



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

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 2014

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
25	Wednesday, May 21, 2014	June 11, 2014
26	Friday, June 6, 2014	June 25, 2014
1	Friday, June 20, 2014	July 9, 2014

**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\*\*\***

**ACCOUNTANCY EXAMINING BOARD[193A]**

Update of board address, 2.1(3) IAB 4/30/14 <b>ARC 1439C</b>	Bureau Offices, Suite 350 200 E. Grand Ave. Des Moines, Iowa	May 22, 2014 9 a.m.
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**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Restricted use pesticide classifications, 45.30 IAB 4/30/14 <b>ARC 1452C</b>	Second Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	May 20, 2014 2 p.m.
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**ENGINEERING AND LAND SURVEYING EXAMINING BOARD[193C]**

Unethical or illegal conduct—business practices, 8.2(6)“a” IAB 4/30/14 <b>ARC 1441C</b>	Bureau Offices, Suite 350 200 E. Grand Ave. Des Moines, Iowa	May 22, 2014 9 a.m.
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**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Best management practices for grain vacuuming at small grain elevators; federal air toxics standards for chemical manufacturing plants and prepared feeds manufacturing, 22.10(3)“a,” 23.1(4) IAB 5/14/14 <b>ARC 1458C</b>	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Windsor Heights, Iowa	June 16, 2014 1 p.m.
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**HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]**

Enhanced 911 telephone systems; department organization, amendments to ch 10 IAB 5/14/14 <b>ARC 1463C</b>	Homeland Security Conference Room Building W-4, Camp Dodge 7105 NW 70th Ave. Johnston, Iowa	June 3, 2014 1 p.m.
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**IOWA FINANCE AUTHORITY[265]**

Shelter assistance fund, 41.1 to 41.12 IAB 5/14/14 <b>ARC 1459C</b>	Authority Offices 2015 Grand Ave. Des Moines, Iowa	June 3, 2014 10 a.m. to 12 noon
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**LABOR SERVICES DIVISION[875]**

Federal occupational safety and health standards for mechanical power presses—adoption by reference, 10.20 IAB 4/30/14 <b>ARC 1440C</b>	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	May 21, 2014 9 a.m. (If requested)
Federal occupational safety and health standards—adoption by reference, 10.20, 26.1 IAB 5/14/14 <b>ARC 1461C</b>	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	June 4, 2014 9 a.m. (If requested)

**NATURAL RESOURCE COMMISSION[571]**

Waterfowl and coot hunting seasons; special September teal season, 91.1, 91.3, 91.6 IAB 4/30/14 <b>ARC 1450C</b>	Conference Room, Fourth Floor Wallace State Office Bldg. Des Moines, Iowa	May 20, 2014 1 p.m.
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**STATE PUBLIC DEFENDER[493]**

Claims for services, amendments to chs 1, 4, 7, 12 to 14 IAB 4/30/14 <b>ARC 1437C</b>	Conference Room 424, Fourth Floor Lucas State Office Bldg. Des Moines, Iowa	May 20, 2014 2:30 p.m.
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Attorney qualifications; contracts, 11.2, 11.3, 11.4(1), 11.5 to 11.8, 11.11(1) IAB 4/30/14 <b>ARC 1438C</b>	Conference Room 424, Fourth Floor Lucas State Office Bldg. Des Moines, Iowa	May 20, 2014 1:30 p.m.
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**TRANSPORTATION DEPARTMENT[761]**

Keep Iowa beautiful program, rescind ch 122 IAB 4/30/14 <b>ARC 1449C</b>	First Floor South Conference Room DOT Administration Bldg. 800 Lincoln Way Ames, Iowa	May 22, 2014 10 a.m. (If requested)
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The following list will be updated as changes occur.

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

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

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

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## Flood Mitigation Assistance (FMA) 2014

AGENCY	PROGRAM	ELIGIBLE APPLICANTS	TYPES OF PROJECT
Iowa Homeland Security and Emergency Management Department (HSEMD)	Flood Mitigation Assistance Competitive Grant (FMA) for Fiscal Year (FY) 2014 authorized by the National Flood Insurance Reform Act of 1994, Title V, Sections 553 & 554, Public Law 103-325 U.S.C. 515a., to reduce the number of repetitive loss claims against the NFIP.	<ul style="list-style-type: none"> <li>• State Agencies and Local Governments</li> <li>• Federally recognized Indian Tribal governments, to include state recognized Indian Tribes, and Authorized Tribal Organizations.</li> <li>• Private non-profit organizations are not eligible to apply as sub-applicants; however, they may request a local government to submit an application for their proposed activity on their behalf.</li> <li>• 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.</li> <li>• All Applicants for a project grant MUST have a FEMA approved local hazard mitigation plan.</li> </ul> <p>To learn more about the FMA program, use the following link on HSEMD's website: <a href="http://www.fema.gov/hazard-mitigation-assistance">http://www.fema.gov/hazard-mitigation-assistance</a></p> <p>Applicants must complete an application through the Electronic Grant (e-Grants) System. <b>Applications must be submitted for State review via e-grants by July 7, 2014.</b> To learn more about the e-grant system use the following link on HSEMD's website: <a href="http://www.iowahomelandsecurity.org/grants/HMA.html">http://www.iowahomelandsecurity.org/grants/HMA.html</a></p> <p><b>For additional information, please contact:</b></p> <p style="text-align: center;"><b>Dennis Harper 515-725-9348</b> <b>Dan Schmitz 515-725-9369</b></p> <p style="text-align: center;"><b>Iowa Homeland Security and Emergency Management Department</b> <b>7900 Hickman Road; Suite 500</b> <b>Windsor Heights, IA 50324</b></p>	<p><b>Eligible Project Activities</b></p> <p>Mitigation projects must focus on natural hazards. Examples include (but not limited to):</p> <ul style="list-style-type: none"> <li>• Mitigation Planning consistent with 44 CFR Part 201 (only for flood hazards)</li> <li>• Property Acquisition and Structural Demolition and Relocation (for NFIP insured properties)</li> <li>• Structural Elevation (for NFIP insured properties)</li> <li>• Dry Flood Proofing (for NFIP insured properties)</li> <li>• Minor Localized Flood Reduction Projects (should benefit NFIP insured properties)</li> <li>• Non-structural Retrofitting of Existing Buildings and Facilities (for NFIP insured properties)</li> <li>• Mitigation Reconstruction (for NFIP insured properties)</li> </ul>

## Pre-Disaster Mitigation (PDM) 2014

AGENCY	PROGRAM	ELIGIBLE APPLICANTS	TYPES OF PROJECT
Iowa Homeland Security and Emergency Management Department (HSEMD)	<p>Pre-Disaster Mitigation Competitive and Grant for Fiscal Year (FY) 2014 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).</p> <p>The PDM program seeks to reduce damages and the loss of life and property from natural hazards through the development and implementation of mitigation actions.</p>	<ul style="list-style-type: none"> <li>• State Agencies and Local Governments</li> <li>• Federally recognized Indian Tribal governments, to include state recognized Indian Tribes, and Authorized Tribal Organizations.</li> <li>• Private non-profit organizations are not eligible to apply as sub-applicants; however, they may request a local government to submit an application for their proposed activity on their behalf.</li> <li>• 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.</li> <li>• All Applicants for a project grant MUST have a FEMA-approved local hazard mitigation plan.</li> </ul> <p>To learn more about the PDM program, use the following link on HSEMD's website: <a href="http://www.fema.gov/hazard-mitigation-assistance">http://www.fema.gov/hazard-mitigation-assistance</a></p> <p>Applicants must complete an application through the Electronic Grant (e-Grants) System. <b>Applications must be submitted for State review via e-grants by July 7, 2014.</b> To learn more about the e-grant system, use the following link on HSEMD's website: <a href="http://www.iowahomelandsecurity.org/grants/HMA.html">http://www.iowahomelandsecurity.org/grants/HMA.html</a></p> <p><b>For additional information, please contact:</b></p> <p><b>Dennis Harper 515-725-9348</b> <b>Dan Schmitz 515-725-9369</b></p> <p><b>Iowa Homeland Security and Emergency Management Department</b> <b>7900 Hickman Road; Suite 500</b> <b>Windsor Heights, IA 50324</b></p> <p><b>TECHNICAL ASSISTANCE HELPDESK:</b> Phone: (866) 222-3580 (toll free) E-mail: <a href="mailto:enghelpline@dhs.gov">enghelpline@dhs.gov</a> <a href="mailto:bchelpline@dhs.gov">bchelpline@dhs.gov</a> <a href="mailto:ehhelpline@dhs.gov">ehhelpline@dhs.gov</a></p>	<p><b>Eligible Project Activities</b></p> <p>Mitigation projects must focus on natural hazards. Examples include (but not limited to):</p> <ul style="list-style-type: none"> <li>• Acquisition or relocation of hazard-prone property for conversion to open space in perpetuity;</li> <li>• Construction of safe rooms (tornado and severe wind shelters);</li> <li>• Structural and non-structural retrofitting (e.g., storm shutters, hurricane clips, bracing systems) of existing structures to meet or exceed applicable building codes relative to hazard mitigation;</li> <li>• Hydrologic and hydraulic studies/analyses, engineering studies, and drainage studies for the purpose of project design and feasibility in conjunction with a project;</li> <li>• Protective measures for utilities; water and sanitary sewer systems and/or infrastructure;</li> <li>• Storm water management projects (e.g., culverts, floodgates, retention basins) to reduce or eliminate long-term risk from flood hazards; and</li> <li>• 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.</li> </ul> <p><b>Planning Application</b></p> <p>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.</p> <p><b>PROJECT TECHNICAL ASSISTANCE:</b></p> <p>Technical assistance for Engineering Feasibility, Benefit-Cost Analysis and Environmental/Historic Preservation compliance is available through FEMA.</p>

**ARC 1458C**

**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 23, “Emission Standards for Contaminants,” Iowa Administrative Code.

First, the Commission proposes in this rule making to establish in Chapter 22 best management practices (BMPs) for grain vacuuming operations at small grain elevators. The BMPs include practical activities that owners and operators may use at grain elevators to minimize dust and possible air quality impacts resulting from vacuuming grain out of storage structures. The BMPs were developed through a stakeholder workgroup that was jointly organized by the Department of Natural Resources (Department) and Agribusiness Association of Iowa (AAI) and that included grain elevator operators and grain vacuum (grain vac) vendors.

Second, the Commission proposes changes to Chapter 23 to adopt by reference federal air toxics standards for chemical manufacturing plants and for prepared feeds manufacturing (also known as National Emission Standards for Hazardous Air Pollutants, or NESHAP).

The Commission had originally adopted these standards by reference in 2010. However, Executive Order (EO) 72 rescinded the adoption of these standards concurrent with the rescission of the RICE NESHAP. EO 72 stated that the RICE NESHAP was too costly for small utilities that maintain and operate rarely used emergency engines, and the RICE NESHAP requirements could increase electricity rates for consumers. In response to the concerns from Governor Branstad as expressed in EO 72 and concerns from other stakeholders, the U.S. Environmental Protection Agency (EPA) agreed to reconsider the RICE NESHAP. Consequently, EPA updated the RICE NESHAP to provide more circumstances for emergency engines and for engines that participate in electricity management programs to operate under nonemergency conditions. The Commission adopted the updated RICE NESHAP in a previous rule making (see **ARC 1014C**, IAB 9/16/13).

Subsequent to EO 72, EPA updated the NESHAPs proposed for adoption in this rule making. The revised NESHAPs generally provide regulatory relief and clarify the previous requirements. The Commission is proposing to adopt these NESHAPs. Upon adoption of the NESHAPs, the Department rather than EPA will implement and enforce these regulations in Iowa, allowing the Department to provide compliance assistance and outreach to affected facilities as soon as possible.

**Item 1** amends subparagraph 22.10(3)“a”(2) to revise the BMPs for grain elevators currently adopted by reference. The BMPs for grain elevators are designed to reduce emissions of particulate matter that is less than 10 microns in diameter (PM<sub>10</sub>), especially dust that crosses the property line and that may adversely affect air quality at nearby businesses or residences. The BMP document includes both facilitywide and equipment-specific practices that apply to both new and existing equipment. The proposed amendment will add to the current BMP document a list of management practices for grain vacuuming operations at grain storage bins. The proposed management practices were developed and recommended by a stakeholder workgroup jointly coordinated by the Department and AAI. The proposed changes to the BMP document are available from the Department, upon request, and at the Department’s Web site at <http://www.iowadnr.gov/InsideDNR/RegulatoryAir/StakeholderInvolvement.aspx> (under the Public Input section).

**Background**

In 2007, the Department worked with AAI and other stakeholders to develop flexible groupings for grain elevators. This collaboration resulted in rules that allowed over 800 owners and operators of small

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

grain elevators (classified as “Group 1” elevators) to complete a one-page registration form rather than apply for an air construction permit. Additionally, the adopted rules (published in the 2/13/08 IAB as **ARC 6599B**) established the BMPs for small grain elevators.

Prior to 2008, most grain facilities used sweep augers to extract the remaining grain from the bottom of storage bins. Beginning in late 2009, the U.S. Occupational Safety and Health Administration (OSHA) sent letters to grain elevators stating that operators could not be inside a grain bin while an unguarded sweep auger operated inside the bin. As a result of the OSHA letters, more facilities use grain vacuuming to remove the remaining grain from storage bins.

With the wider use of grain vacuuming operations, the Department’s field offices started receiving dust complaints from residences and businesses located near grain elevators using grain vacs. The Department became concerned about PM<sub>10</sub> emissions and dust from increased use of grain vac operations. The Department subsequently partnered with AAI to convene a stakeholder workgroup to develop solutions that address complaints and ensure compliance with air quality regulations. The proposed amendment is the result of this collaborative effort.

**Stakeholder Involvement**

The Grain Vac Workgroup convened in August 2011. The workgroup consisted of ten participants in addition to representatives from AAI, the Department and the Iowa Department of Agriculture and Land Stewardship. The facility and business participants included representatives from grain elevators and grain vac vendors. The workgroup met two times between August 2011 and June 2012. In addition, the Department conducted three onsite visits to observe grain vac operations.

The proposed amendment revises the document, “Best Management Practices for Grain Elevators (December 2007),” adopted by reference in subparagraph 22.10(3)“a”(2). The revisions incorporate management practices for grain vac operations. The BMPs for grain vac operations will become applicable on the effective date of the adopted amendment.

**Affected Facilities**

The proposed amendment will revise the current BMPs for “Group 1” grain elevators and provide the option to include revised BMPs in the permits for new or modified “Group 2” grain elevators.

Group 1 grain elevators are specifically defined as facilities with PM<sub>10</sub> emissions less than 15 tons per year (567—22.10(455B)). Group 1 elevators are typically smaller grain elevators and are often “country grain elevators” that receive 50 percent or more of their grain from nearby farmers during harvest season. The owner or operator of a Group 1 elevator may use the BMP document and the streamlined registration process provided in rule 567—22.10(455B) rather than applying for an air construction permit.

Group 2 grain elevators have potential PM<sub>10</sub> emissions between 15 and 50 tons per year. In lieu of using the regular construction permit process, an owner or operator of a Group 2 elevator may complete a shorter application form specific to Group 2 elevators. The facility will receive a Group 2 permit that allows the facility to make certain changes without having to modify the permit. The BMPs included in the Group 2 permit are identical to the BMP document for Group 1 facilities. The amendment will affect only new or modified Group 2 facilities that apply for a new or revised Group 2 permit.

The proposed amendment adds BMPs specific to grain vac operations to the current BMP document. Grain elevators that are not classified as Group 1 or Group 2 elevators are not covered by the proposed amendments. Grain elevators classified as Group 3 or Group 4 in rule 567—22.10(455B), as well as other grain elevators not covered by rule 567—22.10(455B), must obtain air construction permits. Construction permits include requirements specific to the facility, and may require BMPs similar to those in the BMPs for Group 1 or Group 2 facilities.

**Item 2** amends the introductory paragraph of subrule 23.1(4) to reflect the most current amendment date to 40 Code of Federal Regulations (CFR) Part 63 adopted by reference in Chapter 23. The revised date reflects the amendments described below in Item 3 and Item 4.

**Item 3** amends paragraph 23.1(4)“ev” to adopt the federal NESHAP for Chemical Manufacturing at Area Sources (40 CFR Part 63, Subpart VVVVVV). The Commission originally adopted this NESHAP by reference in 2010. However, EO 72 rescinded the adoption of this standard concurrent with the rescission of the RICE NESHAP. Subsequent to EO 72, the EPA revised this NESHAP to provide clarity

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

and regulatory relief to stakeholders. The Commission is now proposing to adopt this standard for chemical manufacturing facilities.

**Background**

In October 2009, EPA finalized the NESHAP for Chemical Manufacturing at Area Sources (Subpart VVVVVV, hereafter referred to as the “6V NESHAP”). The final 6V NESHAP appeared to include ethanol production facilities, but the standards were unclear on several points. In January 2012, EPA agreed to reconsider portions of the 6V NESHAP. On December 21, 2012, EPA issued final amendments to the 6V NESHAP and extended the compliance date until March 2013. With the assistance of the Iowa Renewable Fuels Association (IRFA), the Department determined that current dry-mill corn ethanol production facilities in Iowa are not subject to the 6V NESHAP. At this time, the Department has identified a small number of other chemical manufacturing facilities subject to the 6V NESHAP.

**Stakeholder Involvement**

Since EPA issued the original 6V NESHAP in October 2009, the Department has worked with IRFA to discuss outstanding applicability issues concerning the federal regulations. The Department met with IRFA to discuss EPA’s revised standards (issued on December 21, 2012) and the potential implications for ethanol production facilities in Iowa. IRFA agreed to work with its members and its national association to gather data on emissions from ethanol production that could potentially trigger 6V NESHAP applicability. Based on the data and analysis that IRFA provided to the Department in May and June 2013, the Department concurred with IRFA that current dry-mill corn ethanol production facilities in Iowa are not subject to the 6V NESHAP.

**Affected Facilities**

Based on information and analysis compiled by IRFA, the Department has determined that dry-mill corn ethanol production facilities in Iowa are not subject to the 6V NESHAP, and therefore would not have regulatory costs associated with the 6V NESHAP. Five other chemical manufacturing facilities have notified the Department and EPA that they are subject to the 6V NESHAP. Based on information available, it appears that two of these facilities are already complying with the 6V NESHAP. One of the facilities is currently under construction. The compliance status of the other two facilities is unknown.

Upon adoption of the 6V NESHAP, the Department rather than EPA will implement and enforce these regulations in Iowa, allowing the Department to provide compliance assistance and outreach to affected facilities as soon as possible.

**Item 4** amends paragraph 23.1(4)“fd” to adopt the recently amended federal NESHAP for Area Source Standards for Prepared Feeds Manufacturing (40 CFR Part 63, Subpart DDDDDDD, hereafter referred to as the “7D NESHAP”). The Commission originally adopted this NESHAP by reference in 2010. However, EO 72 rescinded the adoption of this standard concurrent with the rescission of the RICE NESHAP. Subsequent to EO 72, the EPA revised this NESHAP standard to provide clarity and regulatory relief to stakeholders. The Commission is now proposing to adopt the 7D NESHAP.

**Background**

In January 2010, EPA published the 7D NESHAP. The 7D NESHAP appeared to cover all feed mills that used chromium and manganese in production, but several provisions of the final standards were unclear. In 2011, EPA agreed to reconsider some provisions of the 7D NESHAP. EPA finalized its reconsideration on December 23, 2011, revising the 7D NESHAP so that feed mills with pellet cooler operations were not required to install new emissions control if the facility had existing control equipment. The 7D NESHAP compliance date for existing feed mills was January 5, 2012.

**Stakeholder Involvement**

The Department has worked with AAI since EPA issued the original 7D NESHAP in January 2010. EPA issued final amendments on December 23, 2011, that generally allowed affected feed mills to comply with the 7D NESHAP by following basic housekeeping requirements and using existing emissions control equipment.

**Affected Facilities**

Based on notifications submitted to EPA and the survey that the University of Northern Iowa (UNI) air emissions assistance program conducted, the Department estimates that up to 80 facilities in Iowa are subject to the 7D NESHAP. The majority of these facilities are subject only to basic housekeeping

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

requirements. The Department estimates that 20 of these facilities are required to control particulate emissions (a surrogate for manganese and chromium emissions) from pellet cooling operations. Most of these facilities have submitted the required notifications to EPA and the Department indicating the facilities are in compliance with the 7D NESHAP. The 7D NESHAP requires all subject facilities to undertake additional monitoring, record keeping, and reporting.

Upon adoption of the 7D NESHAP, the Department rather than EPA will implement and enforce these regulations in Iowa, allowing the Department to provide compliance assistance and outreach to affected facilities as soon as possible. The Department plans to continue the partnership with UNI and AAI to offer assistance to affected facilities.

Any person may make written suggestions or comments on the proposed amendments on or before June 16, 2014. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324; fax (515)725-9501; or by e-mail to [christine.paulson@dnr.iowa.gov](mailto:christine.paulson@dnr.iowa.gov).

A public hearing will be held on Monday, June 16, 2014, at 1 p.m. in the Conference Rooms, Air Quality Bureau Office, 7900 Hickman Road, Windsor Heights, Iowa. All comments must be received no later than 4:30 p.m. on June 16, 2014.

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)725-9510, or by e-mail to [christine.paulson@dnr.iowa.gov](mailto:christine.paulson@dnr.iowa.gov) to advise of any specific needs.

**Jobs Impact Statement**

The following is a summary of the jobs impact statement. The complete jobs impact statement is available from the Department upon request.

After analysis and review, the Department has determined that the proposed amendments will have no impact on private sector jobs and employment opportunities in the state.

**Grain Vac BMPs**

Grain elevator owners and operators will likely entail costs to control particulate emissions during grain vac operations. However, these costs should be minimal and should not negatively impact jobs at grain elevators. First, the activities listed in the BMP document are simply examples. The grain elevator owner or operator may determine if management activities are necessary to reasonably prevent dust from grain vac operations from crossing the property line and whether any of the examples included in the BMP document are appropriate for the facility. The owner or operator may choose to employ different management practices. Second, the BMPs were developed by a stakeholder group consisting of representatives from both grain elevator and grain vac vendors. The workgroup developed practical, cost-effective practices that are already being successfully implemented at some grain elevators. Third, the Department expects that grain elevator owners and operators will choose to implement BMPs only as necessary and will not implement practices at such a frequency or cost to adversely impact jobs at their facilities.

**6V NESHAP**

Based on information and analysis compiled by IRFA, the Department has determined that dry-mill corn ethanol production facilities in Iowa are not subject to the 6V NESHAP and therefore would not have regulatory costs associated with the 6V NESHAP. The five other facilities potentially affected by the 6V NESHAP may have additional regulatory requirements, but these are not expected to be significant enough to impact jobs.

**7D NESHAP**

The 7D NESHAP requires all subject facilities to undertake additional monitoring, record keeping, and reporting. However, these requirements are not expected to be sufficient to negatively impact jobs at these facilities.

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

The following amendments are proposed.

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

ITEM 1. Amend subparagraph **22.10(3)“a”(2)** as follows:

(2) Best management practices (BMP). The owner or operator of a Group 1 facility shall implement best management practices (BMP) for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. The owner or operator shall implement BMP according to the department manual, Best Management Practices (BMP) for Grain Elevators (December 2007; revised [insert date the revised manual is approved by the commission]), as adopted by the commission on January 15, 2008, and [insert date the revised manual is adopted by the commission] and adopted by reference herein (available from the department, upon request, and on the department's Internet Web site). No later than March 31, 2009, the owner or operator of an existing Group 1 facility shall fully implement applicable BMP, except that BMPs for grain vacuuming operations shall be fully implemented no later than [insert effective date of these amendments]. Upon startup of equipment at the facility, the owner or operator of a new Group 1 facility shall fully implement applicable BMP.

ITEM 2. Amend subrule 23.1(4), introductory paragraph, as follows:

**23.1(4) Emission standards for hazardous air pollutants for source categories.** The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~September 19, 2011,~~ December 21, 2012, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses (except for paragraph 23.1(4)“cz,” which specifies a later date for adoption by reference). 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded ( $F_{bio}$ ) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4)“a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

ITEM 3. Amend paragraph **23.1(4)“ev”** as follows:

*ev. Emission standards for hazardous air pollutants for area sources: chemical manufacturing.* ~~Rescinded IAB 9/19/12, effective 10/24/12.~~ This standard applies to chemical manufacturing at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart VVVVVV)

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

*fd. Emission standards for hazardous air pollutants for area sources: prepared feeds manufacturing.* ~~Rescinded IAB 9/19/12, effective 10/24/12.~~ This standard applies to prepared feeds manufacturing that produces animal feed products (not including feed for cats or dogs) and uses chromium or manganese compounds at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart DDDDDDD)

**ARC 1463C****HOMELAND SECURITY AND EMERGENCY  
MANAGEMENT DEPARTMENT[605]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Department hereby gives Notice of Intended Action to amend Chapter 10, “Enhanced 911 Telephone Systems,” Iowa Administrative Code.

These amendments are intended to implement 2013 Iowa Acts, House File 644, passed by the 85th General Assembly and signed by the Governor on May 24, 2013, and House File 307, passed by the 85th General Assembly and signed by the Governor on April 5, 2013. The legislation provides for changes to Iowa Code chapter 34A. These amendments focus on the creation of a stand-alone Department from a Division of the Department of Public Defense and on surcharge collection and disbursement processes.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before June 3, 2014. Such written materials should be sent to the Administrative Rules Coordinator, Department of Homeland Security and Emergency Management, 7105 NW 70th Avenue, Camp Dodge, Building W-4, Johnston, Iowa 50131.

Also, there will be a public hearing on June 3, 2014, at 1 p.m. in the Department of Homeland Security and Emergency Management Conference Room in Building W-4 at Camp Dodge, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

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

These amendments are intended to implement Iowa Code chapter 34A and 2013 Iowa Acts, House Files 644 and 307.

The following amendments are proposed.

ITEM 1. Rescind the definition of “Administrator” in rule **605—10.2(34A)**.

ITEM 2. Adopt the following **new** definition of “Director” in rule **605—10.2(34A)**:

“*Director*,” unless otherwise noted, means the director of the homeland security and emergency management department.

ITEM 3. Amend the following definitions in rule **605—10.2(34A)**:

“*E911 program manager*” means that person appointed by the ~~administrator~~ director of the homeland security and emergency management ~~division~~ department, and working with the E911 communications council, to perform the duties specifically set forth in Iowa Code chapter 34A and this chapter.

“*Recurring costs*” means repetitive charges incurred by a joint E911 service board or operating authority including, but not limited to, personnel time directly associated with database management and personnel time directly associated with addressing, lease of access lines, lease of equipment, network access fees, and applicable maintenance costs.

“*Wire-line E911 service surcharge*” means a charge ~~set by the E911 service operating authority~~ and assessed on each wire-line access line which physically terminates within the E911 service area in accordance with Iowa Code section 34A.7.

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

ITEM 4. Amend rule 605—10.3(34A) as follows:

**605—10.3(34A) Joint E911 service boards.** Each county board of supervisors shall establish a joint E911 service board.

**10.3(1) and 10.3(2)** No change.

**10.3(3)** *Joint E911 service board bylaws.* Each joint E911 service board shall develop bylaws to specify, at a minimum, the following information:

*a. to m.* No change.

Each member shall sign the adopted bylaws.

The joint E911 service board shall record the signed bylaws with the county recorder and shall forward a copy of the signed bylaws to the E911 program ~~administrator~~ manager at the ~~state~~ homeland security and emergency management ~~division~~ department.

**10.3(4)** *Executive board.* The joint E911 service board may, through its bylaws, establish an executive board to conduct the business of the joint E911 service board. Members of the executive board must be selected from the eligible voting members of the joint E911 service board. The executive board will have such other duties and responsibilities as assigned by the joint E911 service board.

**10.3(5)** No change.

ITEM 5. Amend rule 605—10.4(34A) as follows:

**605—10.4(34A) Enhanced 911 service plan (wire-line).**

**10.4(1)** The joint E911 service board shall be responsible for developing an E911 service plan as required by Iowa Code section 34A.3 and as set forth in these rules. The plan will remain the property of the joint E911 service board. Each joint E911 service board shall coordinate planning with each contiguous joint E911 service board. A copy of the plan and any modifications and addenda shall be submitted to:

- a.* The ~~state~~ homeland security and emergency management ~~division~~ department.
- b.* All public and private safety agencies serving the E911 service area.
- c.* All providers affected by the E911 service plan.

**10.4(2)** The E911 service plan shall, at a minimum, encompass the entire county, unless a waiver is granted by the ~~administrator~~ director. Each plan shall include:

- a.* The mailing address of the joint E911 service board.
- b.* A list of voting members on the joint E911 service board.
- c.* A list of nonvoting members on the joint E911 service board.
- d.* The name of the chairperson and vice chairperson of the joint E911 service board.
- e.* A geographical description of the enhanced 911 service area.
- f.* A list of all public and private safety agencies within the E911 service area.
- g.* The number of public safety answering points within the E911 service area.
- h.* Identification of the agency responsible for management and supervision of the E911 emergency telephone communication system.
- i.* A statement of ~~estimated charges~~ recurring and nonrecurring costs to be incurred by the joint E911 service board, ~~including separate estimates of recurring and nonrecurring charges.~~ These ~~charges~~ costs shall be limited to charges costs directly attributable to the provision of E911 service. ~~The charges shall include the following:~~
  - ~~(1) Item(s) or unit(s) of measurement, or both, and the associated tariff prices applicable in the development of the charges.~~
  - ~~(2) Where tariff prices are not available, work papers showing the development of the charges by item(s)/unit(s) shall be included.~~
  - ~~(3) Charges shall be justified as being attributable to the provision of E911 telephone communication service.~~
- j.* ~~Information from communications service providers detailing the current equipment operated by the provider to provide telephone service and additional central office equipment or technology upgrades, or both, necessary to implement E911 service.~~

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

~~k. j.~~ The total number of telephone access lines by telephone company or companies having points of presence within the E911 service area and the number of this total that is exempt from surcharge collection as provided in rule 605—10.9(34A) and Iowa Code subsection 34A.7(3).

~~l.~~ The estimated number of pay telephones within the E911 service area.

~~m. k.~~ If applicable, a schedule for implementation of the plan throughout the E911 service area. A joint E911 service board may decide not to implement E911 service.

~~n. l.~~ The total property valuation in the E911 service area.

~~o. m.~~ Maps of the E911 service area showing:

(1) to (5) No change.

~~p. n.~~ A block drawing for each telephone central office within the service area showing the method by which the 911 call will be delivered to the PSAP(s).

~~q. o.~~ A plan to migrate to an internet protocol-enabled next generation network.

**10.4(3) to 10.4(5)** No change.

ITEM 6. Amend rule 605—10.5(34A) as follows:

**605—10.5(34A) Referendum and wire-line Wire-line E911 service surcharge.**

~~10.5(1)~~ The surcharge referendum may be initiated only by the joint E911 service board and shall be conducted in accordance with the provisions of Iowa Code sections 34A.6 and 34A.6A and Iowa Administrative Code rule 721—21.810(34A). The surcharge is not a local option tax that can be presented to the voters under Iowa Code chapter 422B. One source of funding for the E911 emergency communications system shall come from a surcharge of one dollar per month, per access line on each access line subscriber.

~~10.5(2)~~ The following information shall be filed with the E911 program manager before the surcharge may be imposed:

~~a.~~ A copy of the “Abstract of Election” (Form 156-K) from each commissioner of elections, in each county or partial county included within the E911 service area, showing passage of the referendum allowing for the imposition of a surcharge for E911 service.

~~b.~~ An E911 service plan for the proposed E911 service area approved by the joint E911 service board.

~~c.~~ A letter signed by the chairperson of the joint E911 service board requesting that the surcharge be imposed within the E911 service area.

~~10.5(3)~~ **10.5(2)** The E911 program manager shall notify a local communications service provider scheduled to provide exchange access E911 service within an E911 service area that implementation of an E911 service plan has been approved by the joint E911 service board, and by the E911 program manager, and by the service area referendum, and that collection of the surcharge is to begin within 60 days. The E911 program manager shall also provide notice to all affected public safety answering points. The 60-day notice to local exchange service providers shall also apply when an adjustment in the wire-line surcharge rate is made.

~~10.5(4)~~ **10.5(3)** The local communications service provider shall collect the surcharge as a part of its monthly billing to its subscribers. The surcharge shall appear as a single line item on a subscriber’s monthly billing entitled “E911 emergency communications service surcharge.”

~~10.5(5)~~ **10.5(4)** The local communications service provider may retain 1 percent of the surcharge collected as compensation for the billing and collection of the surcharge. If the compensation is insufficient to fully recover a provider’s costs for the billing and collection of the surcharge, the deficiency shall be included in the provider’s costs for rate-making purposes to the extent it is reasonable and just under Iowa Code section 476.6.

~~10.5(6)~~ **10.5(5)** The local communications service provider shall remit the collected surcharge to the joint E911 service board on a calendar quarter basis within 20 days of the end of the quarter.

~~10.5(7)~~ **10.5(6)** The joint E911 service board may request, not more than once each quarter, the following information from the local communications service provider:

~~a.~~ to ~~f.~~ No change.

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

Access line counts and surcharge remittances are confidential public records as provided in Iowa Code section 34A.8.

~~10.5(8)~~ **10.5(7)** Collection for a surcharge shall terminate if E911 service ceases to operate within the respective E911 service area. The E911 program manager for good cause may grant an extension.

a. The ~~administrator~~ director shall provide 100 days' prior written notice to the joint E911 service board or the operating authority and to the local communications service provider(s) collecting the fee of the termination of surcharge collection.

b. No change.

c. At the end of one year from the date of termination, any funds not refunded and remaining in the E911 service fund and all interest accumulated shall be retained by the joint E911 service board. However, if the joint E911 service board ceases to operate any E911 service, the balance in the E911 service fund shall be payable to the state homeland security and emergency management division department. Moneys received by the division department shall be used only to offset the costs for the administration of the E911 program.

ITEM 7. Amend rule 605—10.7(34A) as follows:

**605—10.7(34A) Enhanced wireless E911 service plan.** Each joint E911 service board, the department of public safety, the E911 communications council, and wireless service providers shall cooperate with the E911 program manager in preparing an enhanced wireless E911 service plan for statewide implementation of enhanced wireless E911 service.

**10.7(1) Plan specifications.** The enhanced wireless E911 service plan shall include, at a minimum, the following information:

1. Maps showing ~~geographic area to be served by the~~ geographic location within the county of each PSAP receiving that receives enhanced wireless E911 telephone calls.

2. A list of all ~~public and private safety agencies within the enhanced wireless E911 service area~~ safety answering points within the state of Iowa.

3. ~~The geographic location of each PSAP receiving enhanced wireless E911 calls and the name of the person responsible for the management of the PSAP.~~

4. 3. A set of guidelines for determining eligible cost as set forth in Iowa Code section 34A.7A.

5. 4. A schedule for the implementation and maintenance of the next generation 911 systems to provide enhanced wireless 911 phase I and phase II service.

**10.7(2) Adoption by reference.** The “Wireless ~~Enhanced 911~~ NG911 Implementation and Operation Operations Plan,” effective ~~November 1, 2012~~ July 1, 2013, and available from the Homeland Security and Emergency Management ~~Division~~ Department, 7105 NW 70th Avenue, Camp Dodge, Bldg. W-4, Johnston, Iowa, or at the Law Library in the Capitol Building, Des Moines, Iowa, is hereby adopted by reference effective ~~March 27, 2013~~ June 18, 2014.

ITEM 8. Amend rule 605—10.8(34A) as follows:

**605—10.8(34A) Emergency communications service surcharge.**

**10.8(1)** The E911 program manager shall adopt a monthly surcharge of ~~up to 65 cents~~ one dollar to be imposed on each wireless communications service number provided in this state. ~~The amount of wireless surcharge to be collected may be adjusted once yearly, but in no case shall the surcharge exceed 65 cents per month, per customer service number.~~ The surcharge shall not be imposed on wire-line-based communications or prepaid wireless telecommunications service.

**10.8(2)** ~~The amount of wireless surcharge to be collected during a fiscal year shall be determined by the administrator's best estimation of enhanced wireless 911 costs for the ensuing fiscal year. The E911 program manager shall base the estimated cost on information provided by the E911 communications council, wireless service providers, vendors, public safety agencies, joint E911 service boards and any other appropriate parties or agencies involved in the provision or operation of enhanced wireless 911 service. The E911 communications council shall also provide a recommended monthly wireless surcharge for the ensuing fiscal year.~~

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

~~10.8(3)~~ **10.8(2)** The E911 program manager shall order the imposition of a surcharge uniformly on a statewide basis and simultaneously on all communications service numbers by giving at least 60 days' prior notice to wireless carriers to impose a monthly surcharge as part of their periodic billings. The 60-day notice to wireless carriers shall also apply when making an adjustment in the wireless surcharge rate.

~~10.8(4)~~ **10.8(3)** The wireless surcharge shall be ~~65 cents~~ one dollar per month, per customer service number, until changed by rule.

~~10.8(5)~~ **10.8(4)** The communications service provider shall list the surcharge as a separate line item on the customer's billing indicating that the surcharge is for E911 emergency telephone service. The communications service provider is entitled to retain 1 percent of any wireless surcharge collected as a fee for collecting the surcharge as part of the subscriber's periodic billing. The wireless E911 surcharge is not subject to sales or use tax.

~~10.8(6)~~ **10.8(5)** Surcharge funds shall be remitted on a calendar quarter basis by the close of business on the twentieth day following the end of the quarter with a remittance form as prescribed by the E911 program manager. Providers shall issue their checks or warrants to the Treasurer, State of Iowa, and remit to the E911 Program Manager, Homeland Security and Emergency Management ~~Division~~ Department, 7105 NW 70th Avenue, Camp Dodge, Bldg. W-4, Johnston, Iowa 50131.

ITEM 9. Amend subrule 10.9(1) as follows:

**10.9(1)** Wireless E911 surcharge money, collected and remitted by wireless service providers, shall be placed in a fund within the state treasury under the control of the ~~administrator~~ director.

ITEM 10. Amend subrule 10.9(3) as follows:

**10.9(3)** Moneys in the fund shall be expended and distributed in the order and manner as follows:

a. An amount as appropriated by the general assembly shall be allocated to the homeland security and emergency management ~~division~~ department for implementation, support, and maintenance of the functions of the E911 program and to employ the auditor of the state to perform an annual audit of the wireless E911 emergency communications fund.

b. The program manager shall reimburse local communications service providers on a calendar quarter basis for their expenses for transport costs between the wireless E911 selective router and the public safety answering points related to the delivery of wireless E911 service.

c. The program manager shall reimburse local communications service providers and third-party E911 automatic location information (ALI) database providers on a calendar quarter basis for the costs of maintaining and upgrading the E911 components and functionalities between the input and output points of the wireless E911 selective router. This includes the wireless E911 selective router and the automatic location information (ALI) database.

d. The program manager shall allocate 13 percent of the total amount of surcharge generated per calendar quarter to wireless carriers to recover their costs to deliver wireless E911 phase I services as defined in the Federal Communications Commission (FCC) Docket 94-102 and further defined in the FCC's letter to King County, Washington, dated May 7, 2001. If this allocation is insufficient to reimburse all wireless carriers for the wireless service provider's eligible expenses, the program manager shall allocate a prorated amount to each wireless carrier equal to the percentage of the provider's eligible expenses as compared to the total of all eligible expenses for all wireless carriers for the calendar quarter during which expenses were submitted. When prorated expenses are paid, the remaining unpaid expenses shall no longer be eligible for payment under this paragraph. This allocation is for the period beginning July 1, 2013, and ending June 30, 2016.

~~d. e.~~ A minimum of \$1,000 per calendar quarter shall be allocated for each public safety answering point with the E911 service area of the department of public safety or joint E911 service board that has submitted a written request to the program manager. The written request shall be made with the Request for Wireless E911 Fund form contained in the ~~State of Iowa Wireless E911~~ NG911 Implementation and ~~Operation~~ Operations Plan. The request is due to the program manager on May 15, or the next business day, of each year.

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

The amount allocated under 10.9(3)“~~d~~”“e” shall be 46 percent of the total amount of surcharge generated per calendar quarter. The minimum amount allocated to the department of public safety and the joint E911 service boards shall be \$1,000 per PSAP operated by the respective authority. Additional funds shall be allocated as follows:

(1) Sixty-five percent of the total dollars available for allocation shall be allocated in proportion to the square miles of the E911 service area to the total square miles in the state.

(2) Thirty-five percent of the total dollars available for allocation shall be allocated in proportion to the wireless E911 calls answered at the public safety answering point in the E911 service area to the total of wireless E911 calls originating in the state.

(3) Funds allocated under 10.9(3)“~~d~~”“e” shall be deposited in the E911 service fund and shall be used for communications equipment utilized by the public safety answering points for the implementation and maintenance of E911 services.

e. f. If moneys remain after all obligations under 10.9(3)“a” to “~~d~~”“e,” as listed above, have been fully paid, the remainder may be accumulated as a carryover operating surplus. These moneys shall be used to fund future network improvements and public safety answering point improvements. These moneys may also be used for wireless service providers’ transport costs related to wireless E911 phase 2 II services, if those costs are not otherwise recovered by the wireless service provider’s customer billing or other sources and are approved by the program manager. Any moneys remaining in the fund at the end of each fiscal year shall not revert to the general fund of the state but shall remain available for the purposes of the fund.

ITEM 11. Amend subrule 10.9(4) as follows:

**10.9(4)** Payments to local communications service providers and wireless service providers shall be made quarterly, based on original, itemized claims or invoices presented within 20 days of the end of the calendar quarter. Claims or invoices not submitted within 20 days of the end of the calendar quarter are not eligible for reimbursement and may not be included in future claims and invoices. Payments to providers shall be made in accordance with these rules and the State of Iowa Accounting Policies Policy and Procedures Manual.

ITEM 12. Amend subrule 10.9(6) as follows:

**10.9(6)** If it is found that an overpayment has been made to an entity, the E911 program manager shall attempt recovery of the debt from the entity by certified letter. Due diligence shall be documented and retained at the ~~state~~ homeland security and emergency management ~~division~~ department. If resolution of the debt does not occur and the debt is at least \$50, the ~~state~~ homeland security and emergency management ~~division~~ department will then utilize the income offset program through the department of revenue. Until resolution of the debt has occurred, the ~~state~~ homeland security and emergency management ~~division~~ department may withhold future payments to the entity.

ITEM 13. Amend subrule 10.11(2) as follows:

**10.11(2)** The E911 service funds shall be subject to examination by the ~~division~~ department at any time during usual business hours. E911 service funds are subject to the audit provisions of Iowa Code chapter 11. A copy of all audits of the E911 service fund shall be furnished to the ~~division~~ department within 30 days of receipt. If through the audit or monitoring process the ~~division~~ department determines that a joint E911 service board is not adhering to an approved plan or does not have a valid board membership, or if the ~~division~~ department determines that a joint E911 service board or the department of public safety is not using funds in the manner prescribed in these rules or Iowa Code chapter 34A, the ~~administrator~~ director may, after notice and hearing, suspend surcharge imposition and order termination of expenditures from the E911 service fund. The joint E911 service board or department of public safety is not eligible to receive or expend surcharge moneys until such time as the E911 program manager determines that the board or department of public safety is in compliance with the approved plan, board membership, and fund usage limitations.

ITEM 14. Amend rule 605—10.12(34A) as follows:

**605—10.12(34A) Operating budgets.**

## HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605](cont'd)

~~10.12(1)~~ Each By March 31 of each year, each joint E911 service board and the department of public safety shall provide to the E911 program manager a copy, to the E911 program manager, within 30 days of adoption, of the operating budget for the ensuing fiscal year for the fund as established under subrule 10.11(1).

~~10.12(2)~~ The E911 program manager shall, upon review of the operating budget, make necessary adjustments to the surcharge as provided in Iowa Code chapter 34A.

ITEM 15. Amend paragraph **10.14(3)“c”** as follows:

c. The communications service provider shall respond, within a reasonable length of time, to all appropriate requests for information from the ~~administrator~~ director, the department of public safety, a joint E911 service board or operating authority and shall expressly comply with the provisions of Iowa Code section 34A.8.

ITEM 16. Amend rule 605—10.15(34A) as follows:

**605—10.15(34A) Administrative hearings and appeals.**

**10.15(1)** E911 program manager decisions regarding the acceptance or refusal of an E911 service plan, in whole or in part, the implementation of E911 and the imposition of the E911 surcharge within a specific E911 service area may be contested by an affected party.

**10.15(2)** Request for a hearing shall be made in writing to the ~~state~~ homeland security and emergency management ~~division administrator~~ department director within 30 days of the E911 program manager's mailing or serving a decision and shall state the reason(s) for the request and shall be signed by the appropriate authority.

**10.15(3)** The ~~administrator~~ director shall schedule a hearing within 10 working days of receipt of the request for hearing. The ~~administrator~~ director shall preside over the hearing, at which time the appellant may present any evidence, documentation, or other information regarding the matter in dispute.

**10.15(4)** The ~~administrator~~ director shall issue a ruling regarding the matter within 20 working days of the hearing.

**10.15(5)** Any party adversely affected by the ~~administrator's~~ director's ruling may file a written request for a rehearing within 20 days of issuance of the ruling. A rehearing will be conducted only when additional evidence is available, the evidence is material to the case, and good cause existed for the failure to present the evidence at the initial hearing. The ~~administrator~~ director will schedule a hearing within 20 days after the receipt of the written request. The ~~administrator~~ director shall issue a ruling regarding the matter within 20 working days of the hearing.

**10.15(6)** Any party adversely affected by the ~~administrator's~~ director's ruling may file a written appeal to the ~~administrator~~ director of the homeland security and emergency management ~~division~~ department. The appeal request shall contain information identifying the appealing party, the ruling being appealed, specific findings or conclusions to which exception is taken, the relief sought, and the grounds for relief. The ~~administrator~~ director shall issue a ruling regarding the matter within 90 days of the hearing. The ~~administrator's~~ director's ruling constitutes final agency action for purposes of judicial review.

ITEM 17. Amend rule 605—10.16(34A) as follows:

**605—10.16(34A) Confidentiality.** All financial or operations information provided by a communications service provider to the E911 program manager shall be identified by the provider as confidential trade secrets under Iowa Code section 22.7(3) and shall be kept confidential as provided under Iowa Code section 22.7(3) and Iowa Administrative Code 605—Chapter 5. Such information shall include numbers of accounts, numbers of customers, revenues, expenses, and the amounts collected from said communications service provider for deposit in the fund. Notwithstanding such requirements, aggregate amounts and information may be included in reports issued by the ~~administrator~~ director if the aggregated information does not reveal any information attributable to an individual communications service provider.

## ARC 1459C

## IOWA FINANCE AUTHORITY[265]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.41, the Iowa Finance Authority proposes to amend Chapter 41, “Shelter Assistance Fund,” Iowa Administrative Code.

The purpose of these amendments is to clarify the rules and update definitions.

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

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on June 3, 2014. Comments may be addressed to Amber Lewis, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Amber Lewis at (515)725-4901 or e-mailed to [amber.lewis@iowa.gov](mailto:amber.lewis@iowa.gov).

The Authority will hold a public hearing on June 3, 2014, to receive public comments on these amendments. The public hearing will be held from 10 a.m. until 12 noon at the Authority’s offices located at 2015 Grand Avenue, Des Moines, Iowa.

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

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

These amendments are intended to implement Iowa Code section 16.41.

The following amendments are proposed.

ITEM 1. Amend rule 265—41.1(16) as follows:

**265—41.1(16) Purpose.** The shelter assistance fund is created for the ~~purpose~~ purposes of ~~providing financial assistance for the~~ rehabilitation, expansion, or costs of operations of group home shelters for the homeless and domestic violence shelters, evaluation of services for the homeless, and match moneys for federal funds for the homeless management information system.

ITEM 2. Adopt the following **new** definition of “Program participant” in rule **265—41.2(16)**:

“*Program participant*” means any person or family who is homeless or at risk of becoming homeless and who seeks assistance from a recipient and is provided assistance utilizing SAF funds.

ITEM 3. Rescind the definitions of “Emergency shelter,” “Homeless prevention,” “Operations,” “Subrecipient” and “Transitional housing” in rule **265—41.2(16)**.

ITEM 4. Amend the following definitions in rule **265—41.2(16)**:

“*Applicant*” means an eligible provider of ~~eligible~~ homeless services which is applying for SAF program funds.

“*ESG program*” ~~or “ESGP”~~ means the Emergency Solutions Grant Program created pursuant to Title 42 of the U.S. Code (42 U.S.C. Section 11375) as well as parts of Title 24 of the Code of Federal Regulations (24 CFR Part 576).

“*Homeless shelter*” means a facility ~~providing which provides~~ temporary housing ~~and services~~ shelter with overnight sleeping accommodations for homeless persons and which does not require occupants to sign leases or occupancy agreements.

“*Private, nonprofit Nonprofit organization*” means a ~~secular or religious~~ an organization described in Section 501(c) of the Internal Revenue Code which:

## IOWA FINANCE AUTHORITY[265](cont'd)

1. ~~Is exempt from taxation under Subtitle A of the Internal Revenue Code, No part of the net earnings of which inure to the benefit of any member, founder, contributor, or individual;~~
2. ~~Has That has an accounting system and a voluntary board;~~
3. ~~Practices nondiscrimination in the provision of services to clients, and That has a functioning accounting system or has designated a fiscal agent that will maintain a functioning accounting system for the organization;~~
4. ~~That practices nondiscrimination in the provision of assistance; and~~
4. 5. ~~Has That has registered with the state of Iowa as a nonprofit corporation.~~

~~“Recipient” means any private, nonprofit organization or city or county government to which IFA distributes shelter assistance fund program funds.~~

~~“SAF” means shelter assistance fund created in 2010 Iowa Acts, Senate File 2088, section 265 according to Iowa Code section 16.41.~~

~~“Value of the building” means the monetary value assigned to a building by an independent real estate appraiser or as otherwise reasonably established by the recipient or subrecipient.~~

ITEM 5. Amend rule 265—41.3(16) as follows:

**265—41.3(16) Eligible applicants.** ~~City governments, county governments, local public housing authorities, instrumentalities of government, and private, nonprofit organizations are eligible applicants under the SAF program. City or county governments may apply on behalf of a nonprofit service provider within their jurisdictions when the nonprofit service provider serves homeless and near-homeless clients by providing overnight shelter, meals, clothing, transportation, counseling, child care, legal services, medical services, transitional housing services, and other related services for homeless individuals and families.~~

ITEM 6. Amend rule 265—41.4(16) as follows:

**265—41.4(16) Eligible activities.** ~~Activities assisted by the SAF~~ Eligible activities may include the following, where the activities are necessary to assist program participants:

1. ~~Rehabilitation, renovation, or expansion of buildings for use in the provision of providing services for the homeless.~~
2. ~~Provision of normal Normal operating expenses for programs providing services to homeless individuals or families, including staff salaries, maintenance, insurance, utilities, furnishings, provision of essential services, provision of homeless prevention activities, administrative activities, and all other documented normal operating expenses. homeless and domestic violence shelters, including staff salaries, maintenance (including minor or routine repairs), rent, security, fuel, equipment, insurance, utilities, food, furnishings, and supplies necessary for the operation of the shelter. Where no appropriate shelter is available for a homeless family or individual, eligible costs may also include a hotel or motel voucher for that family or individual. Eligible costs may also include the costs of third-party agencies’ providing food either to one or more shelters or directly to program participants.~~
3. Essential services for individuals and families in homeless and domestic violence shelters, including case management, child care, education services, employment assistance and job training, outpatient health services (to the extent that such health services are otherwise unavailable), legal services, life skills training, mental health services (to the extent that such mental health services are otherwise unavailable), substance abuse treatment services (to the extent that such substance abuse treatment is otherwise unavailable), and transportation (transportation that is necessary to provide services).
4. Evaluation of services for the homeless, including the implementation of the HMIS.

ITEM 7. Amend rule 265—41.5(16) as follows:

**265—41.5(16) Ineligible activities.** As a general rule, any activity that is not authorized under the provisions of P.L. 100-628 rule 265—41.4(16) is ineligible to be carried out with SAF program funds. The following are items specifically listed as ineligible in 24 CFR Part 576.

## IOWA FINANCE AUTHORITY[265](cont'd)

- ~~1. Acquisition or new construction of an emergency shelter for the homeless;~~
- ~~2. Rehabilitation administration, such as preparation of work specifications, loan processing, or inspections;~~
- ~~3. Renovation, rehabilitation, or conversion of buildings owned by primarily religious organizations or entities unless the activity complies with all requirements as outlined in 24 CFR Part 576.23(a) and (b).~~

ITEM 8. Amend rule 265—41.6(16) as follows:

**265—41.6(16) Application procedures.** IFA ~~may shall~~ issue requests for ~~proposals from eligible applicants as often as the state expects funding from HUD for the ESG program applications on an annual basis, as long as funds are available.~~ Requests for ~~proposals applications~~ may combine the ESG program with the SAF program. ~~The proposals must applications shall~~ be submitted on the forms or on-line system prescribed by IFA and ~~must, at a minimum, include the amount of funds requested, a description of the need for the funds, documentation of other available funding sources, the source of required local match for the ESG program, and the estimated number of persons to be served by the applicant.~~ Maximum Application requirements, priorities, and maximum and minimum grant awards will be established by IFA for each competition.

ITEM 9. Amend rule 265—41.7(16) as follows:

**265—41.7(16) Application review process.** ~~The application review process will be a joint process that combines the SAF program with the ESG program. The following procedures will be used in the review of applications for most purposes. IFA reserves the right to select an alternate application review process for SAF program funds only.~~

**41.7(1)** Review; threshold criteria; eligible activities.

*a. Review of applications.* Applications will be reviewed by a panel appointed by IFA. ~~Applications will be reviewed based on priorities established during each competition round, in accordance with the state of Iowa consolidated plan for housing and community development. Applicant experience and capacity, as well as past performance, are top priorities. Other review~~ Review criteria include, but are not limited to, program design, applicant experience and capacity, community partnerships and need, ~~program accessibility, program partnerships, the number of persons or households served, and how well the program leverages other resources~~ performance, and budget and grant management.

*b. Threshold criteria.* IFA will identify threshold criteria that all programs ~~must~~ are required to meet in order to be eligible.

*c. Activities eligible during funding cycle.* Each competition round will specify which of the total eligible program activities will be supported ~~during that competition round.~~

**41.7(2)** If an application contains an activity determined to be ineligible, at IFA's discretion, the ineligible activity may be deleted from the application ~~or referred to another funding source or the application may be disqualified.~~

**41.7(3)** ~~IFA reserves the right to negotiate directly with the applicant to determine the priority of funding requested within the application.~~

**41.7(4) 41.7(3)** Before making final funding recommendations, IFA staff may review applications with other state agencies or other groups with expertise in the area of serving homeless persons ~~before making final funding recommendations.~~ Consultation with other agencies is intended to avoid duplication and promote maximum utilization of funding sources.

**41.7(5) 41.7(4)** Based on the review process, IFA may revise the overall funding request by activity or funding level and recommend a final funding figure to the IFA board of directors for approval.

**41.7(6)** ~~IFA reserves the right to negotiate all aspects of a funding request prior to final approval.~~

**41.7(7) 41.7(5)** IFA shall establish the period of funding for each competition.

IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 10. Amend rule 265—41.8(16) as follows:

**265—41.8(16) Matching requirement contributions.** ~~Subrecipients may be required to provide a match for SAF program funds. The rules of each competition will specify what, if any, match is required.~~ IFA reserves the right to designate a portion or all of SAF funds to be used toward the matching contributions requirement imposed by HUD for ESG funds received by the state of Iowa. If SAF funds are designated as ESG matching contributions, they may not also be available to meet matching requirements of other grant moneys received by recipients. Recipients will be informed if SAF funds have been used toward the ESG matching requirement and will be responsible for ensuring compliance with the matching requirements of other grant programs.

ITEM 11. Amend rule 265—41.9(16) as follows:

**265—41.9(16) Funding awards.**

**41.9(1) Awards on behalf of multiple applicants.** Authorization. ~~A city or county government or nonprofit organization may be designated, at the discretion of IFA, to administer contracts for multiple applicants within a prescribed geographic area. The IFA board of directors authorizes funding awards during each application cycle.~~

**41.9(2) Right to negotiate.** IFA reserves the right to negotiate the amount of the funding award, the scale of the project, and alternative methods for completing the project.

**41.9(3) Special purpose awards.** IFA may, at its discretion, ~~award any remaining funds as it sees fit within the SAF program regulations~~ make funding awards for evaluation of services for the homeless, including the implementation of the HMIS, apart from the application procedures and application review process for other activities.

ITEM 12. Amend rule 265—41.10(16) as follows:

**265—41.10(16) Restrictions Requirements placed on recipients and subrecipients.**

**41.10(1) Use as provider of homeless services** Building use. Any building for which SAF program funds are used must be maintained as a provider of homeless services for not less than a three-year period or for not less than a ten-year period if the funding amounts are used for major rehabilitation or conversion of the building. If SAF program funds are used for operating ~~and maintenance~~ costs, the recipient ~~must~~ is required to continue to provide homeless services for at least one year. In calculating the applicable time period, the beginning dates of the three- and ten-year periods are determined as follows:

- a. In the case of a building that was not operated as a provider of services for the homeless before receipt of SAF program funds, on the date of initial occupancy as a provider of services to the homeless.
- b. In the case of a building that was operated as a provider of services to the homeless before the receipt of SAF program funds, on the date that those funds are first obligated to the homeless service provider.

**41.10(2) Building standards.** Any building for which SAF program funds are used for renovation, conversion, rehabilitation, or major rehabilitation must comply with all state and local building codes and ordinances and any other applicable legal requirements.

**41.10(3) Participation by homeless individuals and families.** To the maximum extent possible, SAF program ~~subrecipients must~~ recipients are required to involve, through employment, volunteer services, or otherwise, homeless individuals and families in constructing, renovating, maintaining, and operating facilities assisted with SAF funds, in providing services assisted with SAF funds, and in providing services for occupants of facilities assisted with SAF funds.

**41.10(4) Termination of assistance and grievance procedure.** ~~Subrecipients must~~ Recipients shall establish and implement a formal process to terminate assistance to individuals or families who violate program requirements. This process ~~must~~ shall include a hearing that provides individuals a full opportunity to address issues of noncompliance.

**41.10(5) Data reporting system.** Recipients ~~and subrecipients~~ shall participate in the HUD-approved Homeless Management Information System (HMIS) adopted by IFA as required in the executed contract, unless the recipient ~~or subrecipient~~ qualifies as a domestic violence shelter, in which case the recipient

IOWA FINANCE AUTHORITY[265](cont'd)

~~or subrecipient~~ shall participate in required data collection and reporting activities using a comparable database as defined by HUD (~~HUD HMIS Data Standards, Revised Notice March 2011~~).

**41.10(6) *Ensuring confidentiality.*** ~~Subrecipients must~~ Recipients shall develop and implement procedures to guarantee the confidentiality of records pertaining to any individual to whom family violence prevention or treatment services are provided. In addition, the address or location of any family violence shelter shall not be disclosed to any person except with written authorization of the shelter director.

**41.10(7) *Requirements for religious organizations.*** Recipients shall not engage in religious proselytizing or counseling using SAF funds, nor require attendance at religious services as a requirement or condition to receive assistance with SAF funds, nor limit services or give preference to persons seeking assistance with SAF funds on the basis of religion.

**41.10(8) *Prohibition against involuntary family separation.*** If a shelter provides services to families with children under the age of 18, the age of a child under the age of 18 shall not be used as a basis for denying any family's admission to shelter.

**41.10(9) *Lead-based paint.*** Recipients shall follow the federal rules for lead-based paint, including the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. 4821-4846), the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851-4856), and implementing regulations in 24 CFR Part 35, Subparts A, B, H, J, K, M, and R, which apply to all shelters occupied by program participants.

**41.10(10) *Habitability standards.*** Recipients shall follow the federal rules for habitability, ensuring that shelters funded with SAF adhere to minimum habitability standards for being safe, sanitary, and adequately maintained, according to the regulations at CFR Part 576.403. Standards include considerations for the following: (1) structure and materials, (2) access, (3) space and security, (4) interior air quality, (5) water supply, (6) sanitary facilities, (7) thermal environment, (8) illumination and electricity, (9) food preparation, (10) sanitary conditions, and (11) fire safety.

**41.10(11) *Other requirements.*** IFA may, at its discretion, impose additional requirements on recipients, which will be described in the request for applications, the grant contract, or other guidance materials issued from time to time.

ITEM 13. Amend rule 265—41.11(16) as follows:

**265—41.11(16) *Compliance with applicable federal and state laws and regulations.*** All recipients ~~and subrecipients must~~ shall comply with the Iowa Code ~~governing with respect to~~ activities performed under this program. Use of SAF program funds ~~must~~ shall comply with the following additional requirements.

**41.11(1) *Nondiscrimination and equal opportunity.*** All recipients ~~and subrecipients must~~ shall comply with the following:

*a.* The requirements of Title VIII of the Civil Rights Act of 1968, 42 U.S.C. Sections 3601-19 and implementing regulations; Executive Order 11063 and implementing regulations at 24 CFR Part 107 (June 1, 1999); and Title VI of the Civil Rights Act of 1964 (42 U.S.C. Section 2002d) and implementing regulations at 24 CFR Part 1 (June 1, 1999).

*b.* Affirmative action requirements as implemented with Executive Orders 11625, 12432, and 12138 which require that every effort be made to solicit the participation of minority and women business enterprises (MBE/WBE) in governmental projects.

*c.* The prohibitions against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. Sections 6101-07).

*d.* The prohibitions against discrimination against disabled individuals under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act.

**41.11(2) *Auditing. Review of financial statements.*** ~~All recipients and subrecipients must comply with auditing requirements as outlined in the Single Audit Act of 1996 and the implementing regulations found in OMB Circular A-133.~~ All recipients shall obtain from an independent certified public accountant an annual audit or an annual independent review of the agency's financial statements.

**41.11(3) *Conflict of interest.*** No person who exercises or has exercised any functions or responsibilities with respect to activities assisted under the SAF program, or who is in a position to

## IOWA FINANCE AUTHORITY[265](cont'd)

participate in a decision-making process or gain inside information with regard to activities assisted under the program, may obtain a financial interest or benefit from an assisted activity; have a financial interest in any contract, subcontract, or agreement with respect to an assisted activity; or have a financial interest in the proceeds derived from an assisted activity, either for the person or for those with whom the person has immediate family or business ties, during the person's tenure or during the one-year period following the person's tenure. Persons covered shall include any person who is an employee, agent, consultant, officer, or elected or appointed official of the recipient.

ITEM 14. Amend rule 265—41.12(16) as follows:

**265—41.12(16) Administration.**

**41.12(1) *Contracts.*** Upon selection of an application for funding, IFA will either initiate a contract or authorize a recipient to initiate a contract on IFA's behalf. ~~If a local city or county government or a nonprofit organization is designated as the recipient, the subrecipients~~ Recipients shall remain responsible for adherence to the requirements of the SAF program rules. These rules and applicable federal and state laws and regulations ~~become~~ shall be deemed to be part of the contract. Certain activities may require that permits or clearances be obtained from other state agencies before the start of the project. Funding awards may be conditioned upon the timely completion of these requirements.

**41.12(2) *Record keeping and retention.*** Financial records, supporting documents, statistical records, and all other records pertinent to the funded program shall be retained by the recipient and ~~the subrecipient. Private, nonprofit subrecipients covered through an SAF program contract from a local city or county government or nonprofit organization are responsible for ensuring that pertinent records of their SAF program funds be made available to the administering city or county or nonprofit organization and to IFA upon request. Proper record retention must~~ shall be in accordance with the following:

*a.* Records for any assisted activity shall be retained for five years after the end of the grant period and, if applicable, until audit procedures are completed and accepted by IFA.

*b.* Representatives of the state auditor's office and IFA shall have access to all books, accounts, documents, records, and other property belonging to or in use by a recipient ~~or a subrecipient~~ pertaining to the receipt of assistance under these rules.

**41.12(3) *Reporting requirements.*** ~~Recipients and subrecipients~~ shall submit reports to IFA as prescribed in the contract. Reports include:

*a.* HMIS data reports. All recipients ~~and subrecipients~~ of SAF program funds are required to submit regular reports on clients served using the current HMIS reporting process as prescribed by IFA unless a recipient ~~or subrecipient~~ qualifies as a domestic violence shelter, in which case the recipient ~~or subrecipient~~ must shall submit reports using a comparable database. A comparable database must collect client-level data over time and generate unduplicated aggregate reports based on that data.

*b.* Requests for funds. ~~Recipients and subrecipients must~~ shall submit requests for funds during the contract year at intervals and using forms as prescribed by IFA. IFA may perform any review or field inspections it deems necessary to ensure program compliance, including review of recipient ~~and subrecipient~~ records and reports. When problems of compliance are noted, IFA may require remedial actions to be taken. Failure to respond to notifications of need for remedial action may result in the remedies for noncompliance set forth in subrule 41.12(5).

**41.12(4) *Amendments to contracts.*** ~~Contracts may be amended on an individual basis in emergency situations.~~ Any request to amend a contract ~~must~~ shall be submitted in writing to IFA. IFA will determine if the request to amend is justified based on the material presented in the letter of request. No amendment is valid until approved in writing by IFA.

**41.12(5) *Remedies for noncompliance.*** At any time, IFA may, for cause, find that a recipient ~~or subrecipient~~ is not in compliance with the requirements under this program. Reasons for a finding of noncompliance include, but are not limited to, the recipient's ~~or subrecipient's~~ use of program funds for activities not described in its application, the recipient's ~~or subrecipient's~~ failure to complete approved activities in a timely manner, the recipient's ~~or subrecipient's~~ failure to comply with any applicable state or federal rules or regulations, or the recipient's ~~or subrecipient's~~ lack of continuing capacity to carry

IOWA FINANCE AUTHORITY[265](cont'd)

out the approved program in a timely manner. At its discretion, IFA may employ any of the following remedies for noncompliance:

- a. Issue a warning letter stating that continued failure to comply with program requirements within a stated period of time will result in a more serious action.
- b. Condition a future award.
- c. Direct the recipient ~~or subrecipient~~ to stop incurring costs with grant funds.
- d. Require that some or all of the awarded funds be remitted to the state.
- e. Reduce the level of funds the recipient ~~or subrecipient~~ would otherwise be entitled to receive.
- f. Elect not to provide future award funds to the recipient ~~or subrecipient~~ until appropriate actions are taken to ensure compliance.
- g. Prohibit a future award of funds.

ITEM 15. Amend ~~265~~—**Chapter 41**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 16.5(1)“r” and ~~2010 Iowa Acts, Senate File 2088, division XXII~~ 16.41.

**ARC 1461C**

## **LABOR SERVICES DIVISION[875]**

### **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 88.5, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 10, “General Industry Safety and Health Rules,” and Chapter 26, “Construction Safety and Health Rules,” Iowa Administrative Code.

The proposed amendments adopt by reference changes to federal occupational safety and health standards concerning electrical protective equipment and electrical power generation, distribution and transmission. The effective date for some of the provisions is April 1, 2015. An April 1, 2014, press release by the Occupational Safety and Health Administration of the U.S. Department of Labor includes the following description of the federal standard changes:

OSHA is revising the 40-year-old construction standard for electric power line work to make it more consistent with the corresponding general industry standard and is also making some revisions to the construction and general industry requirements. The updated standards for general industry and construction include new or revised provisions for host and contract employers to share safety-related information with each other and with employees, as well as for improved fall protection for employees working from aerial lifts and on overhead line structures. In addition, the standards adopt revised approach-distance requirements to better ensure that unprotected workers do not get dangerously close to energized lines and equipment. The final rule also adds new requirements to protect workers from electric arcs.

General industry and construction standards for electrical protective equipment are also revised under the final rule. The new standard for electrical protective equipment applies to all construction work and replaces the existing construction standard, which was based on out-of-date information, with a set of performance-oriented requirements consistent with the latest revisions of the relevant consensus standards. The new standards address the safe use and care of electrical protective equipment, including new requirements that equipment made of materials other than rubber provide adequate protection from electrical hazards.

The principal reasons for adoption of these amendments are to implement legislative intent, protect the safety and health of Iowa workers, and make Iowa’s regulations current and consistent with federal

## LABOR SERVICES DIVISION[875](cont'd)

regulations. Pursuant to Iowa Code subsection 88.5(1) and 29 CFR 1953.5, Iowa must adopt changes to the federal occupational safety and health standards.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on June 3, 2014, a public hearing will be held on June 4, 2014, at 9 a.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than June 4, 2014, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

No variance procedures are included in this rule. Variance procedures are set forth in 875—Chapter 5.

After analysis and review of this rule making, jobs could be impacted. However, these amendments are implementing federally mandated regulations, and the State of Iowa is only implementing the federal regulations. The requirements imposed on Iowa businesses by these regulations do not exceed those imposed by federal law.

These amendments are intended to implement Iowa Code section 88.5 and 29 CFR 1953.5.

The following amendments are proposed.

ITEM 1. Amend rule **875—10.20(88)** by inserting the following at the end thereof:  
79 Fed. Reg. 20629 (April 11, 2014)

ITEM 2. Amend rule **875—26.1(88)** by inserting the following at the end thereof:  
79 Fed. Reg. 20629 (April 11, 2014)

## REVENUE DEPARTMENT

### Notice of Electric and Natural Gas Delivery Tax Rate Changes

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue hereby gives notice of the changes to the electric and the natural gas delivery tax rates. These rates will be used in conjunction with the number of kilowatt hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 2013 by each taxpayer, for replacement taxes payable in the 2014-2015 fiscal year.

### 2013 ELECTRIC DELIVERY TAX RATES BY SERVICE AREA RATE CHANGES ONLY

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3226	Akron Municipal Utilities	0.00005331
3201	Algona Municipal Utilities	0.00025144
3227	Anthon Municipal Electric Utility	0.00010313
3213	Bellevue Municipal Utilities	0.00008622
3085	Earlville Municipal Utilities	0.00011850
3231	Glidden Municipal Electric Utility	0.00000214
3282	Manilla Municipal Elec. Utilities	0.00011092
3326	State Center Municipal Light Plant	0.00028983
3328	Sumner Municipal Light Plant	0.00020853
3342	Webster City Municipal Utilities	0.00043318
3345	West Bend Municipal Power Plant	0.00083168

## REVENUE DEPARTMENT(cont'd)

<b>CO. #</b>	<b>IOU's — ELECTRIC</b>	<b>DELIVERY TAX RATE</b>
7305	Omaha Public Power District	0.00132523

<b>CO. #</b>	<b>REC's</b>	<b>DELIVERY TAX RATE</b>
4208	Atchison-Holt Electric Cooperative	0.00085628
4214	Boone Valley Electric Cooperative	0.00084943
4218	Butler County REC	0.00068865
4235	Clarke Electric Cooperative	0.00253720
4251	Federated Rural Electric	0.00033141
4259	Grundy County REC	0.00086958
4260	Grundy Electric Cooperative	0.00046960
4261	Guthrie County REC	0.00120010
4262	Hancock Co. REC	0.00101672
4265	Harrison County REC	0.00072127
4266	Hawkeye REC	0.00051539
4268	Humboldt County REC	0.00093375
4279	Linn County REC	0.00142321
4280	Lyon Rural Electric Cooperative	0.00056786
4299	Nishnabotna Valley REC	0.00059954
4300	North West Rural Electric Coop	0.00034671
4313	Pleasant Hill Community Line	0.00021908
4320	Sac County Rural Electric Coop	0.00069402
4352	Woodbury County REC	0.00103686

**2013 NATURAL GAS DELIVERY TAX RATES BY SERVICE AREA  
RATE CHANGES ONLY**

<b>CO. #</b>	<b>MUNICIPAL GAS</b>	<b>DELIVERY TAX RATE</b>
5238	Coon Rapids Municipal Gas	0.00002699
5275	Lamoni Municipal Gas	0.00077557
5281	Manilla Municipal Gas	0.00032558
5306	Osage Municipal Gas	0.00003639
5340	Wayland Municipal Gas	0.00027918
5344	West Bend Municipal Gas	0.00001834

<b>CO. #</b>	<b>IOU's — GAS</b>	<b>DELIVERY TAX RATE</b>
5270	IES Utilities	0.00600060
5289	MidAmerican Energy	0.00948820
5335	United Cities Gas	0.01177193

## REVENUE DEPARTMENT

### Notice of Rate-Regulated Water Utilities Delivery Tax Rate

Pursuant to the authority of Iowa Code section 437B.3, the Director of Revenue hereby gives notice of the rate-regulated water utility delivery tax rate. This rate will be used in conjunction with the total gallons of water delivered to consumers in calendar year 2013 by each taxpayer, for replacement taxes payable in the 2014-2015 fiscal year.

#### 2013 RATE-REGULATED WATER UTILITIES DELIVERY TAX RATE BY SERVICE AREA

CO. #	RATE-REGULATED WATER	DELIVERY TAX RATE
6020	Iowa American Water	0.00052610

## 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:

May 1, 2013 — May 31, 2013	4.00%
June 1, 2013 — June 30, 2013	3.75%
July 1, 2013 — July 31, 2013	4.00%
August 1, 2013 — August 31, 2013	4.25%
September 1, 2013 — September 30, 2013	4.50%
October 1, 2013 — October 31, 2013	4.75%
November 1, 2013 — November 30, 2013	4.75%
December 1, 2013 — December 31, 2013	4.50%
January 1, 2014 — January 31, 2014	4.75%
February 1, 2014 — February 28, 2014	5.00%
March 1, 2014 — March 31, 2014	4.75%
April 1, 2014 — April 30, 2014	4.75%
May 1, 2014 — May 31, 2014	4.75%

**ARC 1460C****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 sections 17A.4, 476.86, and 476.87, the Utilities Board (Board) gives notice that on April 22, 2014, the Board issued an order in Docket No. RMU-2014-0001, In re: Amendments to Competitive Natural Gas Provider Rules to Address Natural Gas Vehicle Fuel Providers [199 IAC 2.2(18) and 19.14], “Order Commencing Rule Making,” proposing to amend the Board’s competitive natural gas provider (CNGP) rules to allow flexibility in developing separate application forms for CNGPs offering large volume service, small volume service, and natural gas as vehicle fuel. The Board is also proposing to amend the CNGP annual report filing requirements and is updating the Board Duty Officer notification rules.

Iowa Code section 476.86 defines “competitive natural gas provider” as “a person who takes title to natural gas and sells it for consumption by a retail end user in the state of Iowa.” Iowa Code section 476.86 defines “aggregator” as “a person who combines retail end users into a group and arranges for the acquisition of competitive natural gas services without taking title to those services.” Board rules refer to both competitive natural gas providers and aggregators as CNGPs. The current rule, 199 IAC 19.14(3), requires that applications for a CNGP certificate provide all of the applicable information in 199 IAC 2.2(18). The application form in 199 IAC 2.2(18), paragraphs “1” to “5,” “7” and “8,” describes in detail the information that a person is required to file in support of a CNGP certificate. Numbered paragraph 6 of the application requires persons requesting a CNGP certificate to serve small volume customers to provide additional information as follows:

6. Applicants who will be serving small volume customers must provide a demonstration that the applicant has the operational and financial capability to obtain and deliver the services it proposes to offer. At a minimum, applicants are required to submit financial statements. The applicant must submit a balance sheet, statement of income, statement of cash flow, and, if applicable, a statement of shareholders’ equity and the applicant’s debt structure, including bond rating. As a demonstration of the applicant’s operational ability, the applicant must submit a roster of officers and directors, a description of the professional backgrounds of the applicant’s principal managerial and technical personnel, an operational flow chart, and a description of the applicant’s facilities and the services it intends to render. A request for confidential treatment for this information may be filed with the board, pursuant to 199—subrule 1.9(6).

The Board proposed in Docket No. RMU-2013-0001 to amend the CNGP rules in 199 IAC 19.14(476) (but not the application form in 199 IAC 2.2(18)) in order to address CNGPs operating as vehicle fuel providers (VFPs) (See **ARC 1169C**, IAB 11/13/13). Based upon comments during that rule making, the Board decided not to adopt the amendments proposed in Docket No. RMU-2013-0001 and instead is opening this new rule-making docket to address CNGP rules on a more comprehensive basis. The proposed amendments in this rule making address not only the application filing requirements for VFPs but also the different application forms for those CNGPs wishing to provide service to large volume customers or small volume customers, or both.

The Board is proposing to amend 199 IAC 2.2(18) to remove the application form from 2.2(18) and replace the form with language indicating that application forms are available on the Board’s Web site. By removing the current application from 2.2(18), the Board will have the flexibility to create separate

## UTILITIES DIVISION[199](cont'd)

forms for CNGPs providing large volume service, CNGPs providing small volume service, and CNGPs providing vehicle fuel service and to amend and revise those forms in response to industry changes. The proposed amendments are similar to the current provisions for forms required for electric franchises and natural gas pipeline permits located in 199 IAC 2.4(17A,474). That rule lists the forms for each of those processes and states that forms are available upon request.

The Board is also proposing to amend 199 IAC 19.14(476) to state that application forms for those wishing to obtain a certificate to provide CNGP service to large volume, small volume, or vehicle fuel customers can be found on the Board's Web site. The proposed amendments to rule 199 IAC 19.14(476) include language reflecting the statutory requirement that persons requesting a CNGP certificate reasonably demonstrate the managerial, technical, and financial capability to provide the service being offered.

The Board is proposing to amend the CNGP annual filing requirements found in 199 IAC 19.14(5)“c” in the same way that is being proposed for the CNGP application form. Currently, 199 IAC 19.14(5)“c” describes the specific information that a CNGP is required to file in the annual report. Under current procedures, CNGPs are contacted by the Board with information for locating the annual report form on the Board's Web site. The Board is proposing to remove the descriptions of the information required in the annual report in 19.14(5)“c” and only require in the rules the filing of the annual report. The specific information that would be required from each type of CNGP would then be described in the annual report form which will be accessible on the Board's Web site. This will allow timely modifications to the form as necessary.

The Board is also proposing updates to those provisions in the rules that address contacting the Duty Officer about incidents and outages. The preferred method of contacting the Duty Officer is by e-mail, and the Board is proposing amendments to indicate this preference.

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-2014-0001.

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 June 3, 2014. 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.

The Board has not scheduled an oral presentation for the proposed amendments. Any request for the Board to schedule an oral presentation must be filed in the same manner as comments on or before June 3, 2014.

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 ability of persons wishing to offer competitive natural gas provider service, including natural gas vehicle fueling service, in Iowa and therefore on jobs in Iowa, by reducing regulatory burdens, although that effect cannot be quantified.

These amendments are intended to implement Iowa Code sections 17A.4, 476.86 and 476.87.

The following amendments are proposed.

ITEM 1. Amend subrule 2.2(18) as follows:

**2.2(18)** *Application forms for certification of competitive natural gas ~~provider~~ (CNGP) providers.*

STATE OF IOWA  
BEFORE THE IOWA UTILITIES BOARD

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IN-RE:	}	DOCKET NO. (insert docket no.)
(insert applicant name)		APPLICATION FOR CERTIFICATION OF COMPETITIVE NATURAL GAS PROVIDER OR AGGREGATOR

---

COMES NOW (insert name of person or entity requesting the certificate) and files this application for a certificate as a competitive natural gas provider or aggregator (CNGP), and in support thereof states:

1.—The legal name and all trade names under which the applicant will operate, a description of the business structure of the applicant, evidence of authority to do business in Iowa, and the applicant’s state of incorporation.

2.—The names, business addresses and business telephone numbers of the principal officers of the applicant who can be contacted regarding its operations in Iowa and telephone number(s) at which the CNGP can be contacted 24 hours a day.

3.—Identification of affiliates that are certified under 199—19.14(476) and a listing of the names and addresses of all the applicant’s affiliates engaged in the provision of competitive natural gas services in any other state.

4.—A listing of all legal actions and formal complaints pertaining to the provision of competitive natural gas services filed against the applicant or its affiliates at a public utility regulatory body other than the board that were pending in the 12 months prior to the date of the request for certificate, including identification of the title and number of applicable proceedings and a copy of the final orders in such proceedings or the citation to the website where the text of the orders can be found.

5.—Identification of the states and jurisdictions in which the applicant or an affiliate has had a license or certificate to supply competitive natural gas services suspended, revoked, or denied, or where the applicant has voluntarily withdrawn from providing service due to financial or operational reasons. Applicant shall include identification of the title and number of any applicable proceedings and a copy of any final orders in such proceedings or the citation to the website where the text of the orders can be found.

6.—Applicants who will be serving small volume customers must provide a demonstration that the applicant has the operational and financial capability to obtain and deliver the services it proposes to offer. At a minimum, applicants are required to submit financial statements. The applicant must submit a balance sheet, statement of income, statement of cash flow, and, if applicable, a statement of shareholders’ equity and the applicant’s debt structure, including bond rating. As a demonstration of the applicant’s operational ability, the applicant must submit a roster of officers and directors, a description of the professional backgrounds of the applicant’s principal managerial and technical personnel, an operational flow chart, and a description of the applicant’s facilities and the services it intends to render. A request for confidential treatment for this information may be filed with the board, pursuant to 199—subrule 1.9(6).

7.—A commitment to comply with all the applicable conditions of certification contained in 199—subrules 19.14(5) and 19.14(6). Acknowledgement that failure to comply with all the applicable conditions of certification may result in the revocation of the CNGP’s certificate.

8.—A copy of the standard customer contract(s) and disclosure statement required by 199—paragraph 19.14(6)“c.”

Application forms for persons wishing to request a certificate to provide service as a competitive natural gas provider or aggregator in Iowa pursuant to Iowa Code sections 476.86 and 476.87, and 199—19.14(476), can be accessed on the board’s Web site, <http://iub.iowa.gov>, or may be obtained upon request from the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319.

## UTILITIES DIVISION[199](cont'd)

ITEM 2. Amend rule **199—2.2(17A,474)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 17A.9A, 474.6, ~~476.6 and 476.8~~ 476.86 and 476.87.

ITEM 3. Amend subrule 10.17(4) as follows:

**10.17(4)** The board shall be notified, as soon as practical, of any reportable incident by e-mail to the duty officer at [dutyofficer@iub.iowa.gov](mailto:dutyofficer@iub.iowa.gov) or, if e-mail is not available, by calling the board duty officer at (515)745-2332 or by e-mail to [dutyofficer@iub.iowa.gov](mailto:dutyofficer@iub.iowa.gov).

ITEM 4. Adopt the following **new** definition of “Vehicle fuel provider” in subrule **19.14(1)**:

“*Vehicle fuel provider*” or “*VFP*” means a competitive natural gas provider or aggregator as defined in Iowa Code section 476.86 that owns or operates facilities to sell natural gas as vehicle fuel to a retail end user.

ITEM 5. Amend subrule 19.14(3) as follows:

**19.14(3)** *Filing requirements and application process.* ~~Applications shall be made in the format and contain all of the information required in 199—subrule 2.2(18). Applications must be filed with the executive secretary at Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069. An original and ten copies must be filed. Applications for a certificate to provide service as a competitive natural gas provider shall be filed electronically through the board’s electronic filing system. Instructions for making an electronic filing can be found on the board’s electronic filing system Web site at <http://efs.iowa.gov>. Application forms can be found on the board’s Web site at <http://iub.iowa.gov> or may be requested from the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319.~~

*a.* An application fee of \$125 must be included with the application to cover the administrative costs of accepting and processing a filing. In addition, each applicant ~~will~~ may be billed an hourly rate for actual time spent by the board reviewing the application. Iowa Code section 476.87(3) requires the board to allocate the costs and expenses reasonably attributable to certification and dispute resolution to applicants and participants to the proceeding.

*b.* Applications to provide service as a competitive natural gas provider pursuant to Iowa Code sections 476.86 and 476.87 shall contain information to reasonably demonstrate that the applicant possesses the managerial, technical, and financial capability sufficient to obtain and deliver the services the competitive natural gas provider or aggregator proposes to offer. Application forms to provide competitive natural gas service to large volume, small volume, and vehicle fuel customers can be accessed on the board’s Web site, <http://iub.iowa.gov>.

*c.* A request for confidential treatment of the information required to obtain a competitive natural gas provider certificate may be filed with the board pursuant to 199—subrule 1.9(6).

*d.* An applicant shall notify the board during the pendency of the certification request of any material change in the representations and commitments ~~required by this subrule made in the application within 14 days of such change. Any new legal actions or formal complaints as identified in 199 IAC 2.2(18), numbered paragraph “4,”~~ are considered material changes in the request. Once certified, CNGPs shall notify the board of any material change in the representations and commitments required for certification within 14 days of such change.

ITEM 6. Amend paragraph **19.14(5)“c”** as follows:

*c. Reports to the board.* Each CNGP shall file a report with the board on April 1 of each year for the 12-month period ending December 31 of the previous year. The report shall be filed on forms provided by the board, which can be accessed on the board’s Web site, <http://iub.iowa.gov>. This information may be filed with a request for confidentiality, pursuant to 199—subrule 1.9(6). ~~For each utility distribution system, the report shall contain the following information for its Iowa operations:~~

- ~~(1) The average number of small volume end users served per month.~~
- ~~(2) The average number of large volume end users served per month.~~
- ~~(3) The total volume of sales to small volume end users, by month.~~
- ~~(4) The total volume of sales to large volume end users, by month.~~

## UTILITIES DIVISION[199](cont'd)

~~(5) The revenue collected from small volume end users for competitive natural gas services, excluding any revenue collected from end users on behalf of utilities.~~

~~(6) The revenue collected from large volume end users for competitive natural gas services, excluding any revenue collected from end users on behalf of utilities.~~

~~(7) The date the applicant began providing service in Iowa.~~

ITEM 7. Amend subrule 19.17(2), introductory paragraph, as follows:

**19.17(2) Information required.** The utility shall notify the board ~~by telephone~~ by e-mail, as soon as practical, of any reportable incident at dutyofficer@iub.iowa.gov or, when e-mail is not available, by calling the board duty officer at (515)745-2332 ~~or by e-mail at dutyofficer@iub.iowa.gov~~. The person sending the e-mail or the caller shall leave a call-back number for a person who can provide the following information:

ITEM 8. Amend paragraph **20.19(2)“a,”** introductory paragraph, as follows:

*a.* Notification shall be provided regarding outages that meet the requirements of subrule 20.19(1) by notifying the board duty officer by e-mail at dutyofficer@iub.iowa.gov or, in appropriate circumstances, by telephone at (515)745-2332. Notification shall be made at the earliest possible time after it is determined the event may be reportable and should include the following information, as available:

ITEM 9. Amend rule 199—21.9(476) as follows:

**199—21.9(476) Incident reports.** A regulated public water utility shall notify the board when it notifies the Iowa department of natural resources or the local county health department about an incident involving: (1) an occurrence of waterborne emergency (e.g., treatment process malfunction, chemical/biological spill in the water supply, contamination event in the distribution system, emergency that has the potential for drinking water contamination); (2) a boil water advisory and contamination event; or (3) a low-pressure event (less than 20 psi) affecting a widespread area of the system. Notification shall be made to the board by ~~calling~~ e-mail to the board duty officer at dutyofficer@iub.iowa.gov or, in appropriate circumstances, by calling (515)745-2332 ~~or by e-mail at dutyofficer@iub.iowa.gov~~. The caller person contacting the board shall leave a call-back number for a person knowledgeable about the incident. The utility shall report to the board when the incident has ended and normal water service has been restored.

ITEM 10. Amend subrule 25.5(3), introductory paragraph, as follows:

**25.5(3)** The board shall be notified ~~by telephone~~ immediately, or as soon as practical thereafter, by calling e-mail to the board duty officer at (515)745-2332 ~~or by e-mail to dutyofficer@iub.iowa.gov~~ or, in appropriate circumstances, by calling (515)745-2332. The caller person contacting the board shall leave a telephone number of a person who can provide the following information:

## ARC 1455C

## EDUCATIONAL EXAMINERS BOARD[282]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 11, “Complaints, Investigations, Contested Case Hearings,” Iowa Administrative Code.

The Board seeks to clarify language regarding who is eligible to file an ethics complaint before the Board. The amendment removes confusing language and allows any licensed practitioner to file an ethics complaint, regardless of employment status.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 19, 2014, as **ARC 1344C**. A public hearing took place on March 12, 2014. No one attended the public hearing. However, the Board received one written comment from the Iowa State Education Agency, which stated that the proposed amendment would have the unintended effect of removing the ability of educational entities and recognized local or state professional organizations to file an ethics complaint before the Board.

The language published under Notice has been changed to address this comment. The reference to recognized educational entities and local or state professional organizations has been moved to a new paragraph “b,” and subsequent paragraphs have been relettered.

The amendments are subject to waiver pursuant to 282—Chapter 6.

The Board of Educational Examiners adopted this amendment on April 11, 2014.

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

This amendment is intended to implement Iowa Code section 272.2(4).

This amendment will become effective June 18, 2014.

The following amendment is adopted.

Amend subrule 11.4(1) as follows:

**11.4(1) Who may initiate.** The following entities may initiate a complaint:

*a.* Licensed practitioners ~~employed by a school district or their educational entity or their recognized local or state professional organization.~~

*b.* Recognized educational entities or local or state professional organizations.

~~*b. c.*~~ Local boards of education.

~~*e. d.*~~ Parents or guardians of students involved in the alleged complaint.

~~*d. e.*~~ The executive director of the board of educational examiners if the following circumstances have been met:

(1) to (3) No change.

~~*e. f.*~~ The department of transportation if the licensee named in the complaint holds a behind-the-wheel instructor’s certification issued by the department and the complaint relates to an incident or incidents arising during the course of driver’s education instruction.

~~*f. g.*~~ An employee of the department of education who, while performing official duties, becomes aware of any alleged misconduct by an individual licensed under Iowa Code section 272.2.

[Filed 4/17/14, effective 6/18/14]

[Published 5/14/14]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/14/14.

## ARC 1454C

## EDUCATIONAL EXAMINERS BOARD[282]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby amends Chapter 13, “Issuance of Teacher Licenses and Endorsements,” Iowa Administrative Code.

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

The Board recently adopted an amendment to allow out-of-state applicants to provide an expired teaching license as part of their applications. Since adoption of that amendment, the Board has determined that other rules require similar changes. These amendments provide the necessary consistency.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 19, 2014, as **ARC 1343C**. A public hearing took place on March 12, 2014, with written comment accepted until March 14, 2014. No one attended the public hearing, and no written comments were received. These amendments are identical to those published under Notice.

The amendments are subject to waiver pursuant to 282—Chapter 6.

The Board of Educational Examiners adopted these amendments on April 11, 2014.

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

These amendments are intended to implement Iowa Code section 272.2(1)“a.”

These amendments will become effective June 18, 2014.

The following amendments are adopted.

ITEM 1. Amend subrule 13.3(6) as follows:

**13.3(6)** *Requirements for applicants whose preparation was completed through out-of-state teacher preparation programs and who have attained National Board Certification.* An applicant who holds a valid license from another state and who has attained National Board Certification must:

- a. No change.
- b. Provide a valid or expired out-of-state teaching license based on a state-approved teacher preparation program.
- c. to g. No change.

ITEM 2. Amend subrule 13.17(1) as follows:

**13.17(1)** *One-year teacher exchange license.*

a. For an applicant applying under 13.3(2), a one-year nonrenewable exchange license may be issued to the applicant under the following conditions:

- (1) and (2) No change.
- (3) The applicant holds and submits a copy of a valid ~~and current~~ or expired certificate or license ~~in the state in which the preparation was completed or in which the applicant is currently teaching,~~ exclusive of a temporary, emergency or substitute license or certificate;
  1. and 2. No change.
  - (4) to (7) No change.
- b. No change.

[Filed 4/17/14, effective 6/18/14]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/14/14.

**ARC 1462C**

**LOTTERY AUTHORITY, IOWA[531]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 99G.9, 17A.3 and 17A.4, the Iowa Lottery Authority amends Chapter 12, “Licensing,” Iowa Administrative Code.

The rules in Chapter 12 describe licensing standards and requirements for retailers licensed by the Iowa Lottery Authority. This amendment changes the language of 12.12(4) to mirror the language and intent of the statute that it implements (Iowa Code section 99G.24) concerning the Iowa Lottery Authority’s decision to suspend a retailer for selling lottery tickets to a person under the age of 21. Because retailers are, many times, the source of the Lottery’s information on such a sale, the Lottery changed the mandatory-suspension language to provide the Lottery with discretion as to whether a

LOTTERY AUTHORITY, IOWA[531](cont'd)

retailer must be suspended after selling to a minor. This amendment allows the Lottery the discretion not to punish retailers who are forthright and cooperative in reporting such incidents.

Notice of Intended Action was published in the January 8, 2014, Iowa Administrative Bulletin as **ARC 1283C**.

Comments were made about the broadening of the provision in subrule 12.12(4) and the additional discretion it provides the Lottery to discipline retailers for selling lottery tickets to minors. A comment indicated the amendment should specifically limit the subrule to cases in which the retailer self-reported such a sale.

Other comments emphasized the importance of the subrule's mirroring the intent of the Legislature as expressed in the Iowa Code. A Board member specifically commented on the existence of discretion in several other instances in the Lottery's rules and the Iowa Code, with this being the only situation in which the Lottery has no discretion.

This amendment is identical to that published under Notice.

The amendment was adopted during the April 22, 2014, meeting of the Iowa Lottery Authority Board of Directors.

The Iowa Lottery Authority does not intend to grant waivers under the provisions of these rules.

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

This amendment is intended to implement Iowa Code sections 99G.24 and 99G.27.

This amendment will become effective on June 18, 2014.

The following amendment is adopted.

Amend subrule 12.12(4) as follows:

**12.12(4)** Upon suspicion that a retailer has sold a ticket to an underage player, the lottery will investigate and provide a written warning to the retailer describing the report of the event and of the potential violation of Iowa Code Supplement section 99G.30(3). In the event a retailer sells a ticket to an underage player and the lottery can substantiate the claim, the lottery ~~shall~~ may suspend the retailer's license for 7 days. When a retailer sells a ticket to an underage player and the lottery can substantiate the claim a second time in a period of one year from the date of the first event, the lottery ~~shall~~ may suspend the retailer's license for a period of 30 days. When a retailer sells a ticket to an underage player and the lottery can substantiate the claim a third time in a period of one year from the date of the first event as described in this rule, the retailer's license ~~shall~~ may be suspended for one year.

[Filed 4/25/14, effective 6/18/14]

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**ARC 1453C**

## **PROFESSIONAL LICENSURE DIVISION[645]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 152B.6, the Board of Respiratory Care hereby amends Chapter 262, "Continuing Education for Respiratory Care Practitioners," and Chapter 265, "Practice of Respiratory Care Practitioners," Iowa Administrative Code.

Item 1 removes language that attempts to define clinical continuing education. The existing definition was confusing. Removing part of the definition creates a more concise and clearer definition.

Item 2 reiterates the definition of "respiratory care as a practice" in Iowa Code section 152B.2 and provides clarification regarding what is considered the practice of respiratory therapy.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1255C** on December 25, 2013.

The Board received 31 written comments. In addition, 10 comments were received at the public hearing held on January 14, 2014. All the comments were in reference to numbered paragraph "3" in proposed rule 645—265.5(152B,272C) that listed performing pulmonary diagnostic and

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

sleep-related (polysomnography) testing as a respiratory service. Thirty-six total comments were opposed. Five comments were in favor. Comments in opposition stated that references to sleep-related (polysomnography) testing should not be included in the rule.

Based on public comment, the Board removed the controversial reference to sleep-related (polysomnographic) testing in paragraph "3" of rule 645—265.5(152B,272C) in Item 2.

In Item 1, paragraph "a," the word "that," which was stricken in the Notice, has been retained.

After analysis and review of this rule making, no impact on jobs is expected.

These amendments are intended to implement Iowa Code sections 147.76 and 272C.2.

These amendments will become effective June 18, 2014.

The following amendments are adopted.

ITEM 1. Amend subrule 262.3(2) as follows:

**262.3(2) Specific criteria.** Continuing education hours of credit may be obtained by:

a. Programs/activities that shall be of a clinical nature related to the practice of respiratory care. ~~Clinical nature subject matter is described as basic clinical processes that include information beyond the basic licensure requirements applicable to the normal development and use of the clinical respiratory care practitioner. Any communication course must involve the actual application to the practice of the respiratory care practitioner.~~

b. to f. No change.

ITEM 2. Adopt the following **new** rule 645—265.5(152B,272C):

**645—265.5(152B,272C) Respiratory care as a practice.** "Respiratory care as a practice" means a health care profession, under medical direction, employed in the therapy, management, rehabilitation, diagnostic evaluation, and care of patients with deficiencies and abnormalities that affect the pulmonary system and associated aspects of cardiopulmonary and other systems' functions, and includes, but is not limited, to the following direct and indirect respiratory care services that are safe, of comfort, aseptic, preventative, and restorative to the patient:

1. Observing and monitoring signs and symptoms, general behavior, reactions, and general physical responses to respiratory care treatment and diagnostic testing.

2. Determining whether the signs, symptoms, behavior, reactions, or general responses exhibit abnormal characteristics.

3. Performing pulmonary diagnostic testing.

4. Analyzing blood gases and respiratory secretions.

5. Measuring and monitoring hemodynamic and physiologic function related to cardiopulmonary pathophysiology.

6. Performing diagnostic and testing techniques in the medical management of patients to assist in diagnosis, monitoring, treatment, and research of pulmonary abnormalities, including measurement of ventilatory volumes, pressures, and flows; and collection of specimens of blood and from the respiratory tract.

7. Administering:

- Medical gases, aerosols, and humidification, not including general anesthesia.

- Lung expansion therapies.

- Bronchopulmonary hygiene therapies.

- Hyperbaric therapy.

- Pharmacologic and therapeutic agents necessary to implement therapeutic, disease prevention, pulmonary rehabilitative, or diagnostic regimens prescribed by a licensed physician, surgeon, or other qualified health care professional prescriber.

8. Maintaining natural and artificial airways.

9. Without cutting tissues, inserting and maintaining artificial airways.

10. Initiating, monitoring, modifying and discontinuing invasive or noninvasive mechanical ventilation.

11. Performing basic and advanced cardiopulmonary resuscitation.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

12. Performing invasive procedures that relate to respiratory care.
13. Implementing changes in treatment regimen based on observed abnormalities and respiratory care protocols to include appropriate reporting and referral.
14. Managing asthma, COPD, and other respiratory diseases.
15. Performing cardiopulmonary rehabilitation.
16. Instructing patients in respiratory care, functional training in self-care and home respiratory care management and promoting the maintenance of respiratory care fitness, health, and quality of life.
17. Performing those advanced practice procedures that are permitted within the policies of the employing institution and for which the respiratory care practitioner has documented training and demonstrated competence.
18. Managing the clinical delivery of respiratory care services through the ongoing supervision, teaching, and evaluation of respiratory care.
19. Transcribing and implementing a written, verbal, or telephonic order from a licensed physician, surgeon, or other qualified health care professional prescriber pertaining to the practice of respiratory care.

[Filed 4/14/14, effective 6/18/14]

[Published 5/14/14]

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**ARC 1456C**

**RACING AND GAMING COMMISSION[491]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby amends Chapter 4, "Contested Cases and Other Proceedings," Chapter 5, "Track and Excursion Boat Licensees' Responsibilities," Chapter 10, "Thoroughbred and Quarter Horse Racing," and Chapter 11, "Gambling Games," Iowa Administrative Code.

Item 1 allows the Commission to suspend a license for up to five years.

Items 2 and 3 clarify when debt arrangements need to be submitted for approval.

Item 4 clarifies allowable jockey agent representation.

Item 5 clarifies the definition of "administrator."

Item 6 clarifies shipping notification requirements.

Notice of Intended Action for these amendments was published in the February 5, 2014, Iowa Administrative Bulletin as **ARC 1310C**. A public hearing was held on February 25, 2014. No comments were received. In Item 3, one change has been made to the amendments published under Notice. The word "transactions" was changed to "transaction" for consistency in 5.4(8)"a"(2), paragraph "4."

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

These amendments are intended to implement Iowa Code chapters 99D and 99F.

These amendments will become effective June 18, 2014.

The following amendments are proposed.

ITEM 1. Amend rule 491—4.7(99D,99F), introductory paragraph, as follows:

**491—4.7(99D,99F) Penalties (gaming board and board of stewards).** All penalties imposed will be promptly reported to the commission and facility in writing. The board may impose one or more of the following penalties: eject and exclude an individual from a facility; revoke a license; suspend a license for up to ~~365 days~~ five years from the date of the original suspension; place a license on probation; deny a license; impose a fine of up to \$1000; or order a redistribution of a racing purse or the payment of or the withholding of a gaming payout. The board may set the dates for which the suspension must be served. The board may also suspend the license of any person currently under suspension or in bad standing in

## RACING AND GAMING COMMISSION[491](cont'd)

any other state or jurisdiction by a state racing or gaming commission. If the punishment so imposed is not sufficient, in the opinion of the board, the board shall so report to the commission.

ITEM 2. Renumber subparagraph **5.4(8)“a”(2)** as **5.4(8)“a”(3)**.

ITEM 3. Adopt the following **new** subparagraph **5.4(8)“a”(2)**:

(2) A debt transaction greater than \$3 million entered into by a licensee or licensee's parent company assigning an obligation to a licensee, except a debt transaction previously approved in subrule 5.4(20), is subject to commission jurisdiction. The request for approval shall include:

1. The names and addresses of all parties;
2. The amount and source of funds;
3. The nature and amount of security and collateral provided;
4. The specific nature and purpose of the transaction; and
5. The term sheet or executive summary of the transaction.

ITEM 4. Rescind subparagraph **10.5(4)“a”(5)** and adopt the following **new** subparagraph in lieu thereof:

(5) No jockey agent shall represent more than two jockeys and one apprentice jockey at the same time except:

1. A jockey agent may represent three jockeys at a “mixed” meeting so long as no more than two of the jockeys ride the same breed.
2. A jockey agent may represent three jockeys at a race meeting exclusive of thoroughbred racing.

ITEM 5. Amend rule **491—11.1(99F)**, definition of “Administrator,” as follows:

“*Administrator*” means the administrator of the racing and gaming commission or the administrator’s designee.

ITEM 6. Rescind subrule 11.4(6) and adopt the following **new** subrule in lieu thereof:

**11.4(6) Distribution, movement and disposal.**

*a.* Except as otherwise authorized by the administrator, written notice, submitted by facsimile or electronic mail, shall be filed with the commission when a gambling game or implement of gambling is shipped, moved or disposed of. The written notice shall be provided as follows:

- (1) At least five calendar days prior to arrival of a gambling game or implement of gambling at a licensed facility, the licensed distributor shall provide notice.
- (2) At least one day before a gambling game is removed from or disposed of by a licensed facility, the licensed facility or the owner shall provide notice. All methods of disposal for gambling games or implements of gambling are subject to administrator approval.

*b.* The administrator may approve licensee transfers of gambling games or implements of gambling among subsidiaries of the licensee's parent company.

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**ARC 1464C**

**TREASURER OF STATE[781]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 12B.10C, the Treasurer of State hereby amends Chapter 15, “Required Public Funds Custodial Agreement Provisions,” Iowa Administrative Code.

These amendments are necessary to comply with law and to reflect changes in market practice.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 19, 2014, as **ARC 1383C**. No public comment was received. These amendments are identical to the amendments published under Notice of Intended Action.

## TREASURER OF STATE[781](cont'd)

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

These amendments are intended to implement Iowa Code chapter 12B.

These amendments will become effective June 18, 2014.

The following amendments are adopted.

ITEM 1. Amend rule 781—15.1(12B) as follows:

**781—15.1(12B) Scope.**

**15.1(1)** Iowa Code section 12B.10C requires the treasurer of state to adopt rules requiring the inclusion in public funds custodial agreements of any provisions necessary to prevent loss of public funds. A As used in this chapter, “public funds custodial agreement” is means any public funds custodial agreement as defined in Iowa Code section 12B.10C as any contractual agreement pursuant to which one or more persons including, but not limited to, investment advisors, investment companies, trustees, agents and custodians, are authorized to act as a custodian of or to designate another person to act as a custodian of public funds or any security or document of ownership or title evidencing public funds investments.

**15.1(2)** ~~These rules~~ This chapter shall apply to any public unit, as defined in 781—Chapter 13, which uses a public funds custodial agreement for or relating to the investment of public funds. ~~Public~~ As used in this chapter, “public funds” are means public funds as defined in Iowa Code section 12C.1(2)“b” as moneys of the state or a political subdivision or instrumentality of the state including a county, school corporation, special district, drainage district, unincorporated town or township, municipality, or municipal corporation or any agency, board, or commission of the state or a political subdivision; any court or public body noted in Iowa Code section 12C.1(1); a legal or administrative entity created pursuant to Iowa Code chapter 28E; or an electric power agency as defined in Iowa Code section 28F.2.

**15.1(3)** ~~A public unit may only enter into a contractual arrangement pursuant to which a person is authorized to act as a custodian of public funds or any security or document of ownership or title evidencing public funds investments (including the safekeeping of investments owned by a public unit) if that person is the trust or safekeeping department of a national or state bank located in the state of Iowa that lawfully possesses and exercises fiduciary powers under applicable federal laws or the laws of the state of Iowa public funds custodial agreement if the custodian is a state or national bank that is located in the state of Iowa and has a safekeeping or trust department. Provided, however Notwithstanding the foregoing, the treasurer of state may exercise its discretion under Iowa Code section 12C.4 to enter into public funds custodial agreements with a custodian located outside the state of Iowa that lawfully possesses and exercises fiduciary powers under applicable federal or state laws. Each public unit whose investments involve the use of that enters into a public funds custodial agreement shall require the inclusion in the public funds custodial agreement those provisions contained in rule 781—15.2(12B) of this chapter or substantially equivalent provisions.~~

**15.1(4)** ~~Investments of public~~ Public funds that are invested under the provisions of a resolution or indenture for the issuance of bonds, notes, certificates, warrants, or other evidences of indebtedness are not subject to ~~these rules~~ this chapter.

**15.1(5)** ~~This chapter does not apply to those entities described in Iowa Code section 12B.10C(4) or to any other entities that may otherwise be exempted by law. The public safety peace officers’ retirement system governed by Iowa Code chapter 97A, the Iowa public employees’ retirement system governed by Iowa Code chapter 97B, investments by the Iowa finance authority governed by Iowa Code chapter 16, the state fire and police retirement system governed by Iowa Code chapter 411, and the judicial retirement system governed by Iowa Code chapter 602, article 9, are not subject to these rules. These rules also do~~ This chapter does not apply to public funds custodial agreements entered into by the treasurer of state when such agreements are on behalf of any of the entities specified in this section the aforementioned entities.

**15.1(6)** ~~These rules do~~ This chapter does not apply to custodial agreements between an open-end management investment company registered with the federal Securities and Exchange Commission under the federal Investment Company Act of 1940, 15 U.S.C. Sec. 80(a) and a custodian bank.

TREASURER OF STATE[781](cont'd)

~~15.1(7) These rules do~~ This chapter does not apply to any custodial agreements entered into by a public unit or the treasurer of state for the purposes of securing public funds deposits under Iowa Code chapter 12C.

~~15.1(8) These rules do~~ This chapter does not apply to Treasury Direct accounts established by a public unit with a federal reserve bank for the purpose of making direct purchases of United States Treasury bills, notes or bonds.

ITEM 2. Amend rule 781—15.2(12B) as follows:

**781—15.2(12B) Required provisions for inclusion in public funds custodial agreements.** All public funds custodial agreements shall be in writing and shall include the following provisions:

~~15.2(1) The custodian shall represent and warrant that it lawfully possesses and exercises fiduciary powers under applicable federal laws or the laws of the state of Iowa, unless such a custodian is located out of state and is used by the treasurer of state for purposes permitted in Iowa Code section 12C.4, and that it has the resources and expertise to act as the custodian of public funds or any security or document of ownership or title evidencing public funds investments and to perform its responsibilities under the public funds custodial agreement.~~

**15.2(2)** The scope of duties and services to be performed by the custodian shall be described in detail satisfactory to the public unit and shall include, as applicable, custodial, settlement, collection of income and investment proceeds, reporting, and securities valuation services.

**15.2(3)** The custodian shall agree to provide the public unit with receipts, advices or other written confirmation or acknowledgment of its custody, on behalf of the public unit, of all assets delivered to it for the account of the public unit and subject to the public funds custodial agreement.

**15.2(4)** The custodian shall agree to segregate the public funds fund's assets separate from bank the custodian's own assets and to maintain records adequate to describe the fiduciary capacity of the custodian and the public unit's ownership of or beneficial interest in the assets by the public unit held by the custodian.

~~15.2(5) The custodian shall agree to maintain adequate records regarding a description of the assets, all receipts, deliveries and locations of the assets, together with a current inventory thereof, all purchases and sales, all receipts and disbursements of cash and all debits and credits pertaining to transactions relating to the assets, including but not limited to interest payments. The custodian shall agree to conduct periodic inspections in order to verify the accuracy of the inventory, including the securities, if any, held by a subcustodian.~~

~~15.2(6) 15.2(5)~~ The custodian shall agree that all records of investment transactions, documentation, orders and reports, whether in written or machine-readable form, relating to the public funds custodial agreement and the services provided thereunder, regardless of who performs the services, shall be considered records of the public unit and open to inspection and examination by the public unit, its employees and its designees. To the extent records are maintained by others, the custodian shall agree to obtain from the other person an identical right to examination and inspection of the records and to obtain the information and records upon request of the public unit and to enforce its rights in order to obtain any records held by another person. The custodian shall agree to make all such records available upon reasonable request for inspection and audit by the public unit, its employees or designees, and to allow these records or excerpts of these records to be copied and removed to facilitate the audit or to comply with public records requirements to maintain and make available to the public unit, its employees and its designees accurate, current, and complete records that sufficiently and properly document the custodian's performance under the public funds custodial agreement, including records that document all fees and other amounts charged and all transactions occurring during the term of the agreement. The custodian shall, at a minimum, agree to allow the public unit or its designees, at no charge, to access, examine and audit any directly pertinent records of the custodian relating to or created as a result of the public funds custodial agreement.

~~15.2(7) 15.2(6)~~ If the custodian proposes to use a subcustodian or other agent to perform any services in connection with the public funds custodial agreement, the custodian shall agree that it shall be responsible for the acts or omissions of any subcustodians or other agent used as though the

TREASURER OF STATE[781](cont'd)

acts and omissions of any subcustodian or agent were the acts and omissions of the custodian to take appropriate action to recover losses incurred by the public unit as a result of the acts or omissions of any subcustodian.

~~15.2(8)~~ 15.2(7) The custodian shall agree that it will receive all assets purchased by or for the public unit from the persons through or from whom the same were purchased, and only upon receipt thereof (delivery versus payment basis) pay, out of assets held on account of the public unit, the total amount payable on the purchase as set forth in the instructions received by the custodian settle all transactions on a payment-versus-delivery settlement basis except those specifically exempted in the agreement or unless such settlement is not market practice or unless otherwise directed by the public unit. ~~The custodian shall agree to secure possession of all investment instruments that are the subject of or are the underlying obligations for any repurchase agreement.~~

~~15.2(9)~~ The custodian shall agree that it will transfer assets for sale pursuant to instructions delivered to the custodian only upon receipt of the total amount payable to the public unit in connection with the settlement of the transaction, provided that the same conforms to the total amount payable to the public unit as shown in the instructions with respect to such sale. No assets may be delivered out of the account of the public unit without full payment (no "free deliveries" of investment securities shall be permitted).

~~15.2(10)~~ 15.2(8) If a public unit has engaged an investment advisor or investment manager, the public funds custodial agreement must limit the authority of the investment manager or advisor to authorizing a sale or purchase of an investment on a delivery versus payment basis pursuant to an instruction procedure which is consistent with the requirements of the public funds custodial agreement and the internal control policies of the public unit. The public funds custodial agreement shall not permit an investment manager or investment advisor to deliver, transfer, or move cash or securities to another account, location or entity.

~~15.2(11)~~ 15.2(9) The delivery, transfer or movement of cash or securities held in custody for the public unit (except for trades on a delivery versus payment basis) shall only be made pursuant to instructions given to the custodian by ~~the treasurer of the public unit, or other employees designated by the treasurer~~ its employees or designees, consistent with the internal controls established by the public unit.

~~15.2(12)~~ 15.2(10) The public funds custodial agreement shall specify in satisfactory detail the procedures for instructions to be furnished to the custodian in connection with the sales or purchases of securities and the delivery, transfer or movement of cash or securities held in the custody account. The instruction provisions must be consistent with the internal control policies established by the public unit. ~~At a minimum, these~~ These procedures must ~~certify~~ specify the individual or individuals authorized to issue instructions, the scope of their authority, require current specimen signatures of authorized individuals to be maintained by the custodian and require written instructions to be furnished to the custodian. If oral instructions are permitted, the procedures or protocol for them must be specified in detail and must address verification and confirmation procedures and follow-up written instructions required by the custodian and the public unit.

~~15.2(13)~~ 15.2(11) ~~At a minimum, the~~ The public funds custodial agreement shall require the custodian to furnish ~~the following reports to the public unit: A~~ a monthly report describing in satisfactory detail the inventory of the account and transaction history during the preceding month; ~~and other reports at such times as may be adequate to satisfy the public unit's internal control procedures for reconciliation; and written notice to the public unit within 30 days of receipt of all communications from the person performing the audit of the custodian or any regulatory authority of a material weakness in internal control structure, or regulatory orders or sanctions against the custodian, with regard to the services being performed under the public funds custodial agreement.~~ In addition, the custodian shall, to the extent not prohibited by law, provide written notice to the public unit (within a time period acceptable to the public unit) of the custodian's receipt of an audit by an independent or internal auditor or regulatory authority which indicates that there is a material weakness in the custodian's internal control structure or receipt of a regulatory order or sanction which relates to the type of work performed under the public funds custodial agreement. The custodian shall include in the written notice a detailed

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description of the comment or sanction and any curative measures which the custodian proposes to take in response thereto.

~~15.2(14) The custodian shall agree to furnish to the public unit the audited financial statements and related report on internal control structure as required by Iowa Code section 11.6(1) "b"(2) as amended and recodified from time to time.~~

~~15.2(15) 15.2(12) The public funds custodial agreement shall not provide for the compensation of the custodian based on investment performance.~~

~~15.2(16) 15.2(13) The custodian shall agree to comply with all applicable federal, state, and local laws and regulations and all applicable laws and administrative rules of the state of Iowa, including all amendments to laws, regulations and rules adopted following the execution and delivery of the when performing within the scope of the public funds custodial agreement at any time during the term of the public funds custodial agreement.~~

~~15.2(17) The public funds custodial agreement shall require that all investments shall be made in accordance with the laws of the state of Iowa, as then in effect.~~

~~15.2(18) 15.2(14) At a minimum, the custodian shall agree to exercise the standard of care expected of a prudent professional custodian of public funds in holding, maintaining and servicing the securities public fund's assets and cash and in performing the custodian's duties and obligations under the public funds custodial agreement.~~

~~15.2(19) The provisions described in these rules shall not be limited or avoided by other contractual provisions in the public funds custodial agreement.~~

~~15.2(20) Any provisions limiting the liability of the custodian shall not relieve the custodian of liability as a result of its own negligence, lack of good faith or willful misconduct.~~

~~15.2(21) If the custodian intends to perform services pursuant to the public funds custodial agreement in its safekeeping department, the custodian shall represent and warrant that it performs similar services for other customers in its safekeeping department.~~

ITEM 3. Amend rule 781—15.3(12B) as follows:

**781—15.3(12B) Optional provisions which public units should consider.** The provisions set forth in rule 781—15.2(12B) are minimum requirements and are not exclusive. A public unit should determine whether the services performed by the custodian (except for any custodian hired by the treasurer of state pursuant to Iowa Code section 12C.4) pursuant to the public funds custodial agreement will be performed in the safekeeping department or the trust department and, based upon the advice of its counsel, should also consider other appropriate or more favorable provisions that may customarily be included in a public funds custodial agreement. Such things include, but are not limited to: additional representations and warranties; agreements or covenants pertaining to insurance and fidelity bond of the custodian and its employees; permitted use of subcustodians; adequate description of fees and expenses and billing procedures; the requirement of additional reports, including advices of transactions; conditions to the effectiveness of the public funds custodial agreement regarding deliveries of related documents and certificates; a higher standard of care; the ability of the public unit to terminate the public funds custodial agreement on a short-term basis without cause; and indemnification and default provisions, including recovery of attorneys' fees.

ITEM 4. Amend rule 781—15.5(12B) as follows:

**781—15.5(12B) Implementation deadline.** Public units shall have until ~~January 31, 1993~~ July 1, 2015, to incorporate the required provisions contained in rule 781—15.2(12B) into existing public funds custodial agreements. Any new public funds custodial agreement executed after the effective date of these rules shall contain the provisions of rule 781—15.2(12B).

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