a 12-month period may apply for an annual permit to cover all such installations. The holder of an annual permit shall maintain a log of all installations performed pursuant to the annual permit. The owner shall cause the electrical inspection program to be notified of any such installation requiring an inspection and shall be subject to fees for such inspections as though an individual permit had been issued for each installation requiring an inspection. The fee for an annual permit shall be $100. The log shall be available to an electrical inspector on the request of the inspector.

USURY

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

June 1, 2012 — June 30, 2012	4.00%
July 1, 2012 — July 31, 2012	3.75%
August 1, 2012 — August 31, 2012	3.50%
September 1, 2012 — September 30, 2012	3.50%
October 1, 2012 — October 31, 2012	3.75%
November 1, 2012 — November 30, 2012	3.75%
December 1, 2012 — December 31, 2012	3.75%
January 1, 2013 — January 31, 2013	3.75%
February 1, 2013 — February 28, 2013	3.75%
March 1, 2013 — March 31, 2013	4.00%
April 1, 2013 — April 30, 2013	4.00%
May 1, 2013 — May 31, 2013	4.00%
June 1, 2013 — June 30, 2013	3.75%

ARC 0784C

UTILITIES DIVISION[199]

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 Iowa Code section 17A.4 and Iowa Code chapters 476 and 478, the Utilities Board (Board) gives notice that on May 20, 2013, the Board issued an order in Docket No. RMU-2012-0002, In re: Pole Attachments Rule Making [199 IAC Chapter 27] and Amendment to 199 IAC 15.5(2), "Order Adopting Amendment to 199 IAC 15.5(2) and Giving Notice of Proposed Amendments to 199 IAC 25.4," that approved the adoption of an amendment to correct a citation in 199 IAC 15.5(2), stated that the Board would not adopt the proposed pole attachment rules in 199 IAC Chapter 27, and proposed amendments to 199 IAC 25.4 addressing pole attachments. An Adopted and Filed rule making for the amendment to

199 IAC 15.5(2) is published herein as **ARC 0781C**. The Board decided not to adopt rules addressing pole attachments as proposed in **ARC 0455C** and published in the Iowa Administrative Bulletin on November 14, 2012.

This Notice of Intended Action proposes to establish procedures and time frames for pole attachments for poles owned by electric and telecommunications utilities. The proposed amendments are designed to accomplish the goal of ensuring that pole attachments comply with the safety regulations in the Iowa Electrical Safety Code and address the concerns of the Iowa Utility Association (IUA) and the communications companies that filed comments regarding the proposed rules in **ARC 0455C**.

After a review of the comments regarding the pole attachment rules proposed in **ARC 0455C**, the Board has determined that it should not adopt the proposed pole attachment rules as a separate chapter and should not certify compliance with Federal Communications Commission (FCC) regulations in 47 CFR § 1.140 et seq. Comments from participants raised several concerns about the Board's jurisdiction over the rates, terms, and conditions of pole attachments and suggested that the Board could address the safety concerns related to pole attachments with a more limited rule making. Since the primary intent of the proposed rules was to establish procedures that ensured pole attachments installed by communications companies and similar entities were in compliance with the Iowa Electrical Safety Code in 199 IAC Chapter 25, the Board has determined that it can address those safety issues more directly and efficiently with a more limited rule making than one that asserts jurisdiction over the rates, terms, and conditions of pole attachments in addition to safety.

Initial written comments addressing the proposed pole attachment rules were filed by CTIA-The Wireless Association® (CTIA), Cox Iowa Telecom, LLC (Cox), the Iowa Association of Electric Cooperatives (IAEC), Sprint Communications Company L.P., Sprint Spectrum L.P. d/b/a Sprint PCS, Nextel West Corp. d/b/a Nextel, and NPCR, Inc. d/b/a Nextel Partners (collectively, Sprint), Frontier Communications of Iowa, LLC (Frontier), Qwest Corporation d/b/a CenturyLink QC (CenturyLink), the IUA, and Mediacom Communications Corporation (Mediacom).

On February 12, 2013, the Board held an oral presentation to allow for comments regarding the proposed rules and to allow the Board to ask questions of the participants. On February 18, 2013, the Board issued an order allowing for additional written comments and providing an opportunity to respond to certain questions. Additional comments were filed by IUA, Frontier, the Consumer Advocate Division of the Department of Justice, CenturyLink, CTIA, Cox, and Mediacom.

The Board has reviewed the initial written comments, the transcript of the oral presentation, and the additional written comments. It appears from the comments that the Board was presented with two alternatives with regard to adopting rules to address pole attachments in Iowa. The first alternative is not to adopt the proposed rules in Chapter 27 and instead to propose amendments in Chapter 25 limited to the safety of pole attachments, with time frames for notice, correction of violations, penalties, and dispute resolution procedures. The second alternative would be to adopt the proposed rules in Chapter 27 with certain revisions and certify to the FCC that the Board is asserting jurisdiction over the rates, terms, and conditions of pole attachments by communications providers on poles owned by electric and telecommunications utilities.

After consideration of the alternatives, the Board decided that the most effective course of action is the first alternative, in which the Board would not certify FCC compliance but would instead propose amendments that would establish additional requirements in Chapter 25 to ensure that pole attachments meet the safety requirements of the Iowa Electrical Safety Code.

The new amendments are designed to address many of the comments and suggested revisions offered by the participants, especially the communications companies. The primary change from the previously proposed rules is the removal of any reference to rates, terms, and conditions for pole attachment agreements. The proposed amendments do not require that pole attachment agreements be in writing and do not make any reference to rates, terms, or conditions in a pole attachment agreement. Pole attachment agreements will remain subject to the jurisdiction of the FCC.

There appears to be general consensus that the Board has jurisdiction over the safety of pole attachments. Mediacom provided an extensive analysis of the FCC's deference to state and local jurisdiction in this area. Frontier raised the issue of whether the Board has jurisdiction over the excess

space on utility poles. No other participant supported Frontier's position and, as MidAmerican stated, the Board has asserted jurisdiction over the excess pole space in utility rate cases by considering the revenue and expenses related to the excess pole space as part of revenue requirement calculations. In addition, the Maryland case cited by Frontier in support of its position interpreted Maryland law regarding Maryland Public Service Commission (PSC) jurisdiction over excess pole space and, as the Maryland court stated, "Likewise, the instant case turns on the powers granted to the PSC under the PSC Law. Consequently, we do not find the decisions from courts of other jurisdictions helpful." Chesapeake and Potomac Telephone Company of Maryland v. Maryland/Delaware Cable Television Association, Inc., et al., 530 A.2d 734, 741 (Md. Ct. App. 1987). The Maryland court cited decisions in four states that reached the same conclusion about excess pole space and in seven states that reached the opposite conclusion. Id. at 740. The Maryland case provides little guidance in interpreting the Iowa statute, and the Board has historically asserted jurisdiction of excess pole space for ratemaking purposes and for safety purposes. The Board considers this to be the correct interpretation of Iowa Code chapter 476.

The Board has retained the list of entities that are covered by the pole attachment requirements to address the original intent of the rule proposed by the IUA. The intent was to establish requirements for pole attachments from communications and other non-utility entities which now have a right pursuant to federal law to attach to utility poles. One of the primary concerns expressed by the IUA is that as new entities enter the communications market and need to install facilities on electric poles and other utility poles, there are no procedures or requirements in the current rules that the utility companies may use to enforce compliance with the Iowa Electrical Safety Code.

In the proposed amendments, the Board has added electric lines that are not owned by the pole owner as part of the definition of "pole attachment." This change was suggested as part of the balance sought by the communications companies. In addition, by placing the proposed new provisions in Chapter 25 and focusing the requirements specifically on the safety of pole attachments, the Board has removed the exemptions for cooperatively owned utilities and municipals or other government-owned utilities. The safety rules in Chapter 25 apply to all electric and telephone utilities and include electric cooperatives and municipals. The proposed amendments will apply to poles owned by cooperatives and municipals as well as to pole attachments owned by cooperatives, municipals, and other utilities to poles owned by different electric or telecommunications utilities.

In the proposed amendments, the Board will retain the language addressing the actions that may be taken if the violation of the Iowa Electrical Safety Code could reasonably be expected to affect life or property. There appeared to be no disagreement about the need to take action in these circumstances. Interested parties made suggestions that, when the pole owner takes action because the pole occupant has not responded immediately to the violation, the amendments should provide that the pole occupant given notice of the violation may challenge ownership of the pole attachment and that any disagreement about either the ownership of the pole attachment or the cost of the corrective action should be one of the listed reasons that a complaint could be filed with the Board. The proposed amendments reflect these suggestions. In addition and as suggested by some of the comments, the Board has proposed a provision that requires reimbursement by the pole owner when corrective action is taken by a pole occupant and it is later determined that the pole owner caused the violation.

The Board has retained the requirement that requests to attach to poles be made in writing. This requirement provides a way for the pole owner to know what entities are attaching to the poles and provides an opportunity for the pole owner to explain to the pole occupant the requirements for complying with the Iowa Electrical Safety Code when installing the attachment. This requirement should also provide the pole owner with contact information for the pole occupant if a violation is found at some later time.

The Board has not retained the requirement that there be a written agreement between the pole owner and the pole occupant since, according to Mediacom, the FCC requires a written agreement before make-ready work is commenced by the pole owner. Implementation of Section 224 of The Act; A National Broadband Plan for Our Future, Report and Order and Order on Reconsideration, 26 FCC Rcd 5240, (Adopted 4/7/11). The FCC order has this requirement, and the rates, terms, and conditions for pole attachments will remain subject to FCC jurisdiction and regulations, including the requirement for

a written agreement. The removal of the requirement for a written agreement addresses the concerns of the communications companies that any rules adopted should not interfere with existing pole attachment agreements.

The Board has retained the requirement that the pole owner notify the pole occupant in writing of any alleged violations of the Iowa Electrical Safety Code or provide notification by any other means agreed to between the pole owner and pole occupant. The Board has added language to address Mediacom's concerns about notification regarding multiple violations at the same time. The proposed provision concerning multiple violations allows the pole occupant additional time when the pole occupant receives notice of 25 or more violations at one time. The Board considered the suggestion to give advance notice of multiple violations; however, the Board determined that giving additional time accomplished the same goal without additional requirements.

The Board has retained the 30-day written response time for pole occupants to respond to notice of alleged violations, unless the pole occupant has received a list of 25 or more alleged violations, which would allow for a longer response time. The pole occupant must respond in writing unless the pole occupant has reached agreement with the pole owner for some other form of communication. The Board has retained the requirement that the response indicate a plan for corrective action, state that the violation has been corrected, assert that a violation belongs to a different pole occupant, or dispute that there is a violation. The Board has retained the requirement that the corrective action be taken within 90 days of receipt of the notice, unless the notice was for 25 or more alleged violations. For 25 or more alleged violations, the pole occupant will have 180 days to complete any corrective action. The time frames may be extended for good cause. The Board has included as good cause a disagreement that a violation has occurred, a claim that the correction is not possible within the time frames due to events beyond the control of the pole occupant, or a claim that a different pole occupant is responsible for the violation. The Board has also included a provision to the effect that the pole owner and pole occupant may agree to a longer period of time if necessary.

The Board has retained the dispute resolution provisions from the original proposed rules and has included language that both pole owners and pole occupants may use the dispute resolution procedures. The Board has limited the assessment of civil penalties to the provisions of Iowa Code section 476.51, as suggested by some of the commenters.

It was suggested in comments that an exception be established for aerial drops. The Board has not included such an exception in the proposed amendments. Any difference in notice requirements for aerial drops should be negotiated between the pole owner and the pole occupant.

The order approving this Notice of Intended Action can be found on the Board's Electronic Filing System (EFS) Web site, http://efs.iowa.gov, in Docket No. RMU-2012-0002.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before July 2, 2013. The statement should be filed electronically through the Board's EFS. Instructions for making an electronic filing can be found on the EFS Web site at http://efs.iowa.gov. Any person who does not have access to the Internet may file comments on paper pursuant to 199 IAC 14.4(5). An original and ten copies of paper comments must be filed. Both electronic and written filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author's name and address and make specific reference to this docket. All paper communications should be directed to the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069.

An opportunity for interested persons to present oral comments on the proposed amendments will be held at 8:30 a.m. on July 12, 2013, in the Board's hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the Board at (515)725-7334 at least five days in advance of the scheduled date to request that appropriate arrangements be made.

After analysis and review of this rule making, the Board tentatively concludes that the proposed amendments, if adopted, will have a beneficial effect on the safety and reliability of electric service in Iowa. Reliable electric service is a necessity for economic development, so the proposed amendments will have a beneficial effect on jobs in Iowa, although that effect cannot be quantified.

These amendments are intended to implement Iowa Code section 17A.4 and Iowa Code chapters 476 and 478.

The following amendments are proposed.

Amend rule 199—25.4(476,478) as follows:

199—25.4(476,478) Correction of problems found during inspections and pole attachment procedures.

25.4(1) Corrective action shall be taken within a reasonable period of time on all potentially hazardous conditions, instances of safety code noncompliance, maintenance needs, potential threats to safety and reliability, or other concerns identified during inspections. Hazardous conditions shall be corrected promptly. In addition to the general requirements stated in this subrule, pole attachments shall comply with the specific requirements and procedures established in subrule 25.4(2).

25.4(2) To ensure the safety of pole attachments to poles owned by utilities in Iowa, this subrule establishes requirements for attaching electric lines, communications lines, cable systems, video service lines, data lines, wireless antennae and other wireless facilities, or similar lines and facilities that are attached to the excess space on poles owned by utilities.

a. Definitions. The following definitions shall apply to this rule.

"Pole" means any pole owned by a utility that carries electric lines, communications lines, cable systems, video service lines, data service lines, wireless antennae or other wireless facilities, or similar lines and facilities.

"Pole attachment" means any electric line, communication circuit, cable system, video service line, data service line, antenna and other associated wireless equipment, or similar lines and facilities attached to a pole or other supporting structure subject to the safety jurisdiction of the board pursuant to the Iowa electrical safety code, 199—25.2(476,476A,478).

"Pole occupant" means any electric utility, telecommunications carrier, cable system provider, video service provider, data service provider, wireless service provider, or similar person or entity that constructs, operates, or maintains pole attachments as defined in this chapter.

"Pole owner" means a utility that owns poles subject to the safety jurisdiction of the board pursuant to the Iowa electrical safety code, 199—25.2(476,476A,478).

b. Compliance with Iowa electrical safety code. Pole attachments to poles shall be constructed, installed, operated, and maintained in compliance with the Iowa electrical safety code, 199—25.2(476,476A,478), and the requirements and procedures established in this subrule.

c. Requests for access to poles. A pole owner shall provide nondiscriminatory access to poles it owns. Request for access to poles by an electric utility, telecommunications carrier, cable system operator, video service provider, data service provider, wireless service provider, or similar person or entity shall be made in writing or by any method as may be agreed upon by the pole owner and the person or entity requesting access to the pole. If access is denied, the pole owner shall explain in detail the specific reason for denial and how the denial relates to reasons of lack of capacity, safety, reliability, or engineering standards.

d. Notification of violation. A pole owner shall notify in writing a pole occupant of an alleged violation of the Iowa electrical safety code by a pole attachment owned by the pole occupant, or may provide notice by another method as may be agreed upon by the parties to a pole attachment agreement. The notice shall include the address and pole location where the alleged violation occurred, a description of the alleged violation, and suggested corrective action.

e. Corrective action.

(1) Upon receipt of notification from a pole owner that the pole occupant has one or more pole attachments in violation of the Iowa electrical safety code, the pole occupant shall respond to the pole owner within 30 days, or 60 days if 25 or more alleged violations are received at one time, in writing or by another method as may be agreed upon by the pole occupant and the pole owner. The response shall provide a plan for corrective action, state that the violation has been corrected, indicate that the pole attachment is owned by a different pole occupant, or indicate that the pole occupant disputes that a violation has occurred. The violation shall be corrected within 90 days of the date notification is received,

or 180 days if 25 or more alleged violations are received by the pole occupant at one time, unless good cause is shown for any delay in taking corrective action. A disagreement that a violation has occurred, a claim that correction is not possible within the specific time frames due to events beyond the control of the pole occupant, or a claim that a different pole occupant is responsible for the alleged violation will be considered good cause to extend the time for taking corrective action. The pole occupant and pole owner may also agree to an extension of the time for taking corrective action. The pole owner and pole occupant shall cooperate in determining the cause of a violation and an efficient and cost-effective method of correcting a violation.

(2) If the violation could reasonably be expected to endanger life or property, the pole occupant shall take the necessary action to correct, disconnect, or isolate the problem immediately upon notification. If immediate corrective action is not taken by the pole occupant for a violation that could reasonably be expected to endanger life or property, the pole owner may take the necessary corrective action and the pole occupant shall reimburse the pole owner for the actual cost of any corrective measures. If the pole owner is later determined to have caused the violation and the pole occupant has taken corrective action, the pole owner shall reimburse the pole occupant for the actual cost of the corrective action. Disputes concerning the ownership of the pole attachment should be resolved as quickly as possible.

f. Negotiated resolution of disputes. Parties to disputes over alleged violations of the Iowa electrical safety code, the cause of a violation, the pole occupant responsible for the violation, the cost-effective corrective action, or any other dispute regarding the provisions of subrule 25.4(2) shall attempt to resolve disputes through good-faith negotiations. Parties may file an informal complaint with the board pursuant to 199—Chapter 6 as part of negotiations.

g. Complaints. Complaints concerning the requirements or procedures established in subrule 25.4(2), including access to the excess pole space or alleged violations of the Iowa electrical safety code, may be filed with the board by pole owners or pole occupants pursuant to the complaint procedures in 199—Chapter 6.

h. Persons found to have violated the provisions of subrule 25.4(2) may be subject to civil penalties pursuant to Iowa Code section 476.51 or to other action by the board.

ARC 0779C

ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]

Adopted and Filed

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

The amendments to Chapter 4 clarify the education, experience and reference requirements for licensure.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 20, 2013, as **ARC 0603C**. A public hearing was held on Wednesday, March 13, 2013, from 9 to 10 a.m. at the offices of the Professional Licensing Bureau, 1920 SE Hulsizer Road, Ankeny, Iowa. No comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Board on May 9, 2013.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

After analysis and review of this rule making, no adverse impact on jobs has been found. Although there should be no impact on jobs, the Board will continue to work with stakeholders to minimize any negative impact and maximize any positive impact towards jobs.

These amendments are intended to implement Iowa Code section 542B.2.

These amendments will become effective on July 17, 2013.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [4.1, 4.2] is being omitted. These amendments are identical to those published under Notice as **ARC 0603C**, IAB 2/20/13.

[Filed 5/15/13, effective 7/17/13]
[Published 6/12/13]
[For replacement pages for IAC, see IAC Supplement 6/12/13.]

ARC 0783C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission (Commission) hereby amends 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 adopt recent federal amendments to the PSD program related to greenhouse gas emissions. The amendments match federal regulations and streamline Iowa's PSD program by providing additional opportunities for plantwide applicability limitations (PALs) for greenhouse gases.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 20, 2013, as **ARC 0648C**, and a public hearing was held on April 23, 2013, in Windsor Heights, Iowa. The Department of Natural Resources (Department) received no comments at the public hearing and received no written comments by the April 23 public comment deadline. The Commission made no changes to these amendments from those published under Notice of Intended Action.

The Commission proposed in the preamble to the Notice of Intended Action that the final amendments would become effective immediately upon filing because of urgency expressed by stakeholders to expedite the rule making. However, an expedited filing is no longer necessary. Consequently, these amendments are Adopted and Filed, instead of Adopted and Filed Emergency After Notice, and the

amendments will become effective 35 days after publication in the Iowa Administrative Bulletin (July 17, 2013).

Background (PSD Program and PALs)

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 if it is subject to PSD requirements for greenhouse gases.

A PAL permit is a voluntary program that is available to qualifying facilities and that establishes plantwide emission limits on a pollutant-by-pollutant basis. If a facility can maintain its overall emissions of a particular pollutant below the PAL level, the facility can make changes at the facility without triggering PSD review.

Need for Rule Changes

The amendments implement recent changes that the U.S. Environmental Protection Agency (EPA) made to the federal PSD regulations. The federal amendments were published in the Federal Register on July 12, 2012, and became effective on August 13, 2012 (available at http://www.gpo.gov/fdsys/pkg/FR-2012-07-12/pdf/2012-16704.pdf). The amendments to state rules match the federal amendments and provide additional opportunities for new and existing facilities to apply for PALs for greenhouse gases.

The new PAL provisions offer maximum regulatory flexibility to affected facilities that choose to apply for PAL permits and that can maintain emissions of greenhouse gases below the PAL levels. Obtaining and complying with a PAL permit allows a facility to make changes without triggering PSD review. A PAL permit allows a facility to respond more rapidly to market conditions, while still generally ensuring that the environment is protected from adverse impacts from the changes.

A PAL permit may also result in environmental benefit by providing the public with knowledge of the long-term emissions from the facility because PAL permits require enhanced monitoring, record keeping, and reporting to demonstrate compliance. The Department anticipates that the reduced regulatory burden associated with the PAL permitting process will offset any costs of enhanced monitoring, record-keeping, and reporting requirements.

The Department has received an application for a PAL permit from one facility, the University of Iowa (U of I). U of I has requested a PAL permit or greenhouse gases under the new federal amendments. Other companies have also inquired about the availability of a PAL permit for greenhouse gases since the federal amendments became effective.

Consequences of Not Amending State Rules

Because Iowa has its own federally approved PSD program, the Department cannot issue a final PAL permit including the new greenhouse gas provisions until these provisions are adopted into state administrative rules. Without final rules, applicants would need to apply to the EPA to use the new PAL provisions. EPA would likely take significantly longer than the Department to issue a PAL permit.

Additionally, if the Commission did not adopt these amendments, state rules for PSD would continue to be inconsistent with federal regulations, and would also be more stringent than federal regulations, which is prohibited by statute (Iowa Code section 455B.133(4)).

Adopted Amendments

Item 1 amends the PSD program rules to revise the definition of "subject to regulation" in subrule 33.3(1). The amendment adds provisions specifying that greenhouse gases (GHGs) are not "subject to regulation" if the stationary source maintains its total sourcewide emissions below the GHG PAL level and meets all of the requirements for the PAL program and the requirements specified in a PAL permit. The amendment matches the changes the EPA made to federal regulations published on July 12, 2012 (see 40 Code of Federal Regulations (CFR) 52.21(b)(49)(i)). The GHG PAL level and PAL requirements are adopted by reference in rule 567—33.9(455B).

Item 2 amends rule 567—33.9(455B) to revise the adoption by reference of the federal PAL provision. The amendment adopts by reference the new PAL provisions for GHGs that EPA published on July 12, 2012 (see 40 CFR 52.21(aa)).

The amendments allow the Department to approve PALs and issue PAL permits for GHGs on either a mass basis or using the specified calculation for "tons per year carbon dioxide equivalent emissions (CO_2e)" basis, for any existing major stationary source or any existing GHG-only source.

The Department has determined after analysis and review that no adverse impact on jobs exists. The amendments reduce the regulatory burden on affected facilities and provide additional flexibility to facilities that choose to apply for a PAL permit. The amendments could have a positive impact on jobs in Iowa by increasing Department collaboration with job creators to reduce the regulatory burden and by providing additional flexibility for the regulated community, while still ensuring that Iowa's air quality is protected and maintained. The ability to respond more rapidly to market conditions facilitates economic growth and associated job creation.

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

These amendments will become effective on July 17, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule **33.3(1)**, definition of "Subject to regulation," as follows:

"Subject to regulation" means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally applicable regulation codified by the Administrator in 40 CFR Subchapter C (Air Programs) that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

1. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR §86.1818-12(a) (as amended ~~on May 7, 2010~~ through September 15, 2011) as the aggregate group of six greenhouse gases that includes carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs "4" and ~~"5."~~ "5," and shall not be subject to regulation if the stationary source maintains its total sourcewide emissions below the GHG PAL level, meets the requirements in rule 567—33.9(455B), and complies with the PAL permit containing the GHG PAL.

2. For purposes of paragraphs "3," "4," and "5," the term "tpy CO_2 equivalent emissions (CO_2e)" 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). 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_2e.

3. to 5. No change.

ITEM 2. Amend rule 567—33.9(455B) as follows:

567—33.9(455B) Plantwide applicability limitations (PALs). This rule provides an existing major source the option of establishing a plantwide applicability limitation (PAL) on emissions, provided the conditions in this rule are met. The provisions for a PAL as set forth in 40 CFR 52.21(aa) as

amended through ~~November 29, 2005~~ July 12, 2012, are adopted by reference, except that the term "Administrator" shall mean "the department of natural resources."

[Filed 5/22/13, effective 7/17/13]
[Published 6/12/13]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/12/13.

ARC 0777C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science hereby amends Chapter 31, "Licensure of Marital and Family Therapists and Mental Health Counselors," and Chapter 33, "Discipline for Marital and Family Therapists and Mental Health Counselors," Iowa Administrative Code.

These amendments clarify the amount of time a licensure application is active, update the supervised clinical experience requirements, remove outdated language for licensure by endorsement, and clarify that conviction of a crime includes when judgment of conviction or sentence was deferred.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 3, 2013, as **ARC 0679C**. A public hearing was held April 23, 2013, from 8 to 8:30 a.m. in the Fifth Floor Board Conference Room 526, Lucas State Office Building. No public comment was received on the proposed amendments. These amendments are identical to those published under Notice.

These amendments were adopted by the Iowa Board of Behavioral Science on May 14, 2013.

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

These amendments are intended to implement Iowa Code sections 147.3, 147.10, 147.55, 154D.2 and 154D.7.

These amendments will become effective on July 17, 2013.

The following amendments are adopted.

ITEM 1. Rescind subrule 31.2(10) and adopt the following **new** subrule in lieu thereof:

31.2(10) Submitting complete application materials. An application for a temporary or permanent license will be considered active for two years from the date the application is received. If the applicant does not submit all materials within this time period or if the applicant does not meet the requirements for the license, the application shall be considered incomplete. An applicant whose application is filed incomplete must submit a new application, supporting materials, and the application fee. The board shall destroy incomplete applications after two years.

ITEM 2. Rescind subrule 31.5(1) and adopt the following **new** subrule in lieu thereof:

31.5(1) The supervised clinical experience shall:

a. Be a minimum of two years or the equivalent of full-time, postgraduate supervised professional work experience in marital and family therapy.

b. Be completed following completion of the practicum, internship, and all graduate coursework, with the exception of the thesis.

c. Include successful completion of at least 3,000 hours of marital and family therapy that shall include at least 1,500 hours of direct client contact and 200 hours of clinical supervision. Applicants who entered a program of study prior to July 1, 2010, shall include successful completion of 200 hours of clinical supervision concurrent with 1,000 hours of marital and family therapy conducted in person with couples, families and individuals.

d. Include a minimum of 25 percent of all clinical supervision in person. Up to 75 percent of all supervision may be completed by electronic means with no more than 50 percent completed by telephone. Supervision by electronic means is acceptable if:

(1) The first two meetings are face-to-face and in person; and

(2) The system utilized is a confidential, interactive, secure, real-time system that provides for visual and audio interaction between the licensee and the supervisor.

e. Include in the 200 hours of clinical supervision at least 100 hours of individual supervision.

f. Follow and maintain a plan throughout the supervisory period established by the supervisor and the licensee. Such a plan must be kept by the licensee for a period of five years following receipt of the permanent license and must be submitted to the board upon request. The plan for supervision shall include:

(1) The name, license number, date of licensure, address, telephone number, and e-mail address (when available) of the supervisor;

(2) The name, license number, address, telephone number, and e-mail address (when available) of supervisee;

(3) Employment setting in which experience will occur;

(4) The nature, duration and frequency of supervision;

(5) The number of hours of supervision per month;

(6) The supervisor/licensees type (individual/group) and mode (face-to-face/electronic) of supervision;

(7) The methodology for secure transmission of case information;

(8) The beginning date of supervised professional practice and estimated date of completion;

(9) The goals and objectives for the supervised professional practice; and

(10) The signatures of the supervisor and licensee, and the dates of signatures.

g. Have only supervised clinical contact credited for this requirement.

ITEM 3. Rescind subrule 31.7(1) and adopt the following **new** subrule in lieu thereof:

31.7(1) The supervised clinical experience shall:

a. Be a minimum of two years or the equivalent of full-time, postgraduate supervised professional work experience in mental health counseling.

b. Be completed following completion of the practicum, internship, and all graduate coursework, with the exception of the thesis.

c. Include successful completion of at least 3,000 hours of mental health counseling that shall include at least 1,500 hours of direct client contact and 200 hours of clinical supervision. Applicants who entered a program of study prior to July 1, 2010, shall include successful completion of 200 hours of clinical supervision concurrent with 1,000 hours of mental health counseling conducted in person with couples, families and individuals.

d. Include a minimum of 25 percent of all clinical supervision in person. Up to 75 percent of all supervision may be completed by electronic means with no more than 50 percent completed by telephone. Supervision by electronic means is acceptable if:

(1) The first two meetings are face-to-face and in person; and

(2) The system utilized is a confidential, interactive, secure, real-time system that provides for visual and audio interaction between the licensee and the supervisor.

e. Include in the 200 hours of clinical supervision at least 100 hours of individual supervision.

f. Follow and maintain a plan throughout the supervisory period established by the supervisor and the licensee. Such a plan must be kept by the licensee for a period of five years following receipt of the permanent license and must be submitted to the board upon request. The plan for supervision shall include:

(1) The name, license number, date of licensure, address, telephone number, and e-mail address (when available) of the supervisor;

(2) The name, license number, address, telephone number, and e-mail address (when available) of supervisee;

(3) Employment setting in which experience will occur;

(4) The nature, duration and frequency of supervision;

(5) The number of hours of supervision per month;

(6) The supervisor/licensees type (individual/group) and mode (face-to-face/electronic) of supervision;

(7) The methodology for secure transmission of case information;

(8) The beginning date of supervised professional practice and estimated date of completion;

(9) The goals and objectives for the supervised professional practice; and

(10) The signatures of the supervisor and licensee, and the dates of signatures.

g. Have only supervised clinical contact credited for this requirement.

ITEM 4. Amend subparagraph **31.7(2)"b"(3)** as follows:

(3) May be an alternate supervisor who possesses qualifications equivalent to a licensed mental health counselor with at least three years of postlicensure clinical experience, including mental health professionals licensed ~~pursuant to Iowa Code chapter 147~~ to practice independently; and

ITEM 5. Rescind numbered paragraph **"7"** in rule **645—31.8(154D)**.

ITEM 6. Amend subparagraph **31.16(3)"a"(2)** as follows:

(2) Verification of completion of 40 hours of continuing education obtained within the two years ~~of~~ immediately preceding the application for reactivation.

ITEM 7. Amend subparagraph **31.16(3)"b"(2)** as follows:

(2) Verification of completion of 80 hours of continuing education obtained within the two years ~~of~~ immediately preceding the application for reactivation.

ITEM 8. Amend subrule 33.2(12) as follows:

33.2(12) Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within the profession, regardless of whether the judgment of conviction or sentence was deferred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

[Filed 5/14/13, effective 7/17/13]
[Published 6/12/13]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/12/13.

ARC 0778C

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Iowa Department of Transportation, on May 14, 2013, adopted amendments to Chapter 401, "Special Registration Plates," and Chapter 425, "Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the April 3, 2013, Iowa Administrative Bulletin as **ARC 0658C**.

Items 1 and 2 allow qualified firefighters and members of an emergency medical services agency who are current plate holders of a firefighter plate or an emergency medical services plate the ability to apply for reissuance of the previously assigned plate number during a plate replacement or if the plate is lost, damaged or stolen. Item 3 makes a change to the definition of "principal place of business" to state that the business must be within the state of Iowa. Item 4 allows a Department representative, not just a Department investigator, to physically inspect an applicant's principal place of business when the applicant is applying for a motor vehicle dealer's license if the Department decides that an inspection is required.

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.

These amendments are identical to those published under Notice of Intended Action.

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

These amendments are intended to implement Iowa Code sections 321.34, 322.2(15) and 322C.2(8).

These amendments will become effective July 17, 2013.

Rule-making actions:

ITEM 1. Amend subrule 401.9(4) as follows:

401.9(4) *Plates.* Firefighter plates are limited to five characters. Personalized plates are not available. When a new series of firefighter plates is issued to replace a current series or the plate has been lost, stolen, or damaged, an applicant may obtain replacement plates containing the applicant's previous plate number upon payment of the statutory fee.

ITEM 2. Amend subrule 401.10(3) as follows:

401.10(3) EMS plates are limited to five characters. Personalized plates are not available. When a new series of EMS plates is issued to replace a current series or the plate has been lost, stolen, or damaged, an applicant may obtain replacement plates containing the applicant's previous plate number upon payment of the statutory fee.

ITEM 3. Amend rule **761—425.3(322)**, definition of "Principal place of business," as follows:

"Principal place of business" means a building actually occupied where the public and the department may contact the owner or operator during regular business hours. In lieu of a building, a travel trailer dealer may use a manufactured or mobile home as an office if taxes are current or a travel trailer as an office if registration fees are current. The principal place of business must be located in this state.

ITEM 4. Amend subrule 425.12(1) as follows:

425.12(1) *Verification of compliance.* Before a motor vehicle dealer's license is issued, ~~an investigator from~~ a representative of the department ~~shall~~ may physically inspect an applicant's principal place of business to verify compliance with this rule.

[Filed 5/15/13, effective 7/17/13]
[Published 6/12/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/12/13.

ARC 0781C

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code sections 17A.4 and 476.2, the Utilities Board (Board) gives notice that on May 24, 2013, the Board issued an order in Docket No. RMU-2012-0002, In re: Pole Attachments Rule Making [199 IAC Chapter 27] and Amendment to 199 IAC 15.5(2), "Order Adopting Amendment to 199 IAC 15.5(2) and Giving Notice of Proposed Amendments to 199 IAC 25.4." Notice of Intended Action was published in IAB Vol. XXXV, No. 10 (11/14/12), p. 860, as **ARC 0455C**. The Board is adopting the amendment to 199 IAC 15.5(2) that corrects an error to a citation in the subrule.

Item 2 in the Notice of Intended Action included proposed rules that asserted Board jurisdiction over the rates, terms, and conditions of pole attachments on poles owned by electric and telecommunications utilities. The proposed rules related to pole attachments were designed to comply with the Federal Communications Commission (FCC) regulations at 47 CFR § 1.1401 et seq., so that the Board could certify that it had asserted jurisdiction over the pole attachments of communications entities on the poles owned by electric and telecommunications utilities. Based upon comments from participants in the rule making, the Board has determined that adoption of the proposed rules will not be the most efficient approach to accomplish the goal of establishing procedures and time frames to ensure the safety of pole attachments.

Initial written comments were filed by CTIA-The Wireless Association® (CTIA), Cox Iowa Telecom, LLC (Cox), the Iowa Association of Electric Cooperatives (IAEC), Sprint Communications Company L.P., Sprint Spectrum L.P. d/b/a Sprint PCS, Nextel West Corp. d/b/a Nextel, and NPCR, Inc. d/b/a Nextel Partners (collectively, Sprint), Frontier Communications of Iowa, LLC (Frontier), Qwest Corporation d/b/a CenturyLink QC (CenturyLink), the Iowa Utility Association (IUA), and Mediacom Communications Corporation (Mediacom).

The Board held an oral presentation to allow for comments regarding the proposed rules and to allow the Board to ask questions of the participants. The Board allowed participants to file additional written comments after the oral presentation. Additional comments were filed by IUA, Frontier, the Consumer Advocate Division of the Department of Justice, CenturyLink, CTIA, Cox, and Mediacom.

After consideration of the comments, the Board has determined that it will not adopt the proposed rules concerning pole attachments but will instead publish a new Notice that proposes amendments to 199 IAC 25.4(476,478) limited to establishing notice, corrective action, and complaint procedures related to pole attachments that violate the Iowa Electrical Safety Code (see **ARC 0784C** herein). The Board's decision and a discussion of the new proposed amendments to 199 IAC 25.4(476,478) can be found in the "Order Adopting Amendment to 199 IAC 15.5(2) and Giving Notice of Proposed Amendments to 199 IAC 25.4," which is accessible through the Board's electronic filing system (EFS) at the EFS Web site at http://efs.iowa.gov.

The amendment adopted in this rule making will have no impact on jobs.

This amendment is intended to implement Iowa Code sections 17A.4 and 476.2.

This amendment will become effective July 17, 2013.

The following amendment is adopted.

Amend subrule 15.5(2) as follows:

15.5(2) *Relationship to avoided costs.* For purposes of this subrule, "new capacity" means any purchase from capacity of a qualifying facility, construction of which was commenced on or after November 9, 1978.

A rate for purchases satisfies the requirements of this rule if the rate equals the avoided costs determined after consideration of the factors set forth in ~~rule 15.6(476)~~ subrule 15.5(6); except that a rate for purchases other than from new capacity may be less than the avoided cost if the board determines that a lower rate is consistent with subrule 15.5(1) and is sufficient to encourage cogeneration and small power production.

Unless the qualifying facility and the utility agree otherwise, rates for purchases shall conform to the requirements of this rule regardless of whether the electric utility making purchases is simultaneously making sales to the qualifying facility.

In the case in which the rates for purchases are based upon estimates of avoided costs over the specific term of the contract or other legally enforceable obligation, the rates for purchases do not violate this rule if the rates for the purchases differ from avoided costs at the time of delivery.

[Filed 5/20/13, effective 7/17/13]

[Published 6/12/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/12/13.

FEMA-4114-DR-IA

The Department of Homeland Security, Federal Emergency Management Agency (FEMA) hereby gives notice to the public of its intent to reimburse State and local governments and agencies, and eligible private, non-profit organizations for eligible costs incurred to repair and/or replace facilities damaged by snowstorms occurring from April 9-11, 2013. This notice applies to the Public Assistance (PA) and Hazard Mitigation Grant (HMGP) programs implemented under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 USC §§ 5121-5206, as amended.

Under a major disaster declaration (FEMA-4114-DR-IA) signed by the President on May 6, 2013, the following counties in the State of Iowa have been designated adversely affected by the disaster and are eligible for PA only: Dickinson, Lyon, O'Brien, Osceola, and Sioux Counties. Direct federal assistance is authorized. All counties in the State of Iowa are eligible for HMGP.

There are no Counties declared for Individual Assistance.

This public notice concerns public assistance activities that may affect historic properties, activities that are located in or affect wetland areas or the 100-Year Floodplain (areas determined to have a one percent probability of flooding in any given year), and critical actions within the 500-Year Floodplain. Such activities may adversely affect the historic property, floodplain or wetland, or may result in continuing vulnerability to flood damage.

Such activities may include restoring facilities located in a floodplain with eligible damage to pre-disaster condition. Examples of such activities include, but are not limited to, the following:

1. Non-emergency debris removal and disposal;
2. Non-emergency protective measures;
3. Repair/replacement of roads, including streets, culverts, and bridges;
4. Repair/replacement of public dams, reservoirs and channels;
5. Repair/replacement of public buildings and related equipment;
6. Repair/replacement of public water control facilities, pipes and distribution systems;
7. Repair/replacement of public utilities, including sewage treatment plants, sewers and electrical power distribution systems; and
8. Repair/replacement of eligible private, non-profit facilities (hospitals, educational centers, emergency and custodial care services, etc.).

The President's Executive Order 11988, Floodplain Management, and Executive Order 11990, Protection of Wetlands, requires that all Federal actions in or affecting the 100-Year Floodplain or wetland areas be reviewed for opportunities to move the facility out of the floodplain or wetland and to reduce the risk of future damage or loss from flooding and minimize harms to wetlands. However, FEMA has determined that in certain situations, there are no alternatives to restoring an eligible facility located in the floodplain to its pre-disaster condition. These situations meet all of the following criteria:

1. The FEMA estimated cost of repairs is less than 50 percent of the estimated cost to replace the facility and the replacement cost of the facility is less than $100,000.
2. The facility is not located in a floodway or coastal high hazard area.
3. The facility has not sustained structural damage in a previous presidentially declared flood disaster or emergency.
4. The facility is not defined as critical (e.g., hospital, generating plant, contains dangerous materials, emergency operation center, etc.).

FEMA will provide assistance to restore the facilities described above to their pre-disaster condition except when measures to mitigate the effects of future flooding may be incorporated into the restoration work. For example, insufficient waterway openings under culverts and bridges may cause water backup to wash out the structures. The water backup could wash out the facility and could damage other facilities in the area. Increasing the size of the waterway opening would mitigate, or lessen, the potential for this damage. Additional examples of mitigation measures include providing erosion protection at bridge abutments or levees and extending entrance tubes on sewage lift stations.

Disaster assistance projects to restore facilities, which do not meet the criteria listed above, must undergo a detailed review. The review will include a study to determine if the facility can be moved out of the floodplain. The public is invited to participate in the review. The public may identify alternatives for restoring the facility and may participate in analyzing the impact of the alternatives on the facility and the floodplain. An address and phone number for obtaining information about specific assistance projects is provided at the end of this Notice. The final determination regarding the restoration of these facilities in a floodplain will be announced in future Public Notices.

Due to the urgent need for and/or use of the certain facilities in a floodplain, actions to restore the facility may have started before the Federal inspector visits the site. Some of these facilities may meet the criteria for a detailed review to determine if they should be relocated. Generally, facilities may be restored in their original location where at least one of the following conditions applies:

1. The facility, such as a flood control device or bridge, is functionally dependent on its floodplain location.
2. The facilities, such as a park or other open-use space, already represent sound floodplain management and, therefore, there is no need to change it.
3. The facility, such as a road or a utility, is an integral part of a larger network that could not be relocated economically.
4. Emergency action is needed to address a threat to public health and safety.

The effects of not relocating the facilities will be examined. In each case, the examination must show an overriding public need for the facility at its original location that clearly outweighed the requirements in the Executive Order to relocate the facility out of the floodplain. FEMA will also consult State and local officials to make certain that no actions taken will violate either State or local floodplain protection standards. The restoration of these facilities may also incorporate certain measures designed to mitigate the effects of future flooding. This will be the only Notice to the public concerning these facilities.

The National Historic Preservation Act requires federal agencies to take into account the effects of their undertakings on historic properties. Those actions or activities affecting buildings, structures, districts or objects 50 years or older or that affect archeological sites or undisturbed ground will require further review to determine if the property is eligible for listing in the National Register of Historic Places (Register). If the property is determined to be eligible for the Register, and FEMA's undertaking will adversely affect it, FEMA will provide additional public notices. For historic properties not adversely affected by FEMA's undertaking, this will be the only public notice.

FEMA also intends to provide Hazard Mitigation Grant Program (HMGP) funding under Section 404 of the Stafford Act to the State of Iowa for the purposes of mitigating future disaster damages. Hazard mitigation projects may involve the construction of a new facility (e.g., retention pond, or debris dam), modification of an existing undamaged facility (e.g., improving waterway openings of bridges or culverts), and the relocation of facilities out of the floodplain. Subsequent Notices will provide more specific information as project proposals are developed.

Information about assistance projects may be obtained by submitting a written request to the Regional Director, DHS-FEMA Region VII, 9221 Ward Parkway, Suite 300, Kansas City, MO 64114-3372. The information may also be obtained by calling: (816)283-7060, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday. Comments should be sent in writing to the Regional Director, at the above address, within 15 days of the date of publication of this notice.