# IOWA ADMINISTRATIVE BULLETIN

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**HUMAN SERVICES DEPARTMENT[441]** (Cont'd)

# 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.

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**CITATION of Administrative Rules**

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

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

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

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

NOTE: In accordance with Iowa Code section 7.17, 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
# 2009

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

## PRINTING SCHEDULE FOR IAB

| ISSUE NUMBER | SUBMISSION DEADLINE | ISSUE DATE |
|---|---|---|
| **10** | **Friday, October 16, 2009** | **November 4, 2009** |
| **11** | **Wednesday, October 28, 2009** | **November 18, 2009** |
| **12** | **Thursday, November 12, 2009** | **December 2, 2009** |

**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***

**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

| | | |
|---|---|---|
| Housing fund,<br>25.6, 25.8(7)<br>IAB 9/23/09 **ARC 8149B** | ICN Room, Second Floor<br>200 E. Grand Ave.<br>Des Moines, Iowa | October 14, 2009<br>3 p.m. |
| Endow Iowa tax credits,<br>amendments to ch 47<br>IAB 10/7/09 **ARC 8228B** | Iowa Conference Room, Second Floor<br>200 E. Grand Ave.<br>Des Moines, Iowa | November 10, 2009<br>3:30 to 4:30 p.m. |
| Enterprise zones—housing tax<br>credits, 59.8(2)<br>IAB 9/23/09 **ARC 8148B** | Second Floor NE Meeting Room<br>200 E. Grand Ave.<br>Des Moines, Iowa | October 13, 2009<br>2 p.m. |
| Iowa broadband deployment<br>governance board,<br>chs 410 to 412<br>IAB 10/7/09 **ARC 8219B**<br>(See also **ARC 8218B** herein) | ICN Conference Room<br>200 E. Grand Ave.<br>Des Moines, Iowa | October 27, 2009<br>2 to 4 p.m. |

**EDUCATION DEPARTMENT[281]**

| | | |
|---|---|---|
| Special education,<br>amendments to ch 41<br>IAB 8/26/09 **ARC 8050B**<br>**(ICN Network)** | ICN Room, Second Floor<br>Grimes State Office Bldg.<br>400 E. 14th St.<br>Des Moines, Iowa | October 13, 2009<br>2 to 4 p.m. |
| | Mississippi Bend Area Education Agency<br>Louisa Room<br>729 21st St.<br>Bettendorf, Iowa | October 13, 2009<br>2 to 4 p.m. |
| | Great Prairie Area Education Agency<br>3601 West Ave.<br>Burlington, Iowa | October 13, 2009<br>2 to 4 p.m. |
| | Area Education Agency 267<br>3712 Cedar Heights Dr.<br>Cedar Falls, Iowa | October 13, 2009<br>2 to 4 p.m. |
| | Kirkwood Community College<br>Room 202, Linn Hall<br>6301 Kirkwood Blvd. SW<br>Cedar Rapids, Iowa | October 13, 2009<br>2 to 4 p.m. |
| | Loess Hills Area Education Agency<br>24997 Hwy. 92<br>Council Bluffs, Iowa | October 13, 2009<br>2 to 4 p.m. |
| | Keystone Area Education Agency<br>Room 2<br>2310 Chaney Rd.<br>Dubuque, Iowa | October 13, 2009<br>2 to 4 p.m. |
| | Keystone Area Education Agency<br>1400 2nd Street NW<br>Elkader, Iowa | October 13, 2009<br>2 to 4 p.m. |
| | Great Prairie Area Education Agency<br>2814 N. Court St.<br>Ottumwa, Iowa | October 13, 2009<br>2 to 4 p.m. |
| | Area Education Agency 267<br>State Room<br>9184B 265th St.<br>Clear Lake, Iowa | October 13, 2009<br>2 to 4 p.m. |

**EDUCATION DEPARTMENT[281]** (Cont'd)

| | | |
|---|---|---|
| **(ICN Network)** | Graphic Arts Technology Ctr. of Iowa<br>Room 16<br>1951 Manufacturing Dr.<br>Clinton, Iowa | October 13, 2009<br>2 to 4 p.m. |
| | Green Valley Area Education Agency<br>Turner Room<br>1405 N. Lincoln<br>Creston, Iowa | October 13, 2009<br>2 to 4 p.m. |
| | Prairie Lakes Area Education Agency<br>500 NE 6th St.<br>Pocahontas, Iowa | October 13, 2009<br>2 to 4 p.m. |
| | Northwest Area Education Agency<br>Room 103<br>1382 4th Ave. NE<br>Sioux Center, Iowa | October 13, 2009<br>2 to 4 p.m. |
| | Department of Human Services<br>Fourth Floor, Trospar-Hoyt Bldg.<br>822 Douglas St.<br>Sioux City, Iowa | October 13, 2009<br>2 to 4 p.m. |
| | Iowa Lakes Community College<br>Room 118<br>1900 N. Grand Ave.<br>Spencer, Iowa | October 13, 2009<br>2 to 4 p.m. |

**HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]**

| | | |
|---|---|---|
| E911 service board membership,<br>10.2, 10.3(1), 10.4(2), 10.7(2),<br>10.8(6), 10.11<br>IAB 9/23/09 **ARC 8184B** | Division Conference Room<br>Building W-4, Camp Dodge<br>7105 NW 70th Ave.<br>Johnston, Iowa | October 15, 2009<br>10 a.m. |

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

| | | |
|---|---|---|
| Health care facilities,<br>50.10 to 50.13, 56.3, 56.6,<br>56.13 to 56.16, 58.57<br>IAB 10/7/09 **ARC 8190B**<br>**(ICN Network)** | ICN Room, Sixth Floor<br>Lucas State Office Bldg.<br>321 E. 12th St.<br>Des Moines, Iowa | November 19, 2009<br>3 p.m. |
| | Room 118, Iowa Lakes Community College<br>1900 N. Grand Ave.<br>Spencer, Iowa | November 19, 2009<br>3 p.m. |
| | Room 024, Looft Hall<br>Iowa Western Community College<br>2700 College Rd.<br>Council Bluffs, Iowa | November 19, 2009<br>3 p.m. |
| | Room D, Public Library<br>123 S. Linn St.<br>Iowa City, Iowa | November 19, 2009<br>3 p.m. |
| | Room 110, Tama Hall<br>Hawkeye Community College<br>1501 E. Orange Rd.<br>Waterloo, Iowa | November 19, 2009<br>3 p.m. |
| | Room 106, Activity Center<br>North Iowa Community College<br>500 College Dr.<br>Mason City, Iowa | November 19, 2009<br>3 p.m. |

**INSPECTIONS AND APPEALS DEPARTMENT[481]** (Cont'd)

| | | |
|---|---|---|
| **(ICN Network)** | Room 2, Keystone AEA<br>2310 Chaney Rd.<br>Dubuque, Iowa | November 19, 2009<br>3 p.m. |
| | Public Library<br>529 Pierce St.<br>Sioux City, Iowa | November 19, 2009<br>3 p.m. |

**IOWA FINANCE AUTHORITY[265]**

| | | |
|---|---|---|
| Water pollution control works and drinking water facilities financing, amendments to ch 26<br>IAB 10/7/09 **ARC 8193B** | Presentation Room<br>2015 Grand Ave.<br>Des Moines, Iowa | October 28, 2009<br>10 a.m. |

**LABOR SERVICES DIVISION[875]**

| | | |
|---|---|---|
| Child labor—civil penalties, permits, certificates of age, 32.1, 32.2, 32.11, 32.12<br>IAB 9/23/09 **ARC 8167B** | Stanley Room<br>1000 E. Grand Ave.<br>Des Moines, Iowa | October 14, 2009<br>1:30 p.m.<br>(If requested) |

**MEDICINE BOARD[653]**

| | | |
|---|---|---|
| Standards of practice—medical directors at medical spas, 13.8, 23.1<br>IAB 10/7/09 **ARC 8199B** | Suite C, Board Office<br>400 S.W. 8th St.<br>Des Moines, Iowa | October 27, 2009<br>11:30 a.m. |
| Discipline—performing service at wrong site or on wrong patient or performing unauthorized or unneccessary service, 23.1(42)<br>IAB 10/7/09 **ARC 8198B** | Suite C, Board Office<br>400 S.W. 8th St.<br>Des Moines, Iowa | October 27, 2009<br>11 a.m. |

**NATURAL RESOURCE COMMISSION[571]**

| | | |
|---|---|---|
| Licensure—administration fee, special licenses, revocation or suspension due to state debt, 15.4, 15.23, 15.24, 15.51 to 15.55<br>IAB 10/7/09 **ARC 8196B** | Fourth Floor East Conference Room<br>Wallace State Office Bldg.<br>502 E. 9th St.<br>Des Moines, Iowa | October 27, 2009<br>1 p.m. |

**PROFESSIONAL LICENSURE DIVISION[645]**

| | | |
|---|---|---|
| Discipline for sign language interpreters and transliterators, 363.2(11)<br>IAB 9/9/09 **ARC 8111B** | Fifth Floor Board Conference Room<br>Lucas State Office Bldg.<br>Des Moines, Iowa | October 20, 2009<br>9 to 9:30 a.m. |

**PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]**

| | | |
|---|---|---|
| Propane education and research council, 1.1 to 1.3, 1.4(2)<br>IAB 10/7/09 **ARC 8200B** | Council Conference Room, Suite 8<br>4830 Maple Dr.<br>Pleasant Hill, Iowa | October 27, 2009<br>10 a.m. |

**PUBLIC HEALTH DEPARTMENT[641]**

| | | |
|---|---|---|
| Plumbing and mechanical systems board—waivers, ch 31<br>IAB 9/23/09 **ARC 8173B**<br>**(ICN Network)** | National Guard Armory<br>3200 2nd Mech Dr.<br>Sioux City, Iowa | October 13, 2009<br>11 a.m. to 1 p.m. |
| | Iowa Western Community College – 3<br>2700 College Rd.<br>Council Bluffs, Iowa | October 13, 2009<br>11 a.m. to 1 p.m. |
| | National Guard Armory<br>3306 Airport Blvd.<br>Waterloo, Iowa | October 13, 2009<br>11 a.m. to 1 p.m. |
| | Ottumwa Regional Health Center<br>1001 E. Pennsylvania<br>Ottumwa, Iowa | October 13, 2009<br>11 a.m. to 1 p.m. |
| | Mississippi Bend Area Education Agency 9<br>729 21st St.<br>Bettendorf, Iowa | October 13, 2009<br>11 a.m. to 1 p.m. |
| | State Historical Building<br>600 E. Locust<br>Des Moines, Iowa | October 13, 2009<br>11 a.m. to 1 p.m. |
| Supervision of fluroscopy, 41.1(5)<br>IAB 9/23/09 **ARC 8161B** | Fifth Floor Rooms 517 & 518<br>Lucas State Office Bldg.<br>Des Moines, Iowa | October 28, 2009<br>1:30 to 3:30 p.m. |

**PUBLIC SAFETY DEPARTMENT[661]**

| | | |
|---|---|---|
| Commercial explosive licensing, rescind 5.7, 5.851, 5.865, 5.866; adopt ch 235<br>IAB 9/23/09 **ARC 8155B** | First Floor Conference Room 125<br>Public Safety Headquarters Bldg.<br>215 E. 7th St.<br>Des Moines, Iowa | October 13, 2009<br>9 a.m. |
| Fire marshal administration, fire safety requirements, rescind ch 5; adopt ch 200; amend chs 201, 202, 205<br>IAB 9/23/09 **ARC 8156B** | First Floor Conference Room 125<br>Public Safety Headquarters Bldg.<br>215 E. 7th St.<br>Des Moines, Iowa | October 13, 2009<br>10 a.m. |
| | Carroll Recreation Center<br>716 N. Grant Rd.<br>Carroll, Iowa | October 14, 2009<br>4 p.m. |
| | Iowa State Patrol Post #11<br>5400 16th Ave. SW<br>Cedar Rapids, Iowa | October 15, 2009<br>4:30 p.m. |
| Smoke detectors, ch 210<br>IAB 9/23/09 **ARC 8150B** | First Floor Conference Room 125<br>Public Safety Headquarters Bldg.<br>215 E. 7th St.<br>Des Moines, Iowa | October 13, 2009<br>8:30 a.m. |
| Fire fighter certification, 251.202<br>IAB 9/23/09 **ARC 8178B** | First Floor Conference Room 125<br>Public Safety Headquarters Bldg.<br>215 E. 7th St.<br>Des Moines, Iowa | October 15, 2009<br>9 a.m. |
| Licensing of fire protection system installers and maintenance workers, ch 276<br>IAB 9/23/09 **ARC 8153B** | First Floor Conference Room 125<br>Public Safety Headquarters Bldg.<br>215 E. 7th St.<br>Des Moines, Iowa | October 15, 2009<br>8:30 a.m. |

**PUBLIC SAFETY DEPARTMENT[661]** (Cont'd)

| | | |
|---|---|---|
| State building code, amendments to chs 300, 301, 303<br>IAB 9/23/09 **ARC 8179B** | First Floor Conference Room 125<br>Public Safety Headquarters Bldg.<br>215 E. 7th St.<br>Des Moines, Iowa | October 13, 2009<br>10:15 a.m. |
| | Carroll Recreation Center<br>716 N. Grant Rd.<br>Carroll, Iowa | October 14, 2009<br>4 p.m. |
| | Iowa State Patrol Post #11<br>5400 16th Ave. SW<br>Cedar Rapids, Iowa | October 15, 2009<br>4:30 p.m. |
| State historic building code, 350.1(3)<br>IAB 9/23/09 **ARC 8180B** | First Floor Conference Room 125<br>Public Safety Headquarters Bldg.<br>215 E. 7th St.<br>Des Moines, Iowa | October 13, 2009<br>10 a.m. |
| Electrician and electrical contractor licensing and electrical inspections, amend chs 500 to 503, 550 to 552; adopt ch 505<br>IAB 9/23/09 **ARC 8160B** | First Floor Conference Room 125<br>Public Safety Headquarters Bldg.<br>215 E. 7th St.<br>Des Moines, Iowa | October 15, 2009<br>10 a.m. |

**UTILITIES DIVISION[199]**

| | | |
|---|---|---|
| Electric interconnection of distributed generation facilities, amend 15.8, 15.10, 15.11(4); adopt ch 45<br>IAB 10/7/09 **ARC 8201B** | Board Hearing Room<br>350 Maple St.<br>Des Moines, Iowa | December 10, 2009<br>10 a.m. |
| High-volume access service, 22.1(3), 22.14(2), 22.20(5)<br>IAB 10/7/09 **ARC 8227B** | Board Hearing Room<br>350 Maple St.<br>Des Moines, Iowa | December 8, 2009<br>9 a.m. |

**VETERINARY MEDICINE BOARD[811]**

| | | |
|---|---|---|
| Board of veterinary medicine, amendments to chs 1, 8, 10<br>IAB 9/23/09 **ARC 8168B** | Auditorium, Wallace State Office Bldg.<br>502 E. 9th St.<br>Des Moines, Iowa | October 19, 2009<br>10 a.m. |

**VOLUNTEER SERVICE, IOWA COMMISSION ON[817]**

| | | |
|---|---|---|
| Iowa summer youth and green corps programs, adopt chs 9, 10<br>IAB 9/23/09 **ARC 8159B**<br>(See also **ARC 8158B**) | Main Conference Room, Second Floor<br>200 E. Grand Ave.<br>Des Moines, Iowa | October 15, 2009<br>2 p.m. |

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

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

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

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

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
  Agricultural Development Authority[25]
  Soil Conservation Division[27]
ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF INDUSTRY COUNCIL, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
CITIZENS' AIDE[141]
CIVIL RIGHTS COMMISSION[161]
COMMERCE DEPARTMENT[181]
  Alcoholic Beverages Division[185]
  Banking Division[187]
  Credit Union Division[189]
  Insurance Division[191]
  Professional Licensing and Regulation Bureau[193]
    Accountancy Examining Board[193A]
    Architectural Examining Board[193B]
    Engineering and Land Surveying Examining Board[193C]
    Landscape Architectural Examining Board[193D]
    Real Estate Commission[193E]
    Real Estate Appraiser Examining Board[193F]
    Interior Design Examining Board[193G]
  Savings and Loan Division[197]
  Utilities Division[199]
CORRECTIONS DEPARTMENT[201]
  Parole Board[205]
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  Higher Education Loan Authority[284]
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  Public Broadcasting Division[288]
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EGG COUNCIL, IOWA[301]
ELDER AFFAIRS DEPARTMENT[321]
EMPOWERMENT BOARD, IOWA[349]
ENERGY INDEPENDENCE, OFFICE OF[350]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
HUMAN RIGHTS DEPARTMENT[421]

## ARC 8228B

# ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 47, "Endow Iowa Tax Credits," Iowa Administrative Code.

These amendments are being proposed in response to 2009 Iowa Acts, House File 478. The proposed amendments change the amount of the Endow Iowa Tax Credit from 20 percent to 25 percent of a qualifying donation and stipulate that any donation that receives such an Endow Iowa Tax Credit shall not be deductible in determining taxable income for state income tax purposes. The legislation also increased the base appropriation for the Endow Iowa Tax Credit program from $2 million to $3 million annually, which is reflected in the proposed amendments.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on November 13, 2009. Interested persons may submit written or oral comments by contacting Mike Miller, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3077.

A public hearing to receive comments about the proposed amendments will be held on November 10, 2009, from 3:30 to 4:30 p.m. at the above address in the Iowa Conference Room on the second floor.

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

The following amendments are proposed.

ITEM 1. Amend **261—Chapter 47**, parenthetical implementation statutes, as follows:

(~~81GA,HF868~~ 15E,83GA,SF478)

ITEM 2. Amend rule **261—47.2(15E,83GA,SF478)**, definitions of "Act" and "Endow Iowa qualified community foundation," as follows:

*"Act"* means Iowa Code sections 15E.301 to 15E.306 as amended by ~~2005 Iowa acts, House File 868~~ 2009 Iowa Acts, Senate File 478.

*"Endow Iowa qualified community foundation"* means a community foundation organized or operating in this state that substantially complies with the national standards for U.S. community foundations established by the National Council on Foundations as determined by the department in collaboration with the Iowa Council ~~on~~ of Foundations.

ITEM 3. Amend subrules 47.3(2) and 47.3(3) as follows:

**47.3(2)** ~~Approved~~ Beginning January 1, 2010, approved tax credits will be equal to ~~20~~ 25 percent of a taxpayer's gift to a permanent endowment held in an endow Iowa qualified community foundation. The amount of the endowment gift for which the endow Iowa tax credit is claimed shall not be deductible in determining taxable income for state income tax purposes.

**47.3(3)** The amount of tax credits authorized pursuant to this rule shall not exceed a total of ~~$2~~ $3 million annually, plus an additional amount pursuant to Iowa Code section 99F.11(3)*"e"*(3). The maximum amount of tax credits granted to a single taxpayer annually shall not exceed ~~5 percent of the annual amount of tax credits authorized~~ $100,000. If the department receives applications for tax credits in excess of the amount available, the applications shall be prioritized by the date the department received the applications. If the number of applications exceeds the amount of annual tax credits available, the department shall establish a wait list for the next year's allocation of tax credits and applications shall first be funded in the order listed on the wait list.

ITEM 4. Rescind subrule **47.3(7)**.

ITEM 5. Amend subrule 47.4(1) as follows:

**47.4(1)** Twenty-five percent of the annual amount available for tax credits shall be reserved for those permanent endowment gifts made to community affiliate organizations ~~or made in conjunction with the endow Iowa grants program~~. If by September 1 of any year the entire 25 percent reserved for permanent endowment gifts corresponding ~~to the endow Iowa grants program or~~ to community affiliate organizations is not allocated, the amount remaining shall be available for other applicants.

ITEM 6. Amend rule 261—47.5(15E,83GA,SF478) as follows:

**261—47.5(15E,83GA,SF478) Reporting requirements.** By January 31 of each calendar year, the department shall publish an annual report of the activities conducted pursuant to these rules during the previous calendar year and shall submit the report to the governor and general assembly. The annual report shall include ~~a detailed listing of endow Iowa tax credits authorized by the department.~~ the information required by Iowa Code section 15.104(9)*"h."*

ITEM 7. Amend **261—Chapter 47**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 15E.301 to 15E.306 as amended by ~~2005 Iowa Acts, House File 868~~ 2009 Iowa Acts, Senate File 478.

## ARC 8219B

# ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

**Notice of Intended Action**

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

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

Pursuant to the authority of 2009 Iowa Acts, Senate File 376, section 13(5) "b," the Iowa Department of Economic Development hereby gives Notice of Intended Action to adopt new Chapter 410, "Board Structure and Procedures," Chapter 411, "Iowa Broadband Deployment Program," and Chapter 412, "Fair Information Practices, Waiver and Variance, and Petition for Rule Making," Iowa Administrative Code.

These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5). The rules establish the structure and procedures for new Part XIII, the Iowa Broadband Deployment Governance Board (BDGB), specify board duties, and establish eligibility requirements and application and evaluation procedures for the Iowa Broadband Deployment Program.

The BDGB is interested in receiving comments about all of the rules, but particularly feedback about one of the rating factors (promote universal access) that is part of the "project purpose" evaluation criteria located in paragraph 411.7(2)"a." The goal of the Iowa Broadband Deployment Program is to promote universal access to high-speed broadband services for speeds to exceed federal requirements throughout the state. The proposed rules include a rating factor to measure the degree to which a proposed project plans to serve an unserved or underserved area. Comments are encouraged about how to design the scoring to determine if a proposed project is promoting universal access.

During the development of the proposed rules, the BDGB considered a number of measurement methods for this rating factor. The application scoring sheet to implement these rules uses the following scoring method for assessing the promotion of universal access:

Promote Universal Access (8 points maximum). If a project proposes to serve an unserved area, percentage of households in proposed service area (as defined by census block) to be served. If project proposes to improve service to an underserved area, percentage of households in proposed service area (as defined by census block) that will have improved service. Points awarded on sliding scale starting with 1 point for 85%, 2 points for 87.5%, 3 points for 90%, 4 points for 92.5%, 5 points for 95%, 6 points for 97.5% and 8 points for 100%.

The BDGB would like input on this factor and the rating system, specifically how the service area would be defined. The service area could be defined as an area that the applicant defines ("percent of households in the proposed service area to be served"). Or it could be defined as the "percentage of households in the census block." Or, perhaps, it could be defined as the "percentage of households in the census tract." The BDGB would like to determine how this factor can reflect the different ways of identifying a service area depending on what technology is used to provide the broadband service and how the rating factor may be used to demonstrate the way in which the project will expand service to unserved areas or improve service in underserved areas.

On September 11, 2009, the Iowa Broadband Deployment Governance Board approved and recommended to the Iowa Economic Development Board the adoption of these new rules.

Public comments concerning the proposed rules will be accepted until 4:30 p.m. on October 27, 2009. Interested persons may submit written or oral comments by contacting Melanie Johnson, General Counsel, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3018; E-mail Melanie.Johnson@iowalifechanging.com.

A public hearing to receive comments about the proposed rules will be held on October 27, 2009, from 2 to 4 p.m. at the above address in the ICN Conference Room.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 8218B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5).

## ARC 8186B

# EDUCATION DEPARTMENT[281]

### 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 256.7(5), the State Board of Education hereby proposes to rescind Chapter 19, "Attendance Centers," Iowa Administrative Code.

The Iowa Supreme Court recently ruled that this chapter of rules is void. See Wallace, et al., v. Iowa State Board of Education, No. 07-0943 (Iowa Supreme Court; July 31, 2009). The rules in Chapter 19, having been declared void, should be rescinded.

An agencywide waiver provision is provided in 281—Chapter 4.

Interested individuals may make written comments on the proposed amendment on or before October 27, 2009, at 4:30 p.m. Comments on the proposed amendment should be directed to Carol Greta, Attorney, Iowa Department of Education, Second Floor, Grimes State Office Building, 400 East 14th Street, Des Moines, Iowa 50319-0146; telephone (515)281-8661; E-mail carol.greta@iowa.gov; or fax (515)281-4122.

This amendment is intended to implement Iowa Code section 256.7(5).

The following amendment is proposed.

Rescind and reserve **281—Chapter 19**.

# ARC 8220B

# HUMAN SERVICES DEPARTMENT[441]

**Notice of Intended Action**

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

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

These amendments are proposed in conjunction with amendments proposed by the Insurance Division in **ARC 8132B**, a Notice of Intended Action that was published in the Iowa Administrative Bulletin on September 9, 2009. The purpose of both filings is to cooperate in operating a long-term care partnership program in Iowa to provide for financing of long-term care through a combination of private insurance and medical assistance. The amendments are intended to implement Iowa Code chapter 514H as amended by 2009 Iowa Acts, House File 723, and to meet the requirements set by Section 6021 of the federal Deficit Reduction Act of 2005, Public Law 109-171.

The long-term care partnership program provides an incentive for the purchase of qualified long-term care insurance by allowing a $1 disregard of resources for each $1 that a Medicaid applicant's insurance policy has paid for qualified long-term care expenses. The amendments in Item 1:

• Remove the minimum age limit of 65;

• Clarify that the benefit applies to persons who would be eligible for cash assistance or the Family Medical Assistance Program if they were not in a medical institution, persons who qualify for Medicaid under a special income standard for persons who stay in a medical institution more than 30 days, and persons eligible for Medicaid home- and community-based waiver services; and

• Extend the incentive by exempting those disregarded resources from recovery from the estate after the Medicaid member's death.

These amendments do not provide for waivers in specified situations, since they are made to conform to federal and state law. However, requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before October 27, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 249A.3 and 249A.4 and Iowa Code section 249A.35 and chapter 514H as amended by 2009 Iowa Acts, House File 723, sections 1 and 14 to 21, respectively.

The following amendments are proposed.

ITEM 1. Amend subrule 75.5(5) as follows:

**75.5(5)** Consideration of resources for persons in a medical institution who have purchased and used a ~~precertified~~ qualified or approved long-term care insurance policy pursuant to department of commerce, division of insurance, rules 191—Chapter 39 or 72.

*a. Eligibility.* A person ~~65 years of age or older who~~ may be eligible for medical assistance under this subrule if:

(1) The person is ~~either~~ the beneficiary of a ~~certified~~ qualified long-term care insurance policy or is enrolled in a prepaid health care delivery plan that provides long-term care services pursuant to 191—Chapter 39 or 72; and ~~who~~

(2) The person is eligible for medical assistance under ~~75.1(3), 75.1(4), 75.1(5),~~ 75.1(6), 75.1(7), ~~75.1(9), 75.1(12), 75.1(13), 75.1(17),~~ or 75.1(18)~~, 75.1(23) or 75.1(27)~~ except for excess resources ~~may be eligible for medical assistance under this subrule if~~; and

(3) ~~the~~ The excess resources causing ineligibility under the listed coverage groups do not exceed the "asset adjustment" provided in this subrule.

*b. Definition.* "Asset adjustment" shall mean a $1 disregard of resources for each $1 that has been paid out under the person's qualified or approved long-term care insurance policy ~~for qualified Medicaid long-term care services~~.

*c. Estate recovery.* An amount equal to the benefits paid out under a member's qualified or approved long-term care insurance policy will be exempt from recovery from the estate of the member or the member's spouse for payments made by the medical assistance program on behalf of the member.

ITEM 2. Amend rule **441—75.5(249A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 249A.3, ~~and~~ 249A.4, and 249A.35 and chapter ~~249G~~ 514H.

## ARC 8221B

# HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

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

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

The proposed amendments make several changes to the conditions of Medicaid eligibility for persons residing in a medical institution and persons treated as though they were in a medical institution for purposes of eligibility.

The amendments in Items 1 and 2 eliminate the previous personal needs allowance provision for recipients of a pension paid by the U.S. Department of Veterans Affairs (VA) which has been reduced to $90 per month because Medicaid is paying for the person's care. That provision is replaced with an income exemption of $90 which is applicable to reduced VA pensions and to VA pensions received by residents of the Iowa Veterans Home, whether reduced or not. This change will reduce client participation for an estimated 150 residents of the Iowa Veterans Home. The change is made to comply with a policy clarification from the Centers for Medicare and Medicaid Services.

Item 2 allows an additional $10 to a member's personal needs allowance to pay for the administration fees of a medical assistance income or special needs trust. The amount may be higher than $10 if approved by a court. Current rules provide that the Department determines eligibility according to SSI policy but do not specify how this policy is applied to trust expenses in determining a member's client participation amount.

The amendments in Items 3 and 4 close a "loophole" in the penalty on transfer of assets at less than market value imposed under Section 1917(c) of the Social Security Act. When a person has transferred assets to qualify for Medicaid, the penalty is the imposition of a period of ineligibility proportionate to the amount of resources transferred. When that period has expired, the person may become eligible for Medicaid payment for long-term care expenses. If expenses that the person incurred for long-term care during the period of ineligibility are an allowable deduction from the person's income in determining the person's client participation obligation, Medicaid has effectively paid those expenses, thus nullifying a portion of the penalty.

Item 5 clarifies policy on when a penalty is not applied to transfer of assets. Although the current rules exempt the transfer of a home to an applicant's blind or disabled child, Section 1917(c)(2) of the Social Security Act prohibits the application of a penalty for the transfer of any assets to a child who is blind or disabled.

The amendments in Items 6 and 7 correct the policy on when the purchase of an annuity shall be considered a transfer of assets for less than fair market value to conform to the requirements of Sections 1917(c)(1)(F) and (G) of the Social Security Act [42 U.S.C. §1396p(c)(1)(F)-(G)]. Item 8 clarifies policy on when purchase of a life estate is considered a transfer of assets for less than fair market value.

These amendments do not provide for waivers in specified situations, since they are made to conform to federal and state law. However, requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before October 27, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code sections 249A.3 and 249A.4.

The following amendments are proposed.

ITEM 1. Adopt the following **new** paragraph **75.16(1)"g"**:

*g. Clients receiving a VA pension.* The amount of $90 of veteran's pension income shall be exempt from client participation if the client is a veteran or a surviving spouse of a veteran who:

(1) Receives a reduced pension pursuant to 38 U.S.C. Section 5503(d)(2), or

(2) Resides at the Iowa Veterans Home and does not have a spouse or minor child.

ITEM 2. Rescind subparagraph **75.16(2)"a"(1)** and adopt the following **new** subparagraph in lieu thereof:

(1) If the client has a trust described in Section 1917(d)(4) of the Social Security Act (including medical assistance income trusts and special needs trusts), a reasonable amount paid or set aside for necessary expenses of the trust is added to the personal needs allowance. This amount shall not exceed $10 per month except with court approval.

ITEM 3. Amend paragraph **75.16(2)"f"** as follows:

*f. Client's medical expenses.* A deduction shall be allowed for the client's incurred expenses for medical or remedial care that are not subject to payment by a third party and were not incurred for long-term care services during the imposition of a transfer of assets penalty period pursuant to rule 441—75.23(249A). This includes Medicare premiums and other health insurance premiums, deductibles or coinsurance, and necessary medical or remedial care recognized under state law but not covered under the state Medicaid plan.

ITEM 4. Adopt the following **new** paragraph **75.23(1)"c"**:

*c. Client participation after period of ineligibility.* Expenses incurred for long-term care services during a transfer of assets penalty period may not be deducted as medical expenses in determining client participation pursuant to subrule 75.16(2).

ITEM 5. Amend subrule 75.23(5) as follows:

**75.23(5)** *Exceptions.* An individual shall not be ineligible for medical assistance, under this rule, to the extent that:

*a.* The assets transferred were a home and title to the home was transferred to either:

(1) A spouse of the individual.

(2) A child of the individual who is under the age of 21 or is blind or permanently and totally disabled as defined in 42 U.S.C. Section 1382c.

(3) and (4) No change.

*b.* The assets were transferred:

(1) and (2) No change.

(3) To a ~~trust established solely for the benefit of a~~ child of the individual who is blind or permanently and totally disabled as defined in 42 U.S.C. Section 1382c or to a trust established solely for the benefit of such a child.

(4) No change.

*c.* and *d.* No change.

ITEM 6. Amend paragraph **75.23(9)"a,"** introductory paragraph, as follows:

*a.* The entire amount used to purchase an annuity on or after February 8, 2006, shall be treated as assets transferred for less than fair market value unless the annuity meets one of the conditions described in subparagraphs (1) through ~~(4)~~(3) of this paragraph and also meets the condition described in subparagraph (4).

ITEM 7. Amend paragraph **75.23(9)"b"** as follows:

*b.* Funds used to purchase an annuity for ~~less~~ more than its fair market value shall be treated as assets transferred for less than fair market value regardless of when the annuity was purchased or whether~~:~~ the conditions described in 75.23(9)*"a"* were met.

~~(1) The annuity was purchased before February 8, 2006; or~~

~~(2) The annuity was purchased on or after February 8, 2006, and a condition described in 75.23(9)*"a"*(1) to (4) was met.~~

ITEM 8. Amend paragraph **75.23(11)"b,"** introductory paragraph, as follows:

*b.* Funds used to purchase a life estate in another individual's home for ~~less~~ more than its fair market value shall be treated as assets transferred for less than fair market value regardless of whether:

## ARC 8208B

# HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

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

Pursuant to the authority of Iowa Code section 249A.4 and 2009 Iowa Acts, House File 811, section 32, the Department of Human Services proposes to amend Chapter 82, "Intermediate Care Facilities for the Mentally Retarded," Iowa Administrative Code.

These amendments:

• Reflect the change to a 3 percent inflation factor for reimbursement of intermediate care facilities for the mentally retarded in state fiscal year 2010 that was mandated by 2009 Iowa Acts, House File 811, section 32(10); and

• Make technical changes to update the chapter to current Iowa Medicaid organization and terminology.

Current administrative rules state that the inflation factor shall be the percent change from December to December of the Consumer Price Index for all urban consumers, U.S. city average (CPI-U). For state fiscal year 2010, the CPI-U factor is 0.1 percent. Computing reimbursement using this factor would essentially freeze ICF/MR reimbursement rates for state fiscal year 2010. With a 3 percent inflation factor, the estimated average per diem reimbursement rate increases from $386 per day to $397 per day, for a total statewide increase in reimbursement of $8.8 million for state fiscal year 2010. Costs to the state are estimated at $0.9 million, and costs to county governments are estimated at $1.6 million.

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

These amendments were also Adopted and Filed Without Notice and are published herein as **ARC 8207B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before October 27, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code section 249A.4 and 2009 Iowa Acts, House File 811, section 32(10).

## ARC 8209B

# HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 235A.14(1), the Department of Human Services proposes to amend Chapter 175, "Abuse of Children," Iowa Administrative Code.

The proposed amendments:

• Change the retention period for records of rejected child abuse intakes from six months to three years;

• Establish that records of rejected child in need of assistance intakes shall be retained for the same amount of time; and

• Add the number of the safety plan form.

Vulnerable children will have the potential of increased safety if records are retained for a longer period of time. For a caretaker who is alleged to have abused or neglected a child, retention of records when the allegation was insufficient to warrant intervention by the Department means that the caretaker has a longer window of jeopardy of being investigated for abuse or neglect. These records could be referenced to determine if there is sufficient cumulative information that meets the criteria for an intake to be accepted for a child abuse or child in need of assistance assessment.

These amendments do not provide for waivers in specified situations because retention of these records is intended to increase children's safety.

Any interested person may make written comments on the proposed amendments on or before October 27, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to policyanalysis@dhs.state.ia.us.

These amendments are intended to implement Iowa Code chapter 235A.

The following amendments are proposed.

ITEM 1. Amend rule 441—175.24(232) as follows:

**441—175.24(232) Child abuse assessment intake process.** The primary purpose of intake is to obtain available and pertinent information regarding an allegation of child abuse and determine whether a report of child abuse becomes a case or a rejected intake.

**175.24(1)** To result in a case, the report of child abuse must include some information to indicate all of the following. ~~The alleged:~~

~~1. Victim of child abuse is a child.~~

~~2. Perpetrator of child abuse is a caretaker.~~

~~3. Incident falls within the definition of child abuse.~~

*a.* The alleged victim of child abuse is a child.

*b.* The alleged perpetrator of child abuse is a caretaker.

*c.* The alleged incident falls within the definition of child abuse.

**175.24(2)** Only mandatory reporters or the person making the report may be contacted during the intake process to expand upon or to clarify information in the report. Any contact with subjects of the report or with nonmandatory reporters, other than the original reporter, automatically causes the report of child abuse to be accepted for assessment.

**175.24(3)** When it is determined that the report of child abuse fails to constitute an allegation of child abuse, the report of child abuse shall become a rejected intake. Rejected intake information shall be maintained by the department for ~~six months~~ three years from the date the report was rejected and shall then be destroyed.

**175.24(4)** The county attorney shall be notified of all reports of child abuse. When a report of child abuse is received which does not meet the requirements to become a case, but has information about illegal activity, the department shall notify law enforcement of the report.

**175.24(5)** When it is determined that a report of a child needing the assistance of the court fails to meet the definition of "child in need of assistance" in Iowa Code section 232.2(6), the report shall become a rejected child in need of assistance intake. The department shall maintain the report for three years from the date the report was rejected and shall then destroy it.

ITEM 2. Amend subrule **175.27(3)**, introductory paragraph, as follows:

**175.27(3)** *Report of assessment.* The child protection worker shall provide the county attorney and the juvenile court with a copy of Form 470-4133, Family Risk Assessment, and ~~Form~~ Forms 470-4132, Safety ~~Assessment/Plan,~~ Assessment, and 470-4461, Safety Plan, when any of the following occur:

## ARC 8190B

# INSPECTIONS AND APPEALS DEPARTMENT[481]

**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 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to amend Chapter 50, "Health Care Facilities Administration," Chapter 56, "Fining and Citations," and Chapter 58, "Nursing Facilities," Iowa Administrative Code.

This rule making is intended to implement 2009 Iowa Acts, Senate File 433. The proposed amendments to Chapter 50 include new requirements for exit interviews, plans of correction, and revisits; set forth the process for handling complaints and self-reported incidents; update requirements for service; and include inspector conflict of interest provisions. The proposed amendments to Chapter 56 add waiver provisions for violations, self-identification procedures, procedures for the 35 percent reduction, and provisions for double class I fines for intentional violations and update the appeals and informal conference portions to conform with the new law. The proposed amendment to Chapter 58 adds training requirements for nursing facility inspectors to conform with the new law.

The Department does not believe that the proposed amendments pose a financial hardship on any regulated entities.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

The proposed amendments were submitted to affected industry, professional and consumer groups. The comments were received and some recommendations have been incorporated into this Notice of Intended Action.

The proposed amendments were presented to the State Board of Health at the Board's September 9, 2009, meeting, at which time they were initially reviewed.

Any interested person may make written suggestions or comments on the proposed amendments on or before November 18, 2009. Such written materials should be addressed to Steven Mandernach, Administrative Rules Coordinator, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail should be send to steven.mandernach@dia.iowa.gov.

Also, a public hearing regarding these proposed amendments will be held on November 19, 2009, at 3 p.m., at which time persons may present their views either orally or in writing. The hearing will be conducted over the Iowa Communications Network (ICN) at the following locations:

ICN Room, Sixth Floor
Lucas State Office Building
321 E. 12th Street
Des Moines

Room 106, Activity Center
North Iowa Community College
500 College Drive
Mason City

Room 118, Iowa Lakes Community College
1900 N. Grand Avenue
Spencer

Room 110, Tama Hall
Hawkeye Community College
1501 E. Orange Road
Waterloo

Room 024, Looft Hall
Iowa Western Community College
2700 College Road
Council Bluffs

Room #2, Keystone Area Education Agency
2310 Chaney Road
Dubuque

Room D, Iowa City Public Library
123 South Linn Street
Iowa City

Sioux City Public Library
529 Pierce Street
Sioux City

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135C.14 and 2009 Iowa Acts, Senate File 433.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 481—50.10(135C):

**481—50.10(135C) Inspections, exit interviews, plans of correction, and revisits.**

**50.10(1)** *Frequency of inspection.* The department shall inspect a licensed health care facility at least once within a 30-month period. Facilities participating in the Medicare or Medicaid programs may be inspected more frequently as a part of a joint state and federal inspection.

**50.10(2)** *Accessibility of records, the facility, and persons.* An inspector of the department may enter any licensed health care facility without a warrant and may examine all records pertaining to the care provided to residents of the facility. An inspector of the department may contact or interview any resident, employee, or any other person who might have knowledge about the operation of a health care facility. The inspector may duplicate records and take photographs as part of the inspection.

**50.10(3)** *Exit interviews.* The health care facility shall be provided an exit interview at the conclusion of an inspection, and the facility representative shall be informed of all issues and areas of concern related to the deficiencies.

*a. Methods of conducting exit interview.* The department may conduct the exit interview either in person or by telephone.

*b. Second exit interviews.* The department shall conduct a second exit interview if any additional areas of concern are identified.

**50.10(4)** *Submission of additional or rebuttal information.* The facility shall be provided two working days from the date of the exit interview to submit additional or rebuttal information to the department.

*a. Receipt of additional information.* Additional or rebuttal information must be received by the department within two working days in order to be considered.

*b. Methods to submit additional information.* The additional or rebuttal information may be submitted via E-mail, facsimile, or overnight courier to the department.

*c. Inform of the opportunity to submit additional or rebuttal information.* During the inspection, the facility shall be informed of the opportunity to submit additional or rebuttal information and of the contact information for the department.

**50.10(5)** *Standards for determining whether a deficiency exists.* The department shall use a preponderance of the evidence standard when determining whether a regulatory deficiency exists. For purposes of this rule and rule 481—50.11(135C), "preponderance of the evidence standard" means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations or deficiency is more likely true than not true. This standard does not require that the inspector personally witnessed the alleged violation.

**50.10(6)** *Statement of deficiencies.* When one or more deficiencies are found, a statement of deficiencies detailing each deficiency shall be sent by the department to the health care facility within ten working days of the exit interview.

**50.10(7)** *Plan of correction.* Within ten working days following receipt of the statement of deficiencies, the health care facility shall submit a plan of correction to the department.

*a. Contents of plan.* The plan of correction shall contain the following information:

(1) How the facility will correct the deficient practice;

(2) How the facility will act to protect residents;

(3) The measures the facility will take or the systems it will alter to ensure that the problem does not recur;

(4) How the facility plans to monitor its performance to make sure that solutions are sustained; and

(5) Date(s) when corrective action will be completed.

*b. Review of plan.* The department shall review the plan of correction within ten working days of receipt. The department may request additional information or revisions to the plan, which shall be provided as requested.

**50.10(8)** *Revisits.* If a facility licensed under this chapter is subject to or will be subject to denial of payment including payment for Medicare or medical assistance (Medicaid) under Iowa Code chapter 249A, or denial of payment for all new admissions pursuant to 42 CFR Section 488.417, and submits a plan of correction relating to the deficiencies or a response to a citation issued under 481—Chapter 56 and the department elects to conduct an on-site revisit inspection, the department shall commence the revisit inspection within the shortest time feasible of the date that the plan of correction is received or the date specified within the plan of correction alleging compliance, whichever is later.

**50.10(9)** *Appeals of statement of deficiencies.* The facility may appeal the statement of deficiencies by filing an appeal request with the department within 20 working days after receipt of the statement of deficiencies. The procedures defined in rule 481—50.6(10A) shall be followed for the appeal.

ITEM 2. Adopt the following **new** rule 481—50.11(135C):

**481—50.11(135C) Complaint and self-reported incident investigation procedure.**

**50.11(1)** *Complaint.* The process for filing a complaint is as follows:

*a.* Any person with concerns regarding a facility may file a complaint with the Department of Inspections and Appeals, Complaint/Incident Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; by use of the complaint hotline, 1-877-686-0027; by facsimile sent to (515)281-7106; or through the Web site address https://dia-hfd.iowa.gov/DIA_HFD/Home.do.

*b.* When the nature of the complaint is outside the department's authority, the department shall forward the complaint or refer the complainant to the appropriate investigatory entity.

*c.* The complainant shall include as much of the following information as possible in the complaint: the complainant's name, address and telephone number; the complainant's relationship to the facility or resident; and the reason for the complaint.

*d.* The complainant's name shall be confidential information and shall not be released by the department.

*e.* The department shall act on anonymous complaints unless the department determines that the complaint is intended to harass the facility.

*f.* If the department, upon preliminary review, determines that the complaint is intended as harassment or is without a reasonable basis, the department may dismiss the complaint.

**50.11(2)** *Self-reported incident.* When the facility is required pursuant to rule 481—50.7(10A,135C) or other requirements to report an incident, the facility shall make the report to the department via:

*a.* The Web-based reporting tool accessible from the following Internet site, https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the "Login" tab and then access "Add self report";

*b.* Mail by sending the self-report to the Department of Inspections and Appeals, Complaint/Incident Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083;

*c.* The complaint/incident hotline, 1-877-686-0027; or

*d.* Facsimile sent to (515)281-7106.

**50.11(3)** *Time frames for investigation of complaint or self-reported incident.* The following guidelines shall be used for determining the time frame in which an on-site inspection of the facility shall be initiated:

*a. Immediate jeopardy situation.* Within 2 working days for a complaint or self-reported incident determined by the department to be an alleged immediate jeopardy situation. For purposes of this rule, "immediate jeopardy situation" means a situation in which the facility's alleged noncompliance with Iowa Code chapter 135C, or rules adopted pursuant thereto, has caused or is likely to cause, serious injury, harm, impairment, or death to a resident.

*b. High-level nonimmediate jeopardy situation.* Within 10 days for nursing facilities and within 20 working days for intermediate care facilities and residential care facilities for a complaint or self-reported incident determined by the department to be an alleged high-level nonimmediate jeopardy situation. For purposes of this rule, "high-level nonimmediate jeopardy situation" means the alleged noncompliance with Iowa Code chapter 135C, or rules adopted pursuant thereto, may have caused harm that negatively impacts the resident's mental, physical, or psychosocial status and is of such consequence to the resident's well-being that a rapid response is warranted.

*c. Other nonimmediate jeopardy situation.* Within 45 calendar days for a complaint or self-reported incident determined by the department to be an alleged nonimmediate jeopardy situation, other than a high-level nonimmediate jeopardy situation. For purposes of this rule, "other nonimmediate jeopardy situation" means a situation that is not a high-level nonimmediate jeopardy situation where the alleged noncompliance with Iowa Code chapter 135C, or rules adopted pursuant thereto, may cause harm of limited consequence and does not significantly impair the individual's mental, physical, or psychosocial status or function.

*d. No inspection of facility-reported incidents.* The department may determine not to institute an inspection of a self-reported incident using criteria including, but not limited to, the following:

(1) There is no evident deficiency on the part of the facility, and the facility has taken appropriate measures to address the situation; or

(2) There is a potential deficiency but:

1. The facility has taken appropriate measures to address the situation;

2. The facility does not have a recent history of identified deficiency similar to or related to the incident being reported;

3. A complaint has not been filed regarding the incident being reported; and

4. The resulting injury does not cause a significant negative impact to the resident's quality of life.

**50.11(4)** *Standard for determining whether a complaint or self-reported incident is substantiated.* The department shall apply a preponderance-of-the-evidence standard in determining whether a complaint or self-reported incident is substantiated.

**50.11(5)** *Notification of program and complainant.* The department shall notify the facility and, if known, the complainant of the findings of the complaint investigation. The department shall also notify the complainant, if known, if the department does not investigate a complaint, and the reasons for not investigating the complaint shall be included in the notification.

**50.11(6)** *Process for complaint and self-reported incident.* The department and facility shall follow the process outlined in rule 481—50.10(135C), as applicable, when conducting or responding to a complaint or self-reported incident investigation.

ITEM 3. Adopt the following **new** rule 481—50.12(135C):

**481—50.12(135C) Requirements for service.** At each inspection, the facility shall provide the most current contact information for the purpose of service of departmental notices. A statement of deficiencies or citation shall be served upon a facility using one of the following methods.

**50.12(1)** *Electronic mail.* If a facility has electronic mail, electronic mail shall be used for service of statements of deficiencies and citations. If electronic mail is used, the following shall be complied with:

*a.* The department shall send the electronic message return receipt requested. The response from the return receipt shall officially document receipt of the service and the date of receipt.

*b.* A facility shall allow the electronic return receipt to be returned to the department and shall not delay the sending of the return receipt.

*c.* If the department has not received the return receipt within three business days of sending the service via electronic mail, the department shall contact the facility to verify the receipt of the service.

**50.12(2)** *Certified mail.* If a facility does not have access to electronic mail, the service shall be sent via certified mail, return receipt requested.

**50.12(3)** *Personal service.* The department may choose to personally serve the notice upon the health care facility by delivering a copy of the statement of deficiencies or citation to the health care facility and presenting the copy to the facility.

ITEM 4. Adopt the following **new** rule 481—50.13(135C):

**481—50.13(135C) Inspectors' conflicts of interest.**

**50.13(1)** *Conflicts.* Any of the following circumstances disqualifies an inspector from inspecting a particular health care facility licensed under Iowa Code chapter 135C:

*a.* The inspector currently works or, within the past two years, has worked as an employee or employment agency staff at the health care facility, or as an officer, consultant, or agent for the health care facility to be inspected.

*b.* The inspector has any financial interest or any ownership interest in the facility. For purposes of this paragraph, indirect ownership, such as through a broad-based mutual fund, does not constitute a financial or ownership interest.

*c.* The inspector has an immediate family member who has a relationship with the facility as described in subrule 50.13(1), paragraphs *"a"* and *"b."*

**50.13(2)** *Immediate family member.* For purposes of this rule, "immediate family member" means the same as set forth in 42 CFR 488.301, and includes a husband or wife; natural or adoptive parent, child, or sibling; stepparent, stepchild, or stepsibling; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, or sister-in-law; or grandparent or grandchild.

ITEM 5. Amend rule 481—56.3(135C) as follows:

**481—56.3(135C) Fines.** Citations which are issued by the director of the department of inspections and appeals for violations of the statutes or rules relating to health care facilities will subject the facility to the following penalties~~:~~.

**56.3(1)** *Citation for a class I violation~~:~~.* ~~Not~~ The penalty shall not be less than $2,000 nor more than $10,000~~;~~. The penalty for a class I violation shall be doubled when the violation is due to an intentional act by the facility in violation of a provision of Iowa Code chapter 135C or a rule adopted pursuant thereto.

INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

**56.3(2)** *Citation for a class II violation:* ~~Not~~ The penalty shall not be less than $100 nor more than $500. ~~(The director of the department of inspections and appeals may waive the penalty if the violation is corrected within the time specified in the citation);~~ Using the criteria established in paragraph 56.3(2)*"a,"* the director of the department of inspections and appeals may, upon written request, waive the penalty if the class II violation is corrected within the time specified in the citation. The director shall not waive penalties related to the items listed in subrule 56.3(4).

*a. Criteria for waiving the penalty for a class II violation.* The director shall consider the following criteria, among others, when deciding whether to grant a waiver of a class II penalty.

(1) The past history of the facility within the last 24 months of the violation as it relates to the nature of the violation;

(2) The rights of residents to make informed decisions with their doctor(s) and family/legal representative(s); and

(3) The financial hardship the fine will cause the facility.

*b. Process for requesting a waiver of the penalty for a class II violation.*

(1) A facility shall submit documentation that supports the waiver request.

(2) If the facility has requested a waiver based on financial hardship, the facility must provide proof of the hardship for the individual facility, along with the parent corporation, if any. Supporting documentation shall, at minimum, include the facility's, and the parent corporation's, if any, most recent profit and loss statement and balance sheet.

(3) Requests for a waiver shall be submitted within ten working days of receipt by the facility of the notice that the violation has been corrected.

(4) The department shall make a decision on the waiver request or request additional information, if necessary, within ten working days of receipt of a waiver request and shall notify the facility in writing of the department's determination by personal service, by electronic mail, or by certified mail. If additional information is requested, such information shall be provided by the facility within five working days. If additional information is necessary, the department shall make a decision on the waiver request within ten working days of receipt of the additional information requested by the department.

(5) If the waiver request is granted and the facility has paid the penalty, the facility shall be refunded the amount of the penalty paid that was subject to the approved waiver request.

*c. Denial of penalty waiver request for a class II violation.* The director's decision to deny a waiver request is not subject to appeal. The underlying citation or state statement of deficiencies is eligible for appeal.

**56.3(3)** *Citation for a class III violation:* No penalty~~,~~ shall be assessed for a class III violation except as provided in rule 481—56.5(135C).

**56.3(4)** *Self-identification and correction of a class II or class III violation prior to the on-site inspection.* If a facility self-identifies a deficient practice prior to the on-site visit inspection, there has been no complaint filed with the department related to that specific deficient practice, and the facility corrects such practice prior to an inspection, no citation shall be issued or fine assessed for class II or III violations except for those penalties arising pursuant to paragraphs *"a"* to *"f"*:

*a.* Abuse.

(1) Rule 481—57.39(135C);

(2) Rule 481—58.43(135C);

(3) 481—subrules 62.23(23) to 62.23(25);

(4) Rule 481—63.37(135C);

(5) Rule 481—64.33(235B);

(6) Rule 481—65.15(135C);

(7) 481—subrules 65.25(3) to 65.25(5); and

(8) 42 CFR Section 483.420(d).

*b.* Personnel histories.

(1) Iowa Code section 135C.33;

(2) 481—subrule 57.12(3);

(3) 481—subrule 58.11(3);

(4) 481—subrule 62.9(5);
(5) 481—subrule 63.11(3);
(6) Rule 481—64.34(135C); and
(7) 481—subrule 65.9(5).

*c.* Failure to implement physician's orders as required.
(1) 481—paragraph 57.12(2)*"d"*;
(2) 481—paragraph 58.19(2)*"h"*;
(3) 481—paragraph 62.15(1)*"a"*;
(4) 481—paragraph 63.11(2)*"d"*; and
(5) 42 CFR Section 483.460(c)(4).

*d.* Failure to notify the physician of any accident, injury, or adverse change in a resident's condition.
(1) 481—subrule 57.15(5);
(2) 481—subrule 58.14(5); and
(3) 481—paragraph 62.19(2)*"c."*

*e.* Failure to administer all medications as ordered by the resident's physician.
(1) 481—paragraph 57.12(2)*"d"*;
(2) 481—paragraph 58.19(2)*"a"*;
(3) 481—paragraph 63.11(2)*"d"*;
(4) 481—subrule 64.4(9); and
(5) 42 CFR Section 483.460(c)(4).

*f.* Failure to meet the fire safety rules and regulations promulgated by the state fire marshal.
(1) 481—paragraph 58.28(1)*"a"*;
(2) 481—subrule 62.19(7);
(3) 481—paragraph 63.23(1)*"a"*; and
(4) 42 CFR Section 483.470(j).

*g.* Process for documenting self-identification. If, during the inspection, an area of concern is identified to the facility that was self-identified and corrected by the facility prior to the inspection, no complaint has been filed, and the violation does not fall in the exemptions listed in 481—paragraphs 56.3(4)*"a"* to *"f,"* the facility shall complete a "Self-Identification and Correction Form" and submit it to the inspector(s) prior to the conclusion of the inspection, or to the department within two working days of the exit interview via E-mail, facsimile, or overnight courier. The documentation shall include:
(1) The nature of the problem;
(2) The date the problem was identified;
(3) Who identified the problem, i.e., family, resident, staff, physician, pharmacist;
(4) Action steps taken to correct the problem;
(5) Date the facility determined correction was completed; and
(6) All documentation that substantiates the above information.

**56.3(5)** *State penalty dismissed if the corresponding federal deficiency or citation is dismissed or removed.* Any state penalty, including a fine or citation, issued as a result of a joint state and federal survey and certification process shall be dismissed if the corresponding federal deficiency or citation is dismissed or removed.

*a.* If the federal deficiency is dismissed or removed during the federal informal dispute resolution process, the department shall remove any corresponding state fine, citation or deficiency within 20 working days of issuance of the decision.

*b.* If the federal deficiency is dismissed or removed at the conclusion of the federal administrative hearing process, the facility shall submit to the department a copy of the decision, along with a written request for the removal of the corresponding state fine, citation, or deficiency.

**56.3(6)** *Reduction of fine amount by 35 percent.* If a facility has been assessed a penalty, does not request a formal hearing pursuant to Iowa Code section 135C.43 and rule 481—56.17(135C), or withdraws its request for a formal hearing within 30 days of the date that the penalty was assessed, and

the penalty is paid within 30 days of receipt of notice or service, the amount of the civil penalty shall be reduced by 35 percent.

ITEM 6. Amend rule 481—56.6(135C) as follows:

**481—56.6(135C) Treble and double fines ~~for repeated violations~~.**

**56.6(1)** *Treble fines for repeated violations.* The director of the department of inspections and appeals shall treble the penalties specified in rule 481—56.3(135C) for any second or subsequent class I or class II violation occurring within any 12-month period, if a citation was issued for the same class I or class II violation occurring within that period and a penalty was assessed therefor.

**56.6(2)** *Double fines for intentional class I violations.* The director of the department of inspections and appeals shall double the penalties specified in subrule 56.3(1) when the violation is due to an intentional act by the facility in violation of a provision of Iowa Code chapter 135C or rule adopted pursuant thereto.

*a.* For purposes of this subrule, "intentional" means doing an act voluntarily, not by mistake or accident, and doing the act with a specific purpose in mind.

*b.* The facts and circumstances surrounding the act shall be considered when determining whether the act was done intentionally.

*c.* It is assumed that a person intends the natural results of the person's act(s).

ITEM 7. Amend rule 481—56.13(135C) as follows:

**481—56.13(135C) Form of citations.** Each citation issued by the director of the department of inspections and appeals shall contain the following information:

**56.13(1)** to **56.13(3)** No change.

**56.13(4)** When appropriate, a statement of the period of time allowed for correction of the violation, which shall in each case be the shortest period of time the department deems feasible~~.~~; and

**56.13(5)** A statement that the fine may be reduced by 35 percent pursuant to Iowa Code section 135C.43A and subrule 56.3(6).

ITEM 8. Amend rule 481—56.14(135C) as follows:

**481—56.14(135C) Licensee's response to a citation.** Within 20 business days after service of a citation, the facility shall respond in the following manner, according to the type of citation issued.

**56.14(1)** If the facility does not desire to seek an informal conference or contest the citation~~:~~

~~*a.* For each class I violation~~, the facility shall remit to the department of inspections and appeals the amount specified by the department of inspections and appeals in the citation~~;~~ unless:

~~*b.*~~ *a.* ~~For each class I~~ The violation was issued in conjunction with a federal civil money penalty, ~~the facility shall remit the amounts specified by the department of inspections and appeals only after the results of the revisit have been determined;~~ and the department holds the fine issued pursuant to this chapter in abeyance pursuant to Iowa Code section 249A.19, or

~~*c.* For each class II violation issued in conjunction with a federal civil money penalty, the facility shall remit the amounts specified by the department of inspections and appeals only after the results of the revisit have been determined;~~

~~*d.* For each class II violation for which the penalty has not been waived, the facility shall remit to the department of inspections and appeals the amount specified by the department of inspections and appeals in the citation;~~

~~*c.*~~ *b.* ~~For each~~ The class II violation for which the penalty was imposed has been waived pursuant to subrule 56.3(2).

**56.14(2)** ~~or for~~ For each class II or class III violation, the facility shall send a written response to the department of inspections and appeals, acknowledging that the citation has been received and stating that the violation will be corrected within the specified period of time allowed by the citation.

~~**56.14(2)** If the facility desires to contest a citation for a class I violation, the facility shall follow the procedure as set out in 56.16(135C).~~

**56.14(3)** If the facility desires to contest a citation for a class I, class II or class III violation, the facility shall notify the director of the department of inspections and appeals in writing that it desires to contest such citation and request in writing an informal conference with a representative of the department of inspections and appeals.

ITEM 9. Amend subrule 56.15(1) as follows:

**56.15(1)** If the facility does not desire to further contest an affirmed or modified citation for a class I, class II or class III violation, the facility shall, within five working days after the informal conference, or within five working days after receipt of the written decision and explanation of the department of inspections and appeals' representative at the informal conference, ~~as the case may be~~ whichever occurs later, comply with the provisions of ~~56.14(1)*"b"* or 56.14(1)*"c."*~~ subrule 56.14(1).

ITEM 10. Rescind and reserve rule **481—56.16(135C)**.

ITEM 11. Adopt the following **new** rule 481—58.57(135C):

**481—58.57(135C) Training of inspectors.**

**58.57(1)** Subject to the availability of funding, all nursing facility inspectors shall receive 12 hours of annual continuing education in gerontology, wound care, dementia, falls, or a combination of these subjects.

**58.57(2)** An inspector shall not be personally liable for financing the training required under subrule 58.57(1).

**58.57(3)** The department shall consult with the collective bargaining representative of the inspector in regard to the training required under this rule.

## ARC 8193B

# 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," 16.5(1)"r," and 16.133, the Iowa Finance Authority hereby gives Notice of Intended Action to amend Chapter 26, "Water Pollution Control Works and Drinking Water Facilities Financing," Iowa Administrative Code.

The purpose of these amendments is to update the rules for the state revolving fund (SRF) loan programs. Under an agreement with the United States Environmental Protection Agency, the Iowa SRF is administered by the Iowa Department of Natural Resources in partnership with the Iowa Finance Authority.

The proposed changes would:

• Eliminate the minimum loan amounts for infrastructure projects. This is in response to some of the Authority's nonpoint source projects.

• Cap the maximum loan amount per borrower for the Livestock Water Quality program to $500,000.

• Reduce the maximum loan term to ten years for the Livestock Water Quality program.

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

The Authority will hold a public hearing on the proposed amendments on Wednesday, October 28, 2009, at 10 a.m. in the Presentation Room at the Authority's offices located at 2015 Grand Avenue, Des Moines, Iowa.

At the hearing, persons may present their views either orally or in writing. Any interested person may make written comments on or before November 6, 2009. Comments may be addressed to Lori Beary,

Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may be faxed to Lori Beary at (515)725-4901 or E-mailed to Lori Beary at Lori.Beary@iowa.gov.

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

These rules are intended to implement Iowa Code sections 16.5(1)"r" and 16.133.

The following amendments are proposed.

ITEM 1. Amend rule 265—26.2(16) as follows:

**265—26.2(16) Purpose.** The Iowa finance authority provides financing to carry out the functions of the state revolving fund (SRF) loan programs. Under an agreement with the United States Environmental Protection Agency, the Iowa SRF is administered by the Iowa department of natural resources in partnership with the Iowa finance authority. ~~The authority and the Iowa department of natural resources administer the SRF programs under the terms of interagency agreements entered into pursuant to Iowa Code chapter 28E.~~

ITEM 2. Adopt the following **new** definitions of "Common ownership" and "Department" in rule **265—26.3(16)**:

*"Common ownership"* means the ownership of an animal feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more animal feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both.

*"Department"* or *"DNR"* means the Iowa department of natural resources.

ITEM 3. Amend subrule 26.5(6) as follows:

**26.5(6)** *Loan amount and repayment period.* All loans shall be made contingent on the availability of funds ~~and shall be for a minimum of $50,000~~, the maximum loan term will be that allowed by EPA, and repayment of the loan must begin no later than one year after the project is completed or by the date specified in the loan agreement.

ITEM 4. Amend subrule 26.7(1) as follows:

**26.7(1)** *Criteria for disadvantaged community status.* The authority, in conjunction with the department, may develop criteria to determine disadvantaged community status~~, based on~~. Factors included in the criteria include, but are not limited to, the community's median household income and target user charges. Criteria to determine disadvantaged community status shall be established in the IUP.

ITEM 5. Amend subrule 26.8(1) as follows:

**26.8(1)** *Nonpoint source loan assistance.* Loan assistance for nonpoint source projects shall be in the form of low-interest loans ~~or pass-through loans~~ or through linked deposits or loan participations through participating lending institutions.

ITEM 6. Amend subrule 26.8(7) as follows:

**26.8(7)** *Loan amount and period.* All loans shall be made contingent on the availability of funds in the applicable fund or set-aside program as indicated in the IUP. The minimum and maximum loan amounts that will be considered are dependent on project type and are set forth as follows:

IOWA FINANCE AUTHORITY[265](cont'd)

| Type of Project | Type of Assistance | Minimum Loan Amount | Maximum Outstanding Balance ~~Loan Amount~~ | Maximum Loan Term | Project Approval Agency |
|---|---|---|---|---|---|
| General Nonpoint Source | Low-interest loans, ~~or~~ Linked deposit or Loan participations | $5,000 | No maximum | 20 years | DNR |
| Local Water Protection | Linked deposit | $5,000 | ~~$50,000~~ $500,000 per common ownership | 10 years | Division of Soil Conservation |
| Livestock Water Quality Facilities | ~~Pass-through loans~~ Linked deposit | $10,000 | ~~Not to exceed 50% of the livestock water quality set-aside~~ $500,000 per common ownership | ~~Equal to expected life of facility but no greater than 20 years.*~~ 10 years* | ~~DNR~~ Division of Soil Conservation |
| Onsite Wastewater Systems Assistance | Linked deposit | $2,000 | No maximum | 10 years | County ~~Sanitarian~~ |

*If the loan is made only for preparation of a comprehensive nutrient management plan, the loan period shall not exceed 5 years.

## ARC 8192B

# IOWA FINANCE AUTHORITY[265]

### Notice of Termination

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.5(1)"r," the Iowa Finance Authority terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on July 15, 2009, as **ARC 7942B** to adopt Chapter 32, "Iowa Jobs Program," Iowa Administrative Code.

The Notice of Intended Action was published to solicit comments on the adoption of Chapter 32, which was simultaneously Adopted and Filed Emergency as **ARC 7941B**. Public comment was received on the proposed rules. Subsequent to that publication, and due in part to the public comment received, it was deemed necessary to make certain amendments to the chapter on an emergency basis prior to the first possible date for adopting the rules pursuant to the Notice. Those amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8103B** and published under Notice of Intended Action as **ARC 8108B**.

Because the Notice of Intended Action published as **ARC 7942B** has been superseded by the subsequent amendment to Chapter 32, the Authority is terminating the Notice of Intended Action published as **ARC 7942B**.

**ARC 8191B**

# MEDICINE BOARD[653]

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code chapter 272D, the Board of Medicine hereby gives Notice of Intended Action to amend Chapter 12, "Nonpayment of State Debt," Iowa Administrative Code.

The Board approved the amendments to Chapter 12 during a regularly scheduled meeting on September 3, 2009.

Chapter 12 establishes that the Board may deny issuance or renewal of a medical or osteopathic medical license or acupuncture license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit of the Department of Revenue according to the procedures set forth in Iowa Code sections 272D.1 to 272D.9.

These proposed amendments update the language and the Iowa Code references in Chapter 12.

Any interested person may present written comments on the amendments no later than 4:30 p.m. on October 27, 2009. Such written materials should be sent to Mark Bowden, Executive Director, Iowa Board of Medicine, 400 SW Eighth Street, Suite C, Des Moines, Iowa 50309-4686, or sent by E-mail to mark.bowden@iowa.gov.

These amendments are intended to implement Iowa Code chapter 272D.

The following amendments are proposed.

ITEM 1. Strike "82GA,SF2428" wherever it appears in rules **653—12.1(82GA,SF2428)** to **653—12.3(82GA,SF2428)** and insert "272D" in lieu thereof.

ITEM 2. Amend rule **653—12.1(272D)**, definitions of "Act" and "Certificate of noncompliance," as follows:

*"Act"* means ~~2008 Iowa Acts, Senate File 2428, division II~~ Iowa Code sections 272D.1 to 272D.9.

*"Certificate of noncompliance"* means a document known as a certificate of noncompliance which is provided by the centralized collection unit of the department of revenue certifying that the named applicant or licensee has an outstanding liability placed with the unit and has not entered into an approved payment plan to pay the liability.

ITEM 3. Amend subrule 12.2(4) as follows:

**12.2(4)** *Licensees and applicants responsible to inform board.* Licensees and applicants shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with the Act. Licensees and applicants shall also provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to the Act, all court orders entered in such actions, and ~~any~~ withdrawals of certificates issued by the centralized collection unit.

**ARC 8199B**

# MEDICINE BOARD[653]

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76 and chapters 148 and 272C, the Board of Medicine hereby gives Notice of Intended Action to amend Chapter 13, "Standards of Practice and Principles of Medical Ethics," and Chapter 23, "Grounds for Discipline," Iowa Administrative Code.

Chapter 13 establishes the standards of practice for a physician or surgeon or osteopathic physician or osteopathic surgeon who serves as a medical director at a medical spa. Subrule 23.1(43) establishes as a violation improper delegation and supervision by a medical director, pursuant to rule 653—13.8(148,272C).

The Board approved these amendments to its rules during a regularly scheduled meeting on September 3, 2009.

Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on October 27, 2009. Such written materials should be sent to Mark E. Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686, or E-mailed to mark.bowden@iowa.gov.

There will be a public hearing on October 27, 2009, at 11:30 a.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medicine office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapter 148.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 653—13.8(148,272C):

**653—13.8(148,272C) Standards of practice—medical directors at medical spas and delegation and supervision of medical aesthetic services performed by licensed or unlicensed nonphysician persons.** This rule establishes standards of practice for physicians or surgeons or osteopathic physicians or osteopathic surgeons who serve as a medical director at a medical spa.

**13.8(1)** *Definitions.* As used in this rule:

*"Delegation"* means to entrust or transfer the performance of a medical aesthetic service to a licensed or unlicensed nonphysician person.

*"Licensed or unlicensed nonphysician person"* means a person who is not licensed to practice medicine and surgery or osteopathic medicine and surgery and may include persons licensed to practice other professions and unlicensed persons. "Licensed or unlicensed nonphysician person" shall not include advanced registered nurse practitioners.

*"Medical aesthetic service"* means a service which includes, but is not limited to, the following: ablative laser, vaporizing laser, and light device therapy; injectables; tissue alteration services; nonablative laser, nonvaporizing laser, and light device therapy; light-emitting diode therapy; intense pulse light therapy; radiofrequency therapy; ultrasonic therapy; superficial and nonsuperficial exfoliation; superficial and nonsuperficial microdermabrasion; superficial and nonsuperficial dermaplane exfoliation; superficial and nonsuperficial lymphatic drainage; and chemical peels.

*"Medical director"* means a physician who assumes the role of, or holds oneself out as, medical director or a physician who serves as a medical advisor for a medical spa. The medical director is responsible for implementing policies and procedures to ensure quality patient care and for the delegation and supervision of medical aesthetic services to licensed or unlicensed nonphysician persons.

*"Medical spa"* means any entity, however organized, which is advertised, announced, established, or maintained for the purpose of providing medical aesthetic services. "Medical spa" shall not include a dermatology practice which is wholly owned and controlled by one or more Iowa-licensed physicians or advanced registered nurse practitioners if at least one of the owners is actively practicing at each location.

*"Supervision"* means the general oversight of a licensed or unlicensed nonphysician person who performs a medical aesthetic service delegated by a medical director.

**13.8(2)** *Medical director.* A physician who serves as medical director at a medical spa shall:

*a.* Hold an active, unrestricted Iowa medical license to perform each delegated medical aesthetic service;

*b.* Possess the appropriate education, training, experience and competence to safely perform each delegated medical aesthetic service;

*c.* Retain responsibility for the outcome of each delegated medical aesthetic service;

*d.* Be responsible for advertising activities; and

*e.* Be clearly identified in all advertising activities, Internet Web sites and signage related to the medical spa.

**13.8(3)** *Delegated medical aesthetic service.* When a medical director delegates a medical aesthetic service to a licensed or unlicensed nonphysician person, the service shall be:

*a.* Within the delegating medical director's scope of practice and medical competence;

*b.* Of the type that a reasonable and prudent physician would conclude is within the scope of sound medical judgment to delegate; and

*c.* A routine and technical service, the performance of which does not require the skill of a licensed physician.

**13.8(4)** *Supervision.* A medical director who delegates performance of a medical aesthetic service to a licensed or unlicensed nonphysician person is responsible for providing appropriate supervision. The medical director shall ensure that:

*a.* All licensed or unlicensed nonphysician persons are qualified and competent to safely perform any delegated service by personally assessing the person's education, training, experience and ability;

*b.* All licensed or unlicensed nonphysician persons do not perform any services which are beyond that person's competence or the scope of that person's license, certification or registration;

*c.* Licensed or unlicensed nonphysician persons regularly receive direct, in-person supervision from the medical director or a qualified designated physician;

*d.* The medical director or a qualified designated physician regularly reviews a representative sample of patient charts for services performed by a licensed or unlicensed nonphysician person;

*e.* The medical director or a qualified designated physician is physically located within a reasonable distance from the site where a licensed or unlicensed nonphysician person performs delegated services;

*f.* The medical director or a qualified designated physician is available, in person or electronically, to consult with a licensed or unlicensed nonphysician person, particularly in cases of patient injury or emergency;

*g.* Licensed or unlicensed nonphysician persons maintain accurate and timely medical records for the delegated services they perform;

*h.* Each patient provides appropriate informed consent for delegated services performed by a licensed or unlicensed nonphysician person and that such informed consent is timely documented in the patient's medical record;

*i.* Each patient receiving delegated services performed by a licensed or unlicensed nonphysician person is informed of the identity of the medical director or qualified designee if requested; and

*j.* The board receives written verification of the education and training of all licensed and unlicensed nonphysician persons within 14 days of a request by the board.

ITEM 2. Adopt the following **new** subrules 23.1(43) and 23.1(44):

**23.1(43)** Improper delegation and supervision by a medical director to a licensed or unlicensed nonphysician person, which includes, but is not limited to, violation of the standards of practice for

medical directors who delegate and supervise medical aesthetic services performed by the person as set out at rule 653—13.8(148,272C).

**23.1(44)** Failing to provide the board with written verification of the qualifications of licensed or unlicensed nonphysician persons within 30 days of a request made by board staff.

**ARC 8198B**

# MEDICINE BOARD[653]

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76 and chapters 17A, 148 and 272C, the Board of Medicine hereby gives Notice of Intended Action to amend Chapter 23, "Grounds for Discipline," Iowa Administrative Code.

This amendment is intended to prevent surgery on the wrong patient or at the wrong surgery site and to prevent unauthorized or unnecessary procedures. This amendment also stresses the importance of preprocedural verification.

The Board approved this amendment during a regularly scheduled meeting on September 3, 2009.

Any interested person may present written comments on the proposed amendment not later than 4:30 p.m. on October 27, 2009. Such written materials should be sent to Mark E. Bowden, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686, or E-mailed to mark.bowden@iowa.gov.

There will be a public hearing on October 27, 2009, at 11 a.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medicine office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

This amendment is intended to implement Iowa Code chapter 148.

The following amendment is proposed.

Adopt the following **new** subrule 23.1(42):

**23.1(42)** Performing or attempting to perform health care services on the wrong patient or at the wrong site on the body; performing an unauthorized procedure; or performing a procedure that is medically unnecessary or otherwise unrelated to the patient's diagnosis or medical condition. For purposes of this subrule, performing or attempting to perform health care services includes the preparation of the patient.

**ARC 8196B**

# NATURAL RESOURCE COMMISSION[571]

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 15, "General License Regulations," Iowa Administrative Code.

The proposed amendments redefine severe mental disability and severe physical disability; establish a means to verify low-income persons; substitute a free lifetime fishing license with a free annual fishing license; clarify the procedure for administering a free fishing or hunting license; permit enforcement capability in revoking licenses issued in violation of this rule; and provide a mechanism through which the Department may deny, suspend or revoke licenses of persons who owe the state of Iowa money pursuant to Iowa Code chapter 272D.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 27, 2009. Such written materials should be directed to Martin Konrad, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail Martin.Konrad@dnr.iowa.gov. Persons who wish to convey their views orally should contact the Fisheries Bureau at (515)281-6976 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on October 27, 2009, at 1 p.m. in the Fourth Floor East Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, 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 attend the public hearing and have special needs, such as those related to hearing or mobility impairments, should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code chapters 272D, 321G, 456A, 462A, 481A, 481B, 482, 483A, 484A, and 484B.

The following amendments are proposed.

ITEM 1. Amend rule 571—15.4(483A) as follows:

**571—15.4(483A) Administration fee.** An administration fee of $1.50 per privilege purchased shall be collected from the purchaser at the time of purchase, except upon the issuance of free landowner deer and turkey hunting licenses, free annual hunting and fishing licenses, free ~~lifetime~~ annual fishing licenses, free group home fishing licenses, and boat registrations, renewals, transfers, and duplicates. An administrative fee of $3.65 will be collected from the purchaser at the time of boat registration, renewal, transfer, and duplicate purchases.

ITEM 2. Amend subrule 15.23(3) as follows:

**15.23(3)** *Procedure.* Each person shall apply to the department of natural resources for a license as follows:

*a.* Application shall be made on a form provided by the department and shall include the name, address, height, weight, color of eyes and hair, date of birth, and gender of the applicant. In addition, applicants shall include a copy of an official document such as a birth certificate if claiming age status, or a copy of an award letter from the Social Security Administration or private pension plan if claiming permanent disabled status. ~~The applicant shall indicate on the application which low-income assistance program the applicant is receiving.~~ The application shall include an authorization allowing the department of human services to verify ~~that~~ the ~~applicant is a recipient of the low-income assistance program checked on the application~~ applicant's household income if proof of income is provided through the department of human services.

*b.* The free annual hunting and fishing combination license will be issued by the department upon ~~receipt of a properly completed application~~ verification of program eligibility. The license issued under this rule will be valid until January 10 of the subsequent year. Proof of eligibility must be submitted each year in order to obtain a free license.

*c.* A person whose income falls below the federal poverty guidelines~~, but is not a recipient of a state assistance program,~~ may apply for this license by providing either of the following:

(1) ~~A statement listing income from all sources (i.e., social security, retirement income, wages, dividends and interest, cash gifts, rents and royalties, and other cash income).~~ A current Notice of Decision letter. For purposes of this rule, a "current Notice of Decision letter" shall mean a letter from the department of human services dated in the month the application is received or dated in the five months

immediately preceding the month the application is received that describes the applicant's monthly or annual household income.

(2) ~~A copy of any available document that verifies income (i.e., income tax return, bank statement, social security statement, or other document the applicant considers supportive of income status).~~ If a person does not have a "Notice of Decision" letter as described in subparagraph (1), a document shall be provided that states that the applicant's annual income does not exceed the federal poverty limit for the current year and lists income from all sources, including but not limited to any wages or compensation, social security, retirement income, dividends and interest, cash gifts, rents and royalties, or other cash income. In addition, the applicant shall provide documentation of such income by submitting a copy of the applicant's most recently filed state or federal income tax return to the department. In the event an applicant does not have a tax return that was filed within the last year because the applicant's income level does not require the filing of a tax return, the applicant shall so notify the department, shall provide to the department bank statements, social security statements or other relevant income documentation identified by the department, and shall meet with the department to verify income eligibility under this rule.

~~(3) A signed statement by the applicant that the applicant's annual cash income does not exceed the federal poverty limit for the current year.~~

Federal poverty guidelines are published in February of each year and will be the income standard for applicants from that time until the ~~new limits~~ guidelines are available in the subsequent year. The ~~income limit~~ guidelines will be shown on the application and will be available upon request from the department.

ITEM 3. Adopt the following **new** subrule 15.23(4):

**15.23(4)** *Revocation.* Any license issued pursuant to rule 571—15.23(483A) may be revoked, in whole or in part, by written notice, if the director determines that a license holder had provided false information to obtain a license under this chapter or has violated any provision of this chapter and that continuation of the license is not in the public interest. Such revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation, the license holder may file a notice of appeal, requesting a contested case hearing pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the license be reinstated.

ITEM 4. Amend rule 571—15.24(483A) as follows:

**571—15.24(483A) Free ~~lifetime~~ annual fishing license for persons who have severe physical or mental disabilities.**

**15.24(1)** *Purpose.* Pursuant to Iowa Code subsection 483A.24(9), the department of natural resources will issue a free ~~lifetime~~ annual fishing license to Iowa residents 16 or more years of age who have severe mental or physical disabilities who meet the ~~definitions~~ definition of "severe mental disability" ~~and~~ or "severe physical disability" in 15.24(2).

**15.24(2)** *Definitions.* For the purposes of this rule, the following definitions apply:

~~*"Severe mental disability"* means a person who has severe, chronic conditions in all of the following areas which:~~

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

~~2. Are likely to continue indefinitely;~~

~~3. Result in substantial functional limitations in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency; and~~

~~4. Reflect the person's need for a combination and sequence of services which are of lifelong or an extended duration and are individually planned and coordinated.~~

~~*"Severe physical disability"* means a disability that limits or impairs the person's ability to walk under any of the following circumstances:~~

~~1. The person cannot walk 200 feet without stopping to rest.~~

~~2. The person cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device.~~

~~3. The person is restricted by lung disease to such an extent that the person's forced expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than 60 mm/hg on room air at rest.~~

~~4. The person must use portable oxygen.~~

~~5. The person has a cardiac condition to the extent that the person's functional limitations are classified in severity as Class 3 or Class 4 according to standards set by the American Heart Association. They include:~~

~~● Class 3—Persons with cardiac disease resulting in marked limitation of physical activity. The person is comfortable at rest, but less than ordinary activity causes fatigue, palpitation, dyspnea, or angina pain.~~

~~● Class 4—Persons with cardiac disease resulting in inability to carry on any physical activity without discomfort. Symptoms of heart failure or the anginal syndrome may be present even at rest. If any physical activity is undertaken, discomfort is increased.~~

~~6. The person is severely limited in the person's ability to walk due to an arthritic, neurological, or orthopedic condition.~~

*"Severe mental disability"* means a person who has severe, chronic conditions in all of the following areas which:

1. Are attributable to a mental impairment or combination of mental and physical impairments;
2. Result in substantial functional limitations in three or more of the following areas of major life activities: self-care, receptive and expressive language, learning, mobility, self-direction, capacity for independent living, or economic self-sufficiency;
3. Reflect the person's need for a combination and sequence of services that are individually planned and coordinated; and
4. Requires the full-time assistance of another person to maintain a safe presence in the outdoors.

*"Severe physical disability"* means a disability that limits or impairs the person's mobility or use of a hand or arm and that requires the full-time assistance of another person or that makes the person dependant on a wheelchair for the person's normal life routine.

**15.24(3)** *Procedure.* Each person shall apply to the department of natural resources for a license as follows:

*a.* Application shall be made on a form provided by the department and shall include the name, home address, home telephone number, height, weight, eye and hair color, date of birth, and gender of the applicant and other information as required. The license issued under this rule will be issued by the department upon verification of program eligibility and will be valid until January 10 of the subsequent year. Proof of eligibility must be submitted each year in order to obtain the license.

*b.* The application shall be ~~signed and~~ certified by the applicant's attending physician with an original signature and, based upon the ~~criteria listed~~ definition of severe mental disability or severe physical disability as provided for in this rule, declare that the applicant has a severe mental or physical disability. A medical statement from the applicant's attending physician specifying the applicant's type of disability shall be on 8½″ x 11″ stationery of the attending physician or on paper inscribed with the attending physician's letterhead. For purposes of this rule, the attending physician must be a currently practicing doctor of medicine, doctor of osteopathy, physician's assistant or nurse practitioner.

**15.24(4)** *Revocation.* Any license issued pursuant to 571—15.24(483A) may be revoked, in whole or in part, by written notice, if the director determines that a license holder had provided false information to obtain a license under this chapter or has violated any provision of this chapter and that continuation of the license is not in the public interest. Such revocation shall become effective upon a date specified in the notice. The notice shall state the extent of the revocation and the reasons for the action. Within 30 days following receipt of the notice of a revocation, the license holder may file a notice of appeal, requesting a contested case hearing pursuant to 561—Chapter 7. The notice of appeal shall specify the basis for requesting that the license be reinstated.

ITEM 5. Reserve rules **571—15.44(483A)** to **571—15.50(483A)** in Division IV.

ITEM 6. Adopt the following **new** Division V heading in **571—Chapter 15**:

DIVISION V
LICENSE REVOCATION, SUSPENSION, AND MODIFICATION DUE TO LIABILITIES OWED TO THE STATE

ITEM 7. Adopt the following **new** rules 571—15.51(272D) to 571—15.55(272D) in Division V:

**571—15.51(272D) Purpose and use.** This rule is intended to help collect liabilities of the state or a state agency. This rule shall apply to all licenses issued, renewed or otherwise authorized by the department.

**571—15.52(272D) Definitions.** For purposes of this chapter, the following definitions shall apply:

*"Certificate of noncompliance"* means a document provided by the unit certifying the named person has outstanding liability placed with the unit and has not entered into an approved payment plan to pay the liability.

*"Department"* means the department of natural resources.

*"Liability"* means a debt or obligation placed with the unit for collection that is greater than $1,000. For purposes of this chapter, "liability" does not include child support payments collected pursuant to Iowa Code chapter 252J.

*"License"* means a license, certification, registration, permit, approval, renewal or other similar authorization issued to a person by the department which evidences the admission to, or granting of authority to engage in, a profession, occupation, business, industry, or recreation, including those authorizations set out in Iowa Code chapters 321G, 321I, 455B, 455C, 455D, 456A, 459, 459A, 461A, 462A, 481A, 481B, 481C, 482, 483A, 484B and 484C.

*"Licensee"* means a person to whom a license has been issued by the department or who is seeking the issuance of a license from the department.

*"Notice of intent"* means a notice sent to a licensee indicating the department's intent to suspend, revoke, or deny renewal or issuance of a license.

*"Obligor"* means a person with a liability placed with the unit.

*"Unit"* means the centralized collection unit of the department of revenue.

*"Withdrawal of a certificate of noncompliance"* means a document provided by the unit certifying that the certificate of noncompliance is withdrawn and that the department may proceed with issuance, reinstatement, or renewal of a person's license.

**571—15.53(272D) Requirements of the department.**

**15.53(1)** *Records.* The department shall collect and maintain records of its licensees that must include, at a minimum, the following:

*a.* The licensee's first and last names.

*b.* The licensee's current known address.

*c.* The licensee's social security number.

The records shall be made available to the unit so that the unit may match to the records the names of persons with any liabilities placed with the unit for collections. The records must be submitted in an electronic format and updated on a quarterly basis.

**15.53(2)** *Certificate of noncompliance.* Upon receipt of a certificate of noncompliance from the unit, the department shall initiate its existing rules and procedures for the suspension, revocation, or denial of issuance or renewal of a person's license.

**15.53(3)** *Notice of intent.* The department shall provide a notice of intent to a person of its intent to suspend, revoke or deny issuance or renewal of a license in accordance with chapter 272D of the Iowa Code. The suspension, revocation, or denial shall be effective no sooner than 30 days following the issuance of the notice of intent to the person. The notice shall include all of the following:

*a.* That the department has received a certificate of noncompliance from the unit and intends to suspend, revoke or deny issuance or renewal of a person's license;

*b.* That the person must contact the unit to schedule a conference or to otherwise obtain a withdrawal of a certificate of noncompliance;

*c.* That the department will revoke, suspend or deny the person's license unless a withdrawal of a certificate of noncompliance is received from the unit within 30 days from the date of the notice;

*d.* That, in the event the department's rules and procedures conflict with the additional rules and procedures under this action, the rules and procedures of this action shall apply;

*e.* That mistakes of fact in the amount of the liability owed and the person's identity may not be contested to the department; and

*f.* That the person may request a district court hearing as outlined in rule 701—153.14(272D).

**15.53(4)** *Withdrawal.* Upon receipt of a withdrawal of a certificate of noncompliance from the unit, the department shall immediately reinstate, renew, or issue a license if the person is otherwise in compliance with the department's requirements.

**571—15.54(272D) No administrative appeal of the department's action.** Pursuant to Iowa Code section 272D.8, a person does not have a right to a hearing before the department to contest the department's action under this rule but may request a court hearing pursuant to rule 571—15.55(272D).

**571—15.55(272D) District court hearing.** A person may seek review of the actions listed in rule 701—153.14(272D) and request a hearing before the district court by filing an application with the district court in the county in which the majority of the liability was incurred. The person must send a copy of the application to the unit by regular mail. The application must be filed no later than 30 days after the department issues its notice of intent.

**15.55(1)** *Scheduling.* The clerk of the district court shall schedule a hearing and mail a copy of the scheduling order to the person, the unit, and the department.

**15.55(2)** *Certification.* The unit shall certify a copy of its written decision and certificate of noncompliance, indicating the date of issuance, and the department shall certify a copy of the notice issued pursuant to subrule 15.53(3) to the court prior to the hearing.

**15.55(3)** *Stay.* Upon receipt from the clerk of court of a copy of a scheduling order and prior to the hearing, the department shall stay any action contemplated on the person's license pursuant to the notice of intent.

**15.55(4)** *Hearing.* The hearing on the person's application shall be scheduled and held within 30 days of the application being filed. However, if the person fails to appear at the scheduled hearing, the stay shall be lifted and the department shall continue its procedures pursuant to the notice of intent.

**15.55(5)** *Scope of review.* The district court's review shall be limited to demonstration of the amount of the liability owed or the identity of the person.

**15.55(6)** *Findings.* If the court finds the unit was in error either in issuing a certificate of noncompliance or in its failure to issue a withdrawal of a certificate of noncompliance, the unit shall issue a withdrawal of a certificate of noncompliance to the department. If the court finds the unit was justified in issuing a certificate of noncompliance or in not issuing a withdrawal of a certificate of noncompliance, a stay imposed under subrule 15.55(3) shall be lifted and the department shall proceed with the action as outlined in its notice of intent.

ITEM 8. Amend **571—Chapter 15**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 272D, 321G, 456A, 462A, 481A, 481B, 482, 483A, 484A, and 484B.

# ARC 8200B
# PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]

**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 101C.3, the Iowa Propane Education and Research Council hereby gives Notice of Intended Action to amend Chapter 1, "Propane Education and Research Council," Iowa Administrative Code.

The purposes of this amendment are to add rules concerning the development by the Iowa Propane Education and Research Council of energy efficiency programs dedicated to weatherization and to modify the rules concerning the membership of the Iowa Propane and Education Research Council pursuant to Iowa Code chapter 101C as amended by 2009 Iowa Acts, House File 684, sections 1 to 4.

Interested persons may make written comments on the proposed rules on or before October 27, 2009. Such written material should be directed to the Iowa Propane Education and Research Council, P.O. Box 57188, Des Moines, Iowa 50317. Persons who want to convey their views orally should contact the Iowa Propane Education and Research Council at (515)564-1260 or at 4830 Maple Drive, Suite 8, Pleasant Hill, Iowa.

Also, a public hearing will be held on October 27, 2009, at 10 a.m. in the Iowa Propane Education and Research Council Conference Room, 4830 Maple Drive, Suite 8, Pleasant Hill, Iowa. Persons may present their views at the public hearing either orally or in writing. Persons who wish to make oral presentations at the public hearing should contact the Iowa Propane Education and Research Council, P.O. Box 57188, Des Moines, Iowa 50317, or (515)564-1260 at least one day prior to the date of the public hearing.

These amendments are intended to implement 2009 Iowa Acts, House File 684, sections 1 to 4.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definitions of "Energy star certification" and "Weatherization" in rule **599—1.1(101C)**:

*"Energy star certification"* means meeting energy efficiency standards and guidelines pursuant to the Energy Star Program developed and jointly administered by the United States Environmental Protection Agency and United States Department of Energy.

*"Weatherization"* means activities designed to promote or enhance energy efficiency in a residence or other building including but not limited to the installation of attic, wall, foundation, crawlspace, water heater, and pipe insulation; air sealing including caulking and weather-stripping of windows and doors; installation of windows and doors that qualify for energy star certification; the performance of home energy audits; programmable thermostat installation; and carbon monoxide and radon inspection and detection system installation.

ITEM 2. Rescind the definition of "Public member" in rule **599—1.1(101C)**.

ITEM 3. Amend rule 599—1.2(101C) as follows:

**599—1.2(101C) Organization and operation.**

**1.2(1)** The council shall consist of ten voting members appointed by the ~~governor~~ fire marshal, nine of whom represent retail propane marketers and one of whom shall be ~~a public member~~ the administrator of the division of community action agencies of the department of human rights. Qualified propane industry organizations shall together nominate all members of the council other than the administrator. A vacancy in the unfinished term of a council member shall be filled for the remainder of the term in the same manner as the original appointment was made.

PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599](cont'd)

**1.2(2)** Other than the ~~public member~~ administrator, council members shall be full-time employees or owners of a propane industry business or representatives of an agricultural cooperative actively engaged in the propane industry. An employee of a qualified propane industry organization shall not serve as a member of the council. An officer of the board of directors of a qualified propane industry organization or propane industry trade association shall not serve concurrently as a member of the council.

**1.2(3)** to **1.2(5)** No change.

**1.2(6)** A council member, other than the ~~public member~~ administrator, shall not receive compensation for the council member's service and shall not be reimbursed for expenses relating to the council member's service. ~~The public member shall receive a per diem as specified in Iowa Code section 7E.6 and shall be reimbursed for actual expenses incurred in performing official duties of the council not to exceed 40 days per year.~~

**1.2(7)** to **1.2(10)** No change.

ITEM 4. Amend rule 599—1.3(101C) as follows:

**599—1.3(101C) Program and project development and implementation.**

**1.3(1)** No change.

**1.3(2)** The council may develop energy efficiency programs dedicated to weatherization, acquisition and installation of energy-efficient customer appliances that qualify for energy star certification, installation of low-flow faucets and showerheads, and energy efficiency education. The council may by rule establish quality standards in relation to weatherization and appliance installation.

~~**1.3(2)**~~ **1.3(3)** The programs and projects shall be developed to attain equitable geographic distribution of their benefits to the fullest extent practicable. The council shall coordinate its programs and projects with propane industry trade associations and others as the council deems appropriate to provide efficient delivery of services and to avoid unnecessary duplication of activities. The council shall give priority to the development of programs and projects related to research and development, safety, education, and training.

~~**1.3(3)**~~ **1.3(4)** At the beginning of each fiscal year, the council shall prepare a budget plan for the next fiscal year, including the probable cost of all programs, projects, and contracts to be undertaken. The council shall submit the proposed budget to the fire marshal for review and comment. The fire marshal may recommend appropriate programs, projects, and activities to be undertaken by the council.

~~**1.3(4)**~~ **1.3(5)** The council shall also perform the functions required of a state organization under the federal Propane Education and Research Act of 1996, be the repository of funds received under that Act, and separately account for those funds. The council shall coordinate the operation of the program with the federal council as contemplated by 15 U.S.C. Section 6405. These rules shall be administered and construed as complementary to the federal Propane Education and Research Act of 1996, 15 U.S.C. Section 6401 et seq. These rules shall not be construed to preempt or supersede any other program relating to propane education and research organized and operated under the laws of this state.

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

**1.4(2)** The council shall prepare and submit an annual report to the fire marshal and the auditor of state summarizing the activities of the council conducted pursuant to this chapter. The report shall show all income, expenses, and other relevant information concerning assessments collected and expended under these rules. The report shall also include a summary of energy efficiency programs if developed by the council.

**ARC 8223B**

# REVENUE DEPARTMENT[701]

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 40, "Determination of Net Income," Iowa Administrative Code.

This amendment revises rule 701—40.15(422), introductory paragraph, by adding a phrase that makes the Iowa rule consistent with the federal 1040 tax form instructions and 2009 Iowa Acts, Senate File 322, section 4.

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

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

Any interested person may make written suggestions or comments on this proposed amendment on or before October 27, 2009. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

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

Requests for a public hearing must be received by October 29, 2009.

This amendment is intended to implement Iowa Code chapter 422.

The following amendment is proposed.

Amend rule 701—40.15(422), introductory paragraph, as follows:

**701—40.15(422) Reporting of incomes by married taxpayers who file a joint federal return but elect to file separately for Iowa income tax purposes.** Married taxpayers who have separate incomes and have filed jointly for federal income tax purposes can elect to file separate Iowa returns or to file separately on the combined Iowa return form. Where married persons file separately, both must use the optional standard deduction if either elects to use it, or both must claim itemized deductions if either elects to claim itemized deductions. The provisions of Treasury Regulation § 1.63-1 are equally applicable regarding the election to use the standard deduction or itemized deductions for Iowa income tax purposes. The spouses' election to file separately for Iowa income tax purposes is subject to the condition that incomes received by the taxpayers and the deductions for business expenses are allocated between the spouses as the incomes and deductions would have been allocated if the taxpayers had filed separate federal returns. Any Iowa additions to net income and any deductions to net income which pertain to taxpayers filing separately for Iowa income tax purposes must also be allocated accurately between the spouses. Thus, if married taxpayers file a joint federal return and elect to file separate Iowa returns or separately on the combined Iowa return, the taxpayers are required to compute their separate Iowa net incomes as if they had determined their federal adjusted gross incomes on separate federal returns with the Iowa adjustments to net income.

**ARC 8224B**

# REVENUE DEPARTMENT[701]

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code chapter 17A and sections 421.17 and 428A.11, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 79, "Real Estate Transfer Tax and Declarations of Value," and Chapter 80, "Property Tax Credits and Exemptions," Iowa Administrative Code.

Item 1 amends subrule 79.1(3) to delete the requirement that the county recorder initial a deed to show that the real estate transfer tax has been paid.

Item 2 amends the implementation sentence for rule 701—79.1(428A).

Item 3 amends subrule 79.5(1) to update the list of property transfers that are exempt from declaration of value filing requirements.

Item 4 amends the implementation sentence for rule 701—79.5(428A).

Item 5 amends rule 701—79.6(428A) to specify that social security numbers and federal tax identification numbers on declaration of value forms are confidential and must be redacted from the declaration of value form. The implementation sentence is also amended.

Item 6 amends subrule 80.12(2) to delete the requirement that methane gas conversion property must only be used in connection with a publicly owned sanitary landfill operation to qualify for a property tax exemption and to limit the exemption for property not used in connection with a publicly owned sanitary landfill to property placed in operation between January 1, 2008, and December 31, 2012, and to further limit the exemption to a ten-year time period.

Item 7 amends the implementation sentence for rule 701—80.12(427).

Item 8 amends rule 701—80.13(427B,476B). Subrule 80.13(1) is amended to reflect the change in the statute permitting wind energy conversion property to qualify for both the production tax credit and the special valuation of the property by the local assessor. Subrule 80.13(2) is amended to clarify that if a city council or county board of supervisors has not passed an ordinance for the special valuation of wind energy conversion property, the property is to be assessed by the department of revenue. The implementation sentence is also amended.

Item 9 amends rule 701—80.26(427) to provide a property tax exemption for computers and related equipment used in the operation of a data center business. The implementation sentence is also amended.

Item 10 adopts new rule 701—80.28(404B), which provides for a tax exemption on the increase in assessed value of property attributable to the revitalization of the property in a designated disaster area.

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

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than November 9, 2009, to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

REVENUE DEPARTMENT[701](cont'd)

Any interested person may make written suggestions or comments on these proposed amendments on or before October 27, 2009. Such written comments should be directed to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

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

Requests for a public hearing must be received by October 29, 2009.

These amendments are intended to implement Iowa Code section 428A.5 as amended by 2009 Iowa Acts, Senate File 288, section 17; Iowa Code section 428A.4 as amended by 2009 Iowa Acts, Senate File 288, section 16; Iowa Code section 428A.7 as amended by 2009 Iowa Acts, House File 477, section 1; Iowa Code section 427.1(29) as amended by 2009 Iowa Acts, Senate File 478, section 224; Iowa Code sections 476B.4 and 476B.6(1) as amended by 2009 Iowa Acts, Senate File 456, sections 2 and 4; Iowa Code section 427.1 as amended by 2009 Iowa Acts, Senate File 478, section 200; and 2009 Iowa Acts, Senate File 457, sections 23 through 30.

The following amendments are proposed.

ITEM 1. Amend subrule 79.1(3) as follows:

**79.1(3)** *Evidence of payment.* The recorder ~~shall~~ or authorized employee of the recorder must enter the tax payment amount~~, date of payment, and initials of the recorder or authorized employee of the recorder~~ on the face of the instrument of conveyance presented for recording.

ITEM 2. Amend rule **701—79.1(428A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code chapter 428A as amended by 2009 Iowa Acts, Senate File 288, section 17.

ITEM 3. Amend subrule 79.5(1) as follows:

**79.5(1)** *Real estate transfer—declaration of value form.* A real estate transfer—declaration of value form ~~shall~~ must be completed for any deed, contract, instrument or writing that grants, assigns, transfers or otherwise conveys real property, except those specifically exempted by law, if the document presented for recording clearly states on its face that it is a document exempt from the reporting requirements as enumerated in Iowa Code section 428A.2, subsections 2 ~~to 13~~ through 5, 7 through 13, and 16 ~~to~~ through 21, or subsection 6, except in the case of a federal agency or instrumentality, or if a transfer is the result of acquisition of property for public purposes through eminent domain, or is a deed given in fulfillment of a previously recorded real estate contract. A real estate transfer—declaration of value form is not required for any transaction that does not grant, assign, transfer or convey real property.

ITEM 4. Amend rule **701—79.5(428A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 428A.1~~,~~ and 428A.2, and section 428A.4 as amended by ~~1999~~ 2009 Iowa Acts, ~~chapter 175~~ Senate File 288, section 16.

ITEM 5. Amend rule 701—79.6(428A) as follows:

**701—79.6(428A) Public access to declarations of value.** Declarations of value are public records and ~~shall~~ must be made available for public inspection in accordance with Iowa Code chapter 22. However, if the declaration of value contains the social security number or federal tax identification number of the buyer or seller, the social security number or the federal tax identification number must be redacted by the government official in possession of the declaration of value form prior to its being released to the public.

This rule is intended to implement Iowa Code ~~chapter 428A~~ section 428A.7 as amended by 2009 Iowa Acts, House File 477, section 1.

ITEM 6. Amend subrule 80.12(2) as follows:

**80.12(2)** *Eligibility for exemption.* To qualify for exemption, the property must be used either in an operation ~~connected with, or in conjunction with, a publicly owned sanitary landfill~~ that decomposes waste and converts it to ~~collect~~ methane gas or other gases produced as a byproduct of waste

decomposition, then collects the gases and ~~convert the gas~~ converts them to energy; or in an operation ~~connected with, or in conjunction with, a publicly owned sanitary landfill to collect~~ that collects waste ~~that would otherwise be collected by, or deposited with, a publicly owned sanitary landfill~~ in order to decompose ~~the waste~~ it to produce methane gas or other gases for conversion into energy. ~~The property used to decompose the waste and convert the waste to gas is not eligible for the exemption.~~ The exemption applies to both property used in connection with, or in conjunction with, a publicly owned sanitary landfill and to property not used in connection with, or in conjunction with, a publicly owned sanitary landfill.

The exemption for property not used in an operation connected with, or in conjunction with, a publicly owned sanitary landfill is limited to property originally placed in operation on or after January 1, 2008, and on or before December 31, 2012, and will be available for the ten-year period following the date the property was originally placed in operation.

ITEM 7. Amend rule **701—80.12(427)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 427.1(29) as amended by 2009 Iowa Acts, Senate File 478, section 224.

ITEM 8. Amend rule 701—80.13(427B,476B) as follows:

**701—80.13(427B,476B) Wind energy conversion property.**

**80.13(1)** ~~*Property that does not qualify for the wind energy production tax credit.*~~ *Special valuation allowed by ordinance.* A city council or county board of supervisors may provide by ordinance for the special valuation of wind energy conversion property. If the ordinance is repealed, the special valuation applies through the nineteenth assessment year following the first year the property was assessed. Once the ordinance has been repealed and the special valuation is no longer applicable, the property ~~shall~~ must be valued at market value rather than at 30 percent of net acquisition cost. The special valuation applies to property first assessed on or after the effective date of the ordinance. The local assessor ~~shall~~ must value the property in accordance with the schedule provided in Iowa Code section 427B.26(2). The property qualifies for special valuation provided the taxpayer files a declaration of intent with the local assessor by February 1 of the assessment year in which the property is first assessed for tax to have the property locally assessed. The property ~~shall~~ must not be assessed until the assessment year following the year the entire wind plant is completed. A wind plant is completed when it is placed in service.

**80.13(2)** ~~*Property that qualifies for the wind energy production tax credit.*~~ *Special valuation not allowed by ordinance.* ~~The wind energy production tax credit applies to electrical production facilities placed in service on or after July 1, 2005, but prior to July 1, 2012. These facilities are~~ If a city council or county board of supervisors has not passed an ordinance providing for the special valuation of wind energy conversion property, the property is to be assessed by the department of revenue for a period of 12 years, and the taxes payable on the facilities are to be paid to the department at the same time as regular property taxes. The owner of the facility ~~shall~~ must file an annual report with the department by May 1 of each year during the 12-year assessment period, and the department ~~shall~~ must certify the assessed value of the facility by November 1 of each year to the county auditor. The board of supervisors ~~shall~~ must notify the county treasurer to state on the tax statement that the property taxes are to be paid to the department ~~of revenue~~. The board ~~shall~~ must also notify the department of those facilities that are required to pay the property taxes to the department. The department ~~of revenue shall~~ must notify the county treasurer of the date the taxes were paid within five business days of receipt, and the notification ~~shall authorize~~ is authorization for the county treasurer to mark the record as paid in the county system.

This rule is intended to implement Iowa Code section 427B.26 and chapter 476B as amended by 2009 Iowa Acts, Senate File 456, sections 2 and 4.

ITEM 9. Amend rule 701—80.26(427) as follows:

**701—80.26(427) Web search portal and data center business property.** This exemption includes computers and equipment necessary for the maintenance and operation of a web search portal or data

center business, including cooling systems, cooling towers, and other temperature control infrastructure; ~~all~~ power infrastructure for transformation, distribution, or management of electricity ~~used for the maintenance and operation of the web search portal~~, including but not limited to exterior dedicated business-owned substations~~;~~, and power distribution systems which are not subject to assessment under Iowa Code chapter 437A; back-up power generation systems, battery systems, and related infrastructure; and racking systems, cabling, and trays~~, which are necessary for the maintenance and operation of the web search portal~~. The exemption does not apply to land, buildings, and improvements ~~or power distribution systems subject to assessment under Iowa Code chapter 437A~~. The web search portal or data center business must meet the requirements contained in Iowa Code section 423.3, subsection 92, ~~or~~ subsection 93, or subsection 95, for the exemption to be allowable. The owner of the property must file a claim for exemption with the assessor by February 1 of the first year the exemption is claimed. Claims for exemption in successive years ~~shall~~ will be required only for property additions.

This rule is intended to implement Iowa Code ~~Supplement section~~ sections 427.1(35) and 427.1(36) and section 427.1 as amended by ~~2008~~ 2009 Iowa Acts, ~~House~~ Senate File ~~2233~~ 478, section ~~2~~ 200.

ITEM 10. Adopt the following **new** rule 701—80.28(404B):

**701—80.28(404B) Disaster revitalization area.** The governing body of a city or county may, by ordinance, designate an area of the city or county a disaster revitalization area if that area is within a county or portion of a county in which the governor has proclaimed a disaster emergency or the United States president has declared a major disaster. All real property within a disaster revitalization area is eligible to receive a 100 percent exemption from taxation on the increase in assessed value of the property if the increase in assessed value is attributable to revitalization of the property occurring between May 25, 2008, and December 31, 2013. The amount of increase in value shall be the difference between the assessed value of the property on January 1, 2007, and the assessed value of the property on January 1, 2010, and subsequent assessment years. The exemption is for a period not to exceed five years, starting with an assessment year beginning on or after January 1, 2010. A city or county may adopt a tax exemption percentage different from the 100 percent exemption. The different percentage adopted must not allow a greater exemption, but may allow a smaller exemption. If the homeowner elects to take the exemption provided in this rule, the homeowner may not claim any other value-added exemption. An application must be filed for each revitalization project resulting in increased assessed value for which an exemption is claimed. The application for exemption must be filed by the owner of the property with the local assessor by February 1 of the first assessment year for which the exemption is requested. After the tax exemption is granted, the exemption will continue for succeeding years without the taxpayer's having to file an application for exemption unless additional revitalization projects occur on the property. The ordinance must expire or be repealed no later than December 31, 2016.

This rule is intended to implement 2009 Iowa Acts, Senate File 457, sections 23 to 30.

# 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:

| | |
|---|---|
| October 1, 2008 — October 31, 2008 | 6.00% |
| November 1, 2008 — November 30, 2008 | 5.75% |
| December 1, 2008 — December 31, 2008 | 5.75% |
| January 1, 2009 — January 31, 2009 | 5.50% |
| February 1, 2009 — February 28, 2009 | 4.50% |
| March 1, 2009 — March 31, 2009 | 4.50% |
| April 1, 2009 — April 30, 2009 | 5.00% |

USURY(cont'd)

| | |
|---|---|
| May 1, 2009 — May 31, 2009 | 4.75% |
| June 1, 2009 — June 30, 2009 | 5.00% |
| July 1, 2009 — July 31, 2009 | 5.25% |
| August 1, 2009 — August 31, 2009 | 5.75% |
| September 1, 2009 — September 30, 2009 | 5.50% |
| October 1, 2009 — October 31, 2009 | 5.50% |

## ARC 8201B

# 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 the authority of Iowa Code sections 17A.4, 17A.7, 476.1, 476.8, and Section 211 of the Public Utility Regulatory Policies Act of 1978, as amended by the Energy Policy Act of 2005, the Utilities Board (Board) gives notice that on September 16, 2009, the Board issued an order in Docket No. RMU20090008, In re: Electric Interconnection of Distributed Generation Facilities, "Order Commencing Rule Making." The Board is noticing for public comment proposed amendments to 199—15.8(476), 199—15.10(476), and 199—15.11(476) and new Chapter 45. The proposed amendments and new chapter deal with electric interconnection of distributed generation facilities.

The genesis of this rule making began on August 8, 2005, when the Energy Policy Act of 2005 (EPACT 2005) was signed into law. Among the many provisions of this federal legislation are five new federal rate-making standards added to the Public Utility Regulatory Policies Act of 1978 (PURPA). The fifth of these new standards (commonly referred to as Standard 15), found in Section 211 of PURPA (16 U.S.C. 2621(d)), pertains to interconnection of distributed generation facilities. Standard 15 provides that all state utility commissions must consider and make a determination of whether to adopt the standard. Standard 15, if adopted by the Board, would require each rate-regulated utility to interconnect any customer's on-site generation (i.e., distributed generation) with the utility's local distribution facilities, based on Institute of Electrical and Electronics Engineers (IEEE) Standard 1547. Standard 15 also requires, among other things, the establishment of nondiscriminatory practices and procedures that promote the best practices of interconnection of distributed generation.

The Board initiated a proceeding on July 3, 2006, to consider adopting Standard 15. After receiving comments from inquiry participants, the Board issued an order on April 25, 2007, adopting Standard 15, in part, and inviting comments on preliminary model interconnection procedures for rate-regulated utilities. Several participants filed comments on the model interconnection procedures. Three inquiry participants, the Environmental Law and Policy Center and the Distributed Generation Coalition, MidAmerican Energy Company, and the Consumer Advocate Division of the Department of Justice, filed supplemental comments on December 24, 2008. The three participants agreed to jointly advocate using interconnection rules adopted by Illinois as a starting point for revising the Board's generator interconnection rules, rather than the draft model interconnection procedures promulgated by the Board for comment on April 25, 2007, in Docket No. NOI-06-4.

The Board asked inquiry participants to comment on whether and how the Illinois interconnection rules should be adopted for Iowa. Several participants responded in January 2009. Although not all inquiry participants have indicated their agreement with using the Illinois rules as a starting point, the Board believes it is time to propose amendments to Chapter 15 and to propose a new Chapter 45, using

the Illinois rules as a starting point, so that the process can move forward and interconnection standards for distributed generation facilities can be adopted on a timely basis.

The proposed rules apply only to PURPA qualifying facilities and alternate energy production facilities, and to rate-regulated utilities. Also, the net metering references in the proposed rules include both the Board's net metering rule, which applies only to rate-regulated utilities, and an individual utility's net metering or net billing tariff. The changes proposed to Chapter 15 are for consistency with the proposed interconnection standards.

The proposed rules provide four levels of review. Levels 1 through 3 provide expedited review and Level 4 involves a more in-depth process. Level 1 provides an expedited review process for very small lab-certified generation facilities with capacities of 10 kW (i.e., 10 kVA) or less. Level 2 provides an expedited process for lab-certified generation facilities of 2 MW (i.e., 2 MVA) or less that seek interconnection with either a radial distribution circuit or a spot network that serves only one customer. Level 3 provides an expedited process for lab-certified generation facilities that will not export power onto the utility's system, and which seek interconnection with either area networks (limited to generation facilities of 50 kVA or less) or radial distribution circuits (limited to generation facilities of 10 MVA or less). All three expedited review levels presume the interconnection will require no construction of additional facilities by the utility. If additional facilities are required by the utility to accommodate the interconnection, or if the applicant cannot successfully complete Levels 1, 2, or 3, the application will receive more extensive review under Level 4.

In the inquiry, some commenters questioned whether the criteria for expedited review under Levels 2 and 3 would be applicable in Iowa's rural areas. Interested parties should provide specific comments on whether the criteria for Level 2 or Level 3 expedited review should be adjusted to take into account potential limitations in rural areas.

The NOI participants had varying suggestions regarding the level of application fees. In the proposed rules, the fees are set according to review level: $50 for Level 1; $100 plus $1 per kVA for Level 2; $500 plus $2 per kVA for Level 3; and $1,000 plus $2 per kVA for Level 4. Standard forms and agreements are also proposed as part of new Chapter 45. In addition, the technical standards proposed will supplement the current standards listed in 199 IAC 15.10(1), in a way that confirms whether the current Iowa standards are covered by IEEE 1547 and UL 1741 without risking unintended consequences. That is, the standards listed in 199 IAC 15.10(1) are proposed to be revised to lead with IEEE 1547 and UL 1741 as the baseline technical standards, with the other ANSI and IEEE standards subordinated and applicable only to the extent the functional equivalents of their provisions are not already incorporated in the provisions of IEEE 1547 or UL 1741.

One of the more contentious issues in Docket No. NOI-06-4 has been whether interconnecting generators should be required to carry liability insurance and, if so, in what amounts. As noted in the Board's previous order in Docket No. NOI-06-4, none of the parties presented any substantive information or studies to support a liability insurance requirement, and any potential risk that might exist seems greatly reduced by the utility's interconnection standards and requirements. The proposed rules include some liability insurance requirements based on the Illinois interconnection rules. For Level 1, the requirement is for general liability coverage "such as, but not limited to, homeowner's insurance." Also, the Level 1 customer is required to name the utility as an additional insured, whenever possible. For Levels 2 through 4, for generators with a capacity of 1 MVA or greater, the interconnecting customer is required to carry coverage of $2 million for each occurrence and $4 million in the aggregate. The Illinois rules appear not to address insurance requirements for Level 2 through 4 generators with capacities less than 1 MVA. Under the proposed rules, these generators would have insurance requirements similar to the requirements for Level 1 generators.

The Board recognizes that the issues involved with interconnection are detail-oriented. Participants are encouraged to work together with as many other participants as possible to try to reach consensus on any modifications to the proposed rules that they believe are appropriate. After reviewing the written comments and receiving additional comments at the oral presentation scheduled below, the Board will determine whether a technical conference should be scheduled.

Pursuant to Iowa Code sections 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 October 27, 2009. The statement should be filed electronically through the Board's Electronic Filing System (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 shall 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, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on December 10, 2009, in the Board's hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 at least five days in advance of the scheduled date to request that appropriate arrangements be made.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3 is applicable to these amendments.

These amendments are intended to implement Iowa Code section 476.1, Iowa Code section 476.8, and Section 211 of the Public Utilities Regulatory Policies Act of 1978, as amended by the Energy Policy Act of 2005.

The following amendments are proposed.

ITEM 1. Amend rule 199—15.8(476) as follows:

**199—15.8(476) Interconnection costs.** For purposes of this rule, "utility" means a rate-regulated electric utility.

**15.8(1)** Qualifying facilities and AEP facilities shall be obligated to pay ~~any~~ interconnection costs, as ~~defined~~ described in ~~this chapter. These costs shall be assessed on a nondiscriminatory basis with respect to other customers with similar load characteristics.~~ 199—Chapter 45.

**15.8(2)** ~~Utilities shall be reimbursed by qualifying facilities and AEP facilities for interconnection costs at the time the costs are incurred. Upon petition by any party involved and for good cause shown, the board may allow for reimbursement of costs over a reasonable period of time and upon such conditions as the board may determine; provided, however, that no other customers of the utility shall bear any of the costs of interconnection.~~ Reserved.

ITEM 2. Amend rule 199—15.10(476) as follows:

**199—15.10(476) Standards for interconnection, safety, and operating reliability.** For purposes of this rule, "electric utility" or "utility" means both rate-regulated and non-rate-regulated electric utilities.

**15.10(1)** *Acceptable standards.* ~~Qualifying~~ The interconnection of qualifying facilities and AEP facilities and associated interconnection equipment to an electric utility system shall meet the applicable provisions ~~in~~ of the publications listed below ~~in order to be eligible for interconnection to an electric utility system~~:

*a.* Standard for Interconnecting Distributed Resources with Electric Power Systems, ANSI/IEEE Standard 1547-2003.

*b.* Underwriters Laboratories Standard for Inverters, Converters, and Controllers for Use in Independent Power Systems, UL 1741-2005.

*c.* Provisions of the following publications, but only to the extent the functional equivalents of these provisions are not incorporated in the provisions of paragraph 15.10(1)*"a"* or *"b"* above:

~~*a.*~~ (1) General Requirements for Synchronous Machines, ANSI C50.10-1990.

~~*b.*~~ (2) IEEE Standard for Salient-Pole 50 Hz and 60 Hz, Synchronous Generators and Generator/Motors for Hydraulic Turbine Applications Rated 5 MVA and above, IEEE C50.12-2005.

~~*e.*~~ (3) IEEE Standard for Cylindrical-Rotor 50 Hz and 60 Hz, Synchronous Generators Rated 10 MVA and above, IEEE C50.13-2005.

(4) IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems—IEEE 519-1992.

*d.* Iowa Electrical Safety Code, as defined in 199—Chapter 25.

*e.* National Electrical Code, ANSI/NFPA 70-~~2005~~ 2008.

~~*f.* IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems—IEEE 519-1992.~~

~~*g.* Standard for Interconnecting Distributed Resources with Electric Power Systems, ANSI/IEEE 1547-2003.~~

For those facilities which are of such design as to not be subject to the standards noted in paragraphs 15.10(1)*"a"* through ~~*"d,"*~~ *"c"* above, data on the manufacturer, type of device, and output current wave form (at full load) and output voltage wave form (at no load and at full load) shall be submitted to the utility for review and approval prior to interconnection. ~~A copy of the utility decision (whether approving or disapproving), including the data specified in paragraphs 15.10(1)*"a"* through *"d"* and the exact location of the facility, shall be filed with the board within one week of the date of the decision. The utility decision, or its failure to decide within a reasonable time, may be appealed to the board. The appeal shall be treated as a contested case proceeding.~~

**15.10(2)** No change.

**15.10(3)** *Interconnection facilities.* Interconnections between qualifying facilities or AEP facilities and electric utility systems shall be equipped with devices, as set forth below, to protect either system from abnormalities or component failures that may occur within the facility or the electric utility system. Inclusion of the following protective systems shall be considered as a minimum standard of accepted good practice unless otherwise ordered by the board:

*a.* ~~The interconnection must be provided with a switch that provides a visible break or opening. The switch must be capable of being padlocked in the open position.~~ Distributed generation facilities shall have the capability to be isolated from the utility. For distributed generation facilities interconnecting to a primary line, the isolation shall be by means of a lockable, visible-break isolation device accessible by the utility. For distributed generation facilities interconnecting to a secondary line, the isolation shall be by means of a lockable isolation device whose status is indicated and is accessible by the utility. The isolation device shall be installed, owned and maintained by the owner of the distributed generation facility and located electrically between the distributed generation facility and the point of interconnection. A draw-out type of circuit breaker accessible to the utility with a provision for padlocking at the drawn-out position satisfies the requirement for an isolation device.

*b.* No change.

*c.* Facilities with a design capacity of 100 ~~kilowatts~~ kVA or less must be equipped with automatic disconnection upon loss of electric utility-supplied voltage.

*d.* Those facilities that produce a terminal voltage prior to the closure of the interconnection shall be provided with synchronism-check devices to prevent closure of the interconnection under conditions other than a reasonable degree of synchronization between the voltages on each side of the interconnection switch.

**15.10(4)** *Access.* Both the operator of the qualifying facility or AEP facility and the utility shall have access to the ~~interconnection switch~~ isolation device at all times. An interconnection customer may elect to provide the utility with access to an isolation device that is contained in a building or area that may be unoccupied and locked or not otherwise accessible to the utility by installing a lockbox provided by the utility that allows ready access to the isolation device. The lockbox shall be in a location determined by the utility to be accessible by the utility. The interconnection customer shall permit the utility to affix a placard in a location of its choosing that provides instructions to utility operating personnel for accessing the isolation device. If the utility needs to isolate the distributed generation facility, the utility shall not be held liable for any damages resulting from the actions necessary to isolate the generation facility.

**15.10(5)** No change.

UTILITIES DIVISION[199](cont'd)

**15.10(6)** *Emergency disconnection.* In the event that an electric utility or its customers experience problems of a type that could be caused by the presence of alternating currents or voltages with a frequency higher than 60 Hertz, the utility shall be permitted to open and lock the interconnection switch pending a complete investigation of the problem. Where the utility believes the condition creates a hazard to the public or to property, the disconnection may be made without prior notice. However, the utility shall notify the operator of the qualifying facility or AEP facility by written notice and, where possible, verbal notice as soon as practicable after the disconnections. ~~If the facility and the utility are unable to agree on conditions for reconnection of the facility, a contested case proceeding to determine the conditions for reconnection may be commenced by the facility or the utility upon filing of a petition.~~

ITEM 3. Rescind and reserve subrule **15.11(4)**.

ITEM 4. Adopt the following **new** 199—Chapter 45:

CHAPTER 45
ELECTRIC INTERCONNECTION OF DISTRIBUTED GENERATION FACILITIES

**199—45.1(476) Definitions.** Terms defined in the Public Utility Regulatory Policies Act of 1978 (PURPA), 16 U.S.C. 2601, et seq., shall have the same meaning for purposes of these rules as they have under PURPA, unless further defined in this chapter.

*"Adverse system impact"* means a negative effect that compromises the safety or reliability of the electric distribution system or materially affects the quality of electric service provided by the utility to other customers.

*"AEP facility"* means an AEP facility as defined in 199—Chapter 15, used by an interconnection customer to generate electricity that operates in parallel with the electric distribution system. An AEP facility typically includes an electric generator and the interconnection equipment required to interconnect safely with the electric distribution system or local electric power system.

*"Affected system"* means an electric system not owned or operated by the utility reviewing the interconnection request that could suffer an adverse system impact from the proposed interconnection.

*"Applicant"* means a person (or entity) who has submitted an interconnection request to interconnect a distributed generation facility to a utility's electric distribution system.

*"Area network"* means a type of electric distribution system served by multiple transformers interconnected in an electrical network circuit, generally used in large, densely populated metropolitan areas.

*"Board"* means the Iowa utilities board.

*"Business day"* means Monday through Friday, excluding state and federal holidays.

*"Calendar day"* means any day, including Saturdays, Sundays, and state and federal holidays.

*"Certificate of completion"* means the Standard Certificate of Completion in Appendix B (rule 199—45.15(476)) that contains information about the interconnection equipment to be used, its installation, and local inspections.

*"Commissioning test"* means tests applied to a distributed generation facility by the applicant after construction is completed to verify that the facility does not create adverse system impacts and performs to the submitted specifications. At a minimum, the scope of the commissioning tests performed shall include the commissioning test specified in Institute of Electrical and Electronics Engineers, Inc. (IEEE) Standard 1547, Section 5.4 "Commissioning tests."

*"Distributed generation facility"* means a qualifying facility or an AEP facility.

*"Distribution upgrade"* means a required addition or modification to the electric distribution system to accommodate the interconnection of the distributed generation facility. Distribution upgrades do not include interconnection facilities.

*"Draw-out type circuit breaker"* means a switching device capable of making, carrying and breaking currents under normal and abnormal circuit conditions such as those of a short circuit. A draw-out circuit breaker can be physically removed from its enclosure creating a visible break in the circuit. The draw-out circuit breaker shall be capable of being locked in the open, drawn-out position.

*"Electric distribution system"* means the facilities and equipment owned and operated by the utility and used to transmit electricity to ultimate usage points such as homes and industries from interchanges with higher voltage transmission networks that transport bulk power over longer distances. The voltage levels at which electric distribution systems operate differ among areas but generally operate at less than 100 kilovolts of electricity. "Electric distribution system" has the same meaning as the term "Area EPS," as defined in Section 3.1.6.1 of IEEE Standard 1547.

*"Fault current"* is the electrical current that flows through a circuit during an electrical fault condition. A fault condition occurs when one or more electrical conductors contact ground or each other. Types of faults include phase to ground, double-phase to ground, three-phase to ground, phase-to-phase, and three-phase. Often, a fault current is several times larger in magnitude than the current that normally flows through a circuit.

*"IEEE Standard 1547"* is the Institute of Electrical and Electronics Engineers, Inc., 3 Park Avenue, New York, NY 10016-5997, Standard 1547 (2003) "Standard for Interconnecting Distributed Resources with Electric Power Systems." This incorporation does not include any later amendments or editions.

*"IEEE Standard 1547.1"* is the IEEE Standard 1547.1 (2005) "Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems." This incorporation does not include any later amendments or editions.

*"Interconnection customer"* means a person or entity that interconnects a distributed generation facility to an electric distribution system.

*"Interconnection equipment"* means a group of components or an integrated system owned and operated by the interconnection customer that connects an electric generator with a local electric power system, as that term is defined in Section 3.1.6.2 of IEEE Standard 1547, or with the electric distribution system. Interconnection equipment is all interface equipment including switchgear, protective devices, inverters, or other interface devices. Interconnection equipment may be installed as part of an integrated equipment package that includes a generator or other electric source.

*"Interconnection facilities"* means facilities and equipment required by the utility to accommodate the interconnection of a distributed generation facility. Collectively, interconnection facilities include all facilities and equipment between the distributed generation facility's interconnection equipment and the point of interconnection, including any modifications, additions, or upgrades necessary to physically and electrically interconnect the distributed generation facility to the electric distribution system. Interconnection facilities are sole-use facilities and do not include distribution upgrades.

*"Interconnection request"* means an applicant's request, in a form approved by the board, for interconnection of a new distributed generation facility or to change the capacity or other operating characteristics of an existing distributed generation facility already interconnected with the electric distribution system.

*"Interconnection study"* is any study described in rule 199—45.11(476).

*"Lab-certified"* means a designation that the interconnection equipment meets the requirements set forth in rule 199—45.6(476).

*"Line section"* is that portion of an electric distribution system connected to an interconnection customer's site, bounded by automatic sectionalizing devices or the end of the distribution line, or both.

*"Local electric power system"* means facilities that deliver electric power to a load that is contained entirely within a single premises or group of premises. Local electric power system has the same meaning as that term has as defined in Section 3.1.6.2 of IEEE Standard 1547.

*"Nameplate capacity"* is the maximum rated output of a generator, prime mover, or other electric power production equipment under specific conditions designated by the manufacturer and usually indicated on a nameplate physically attached to the power production equipment.

*"Nationally recognized testing laboratory"* or *"NRTL"* means a qualified private organization that meets the requirements of the Occupational Safety and Health Administration's (OSHA) regulations. See 29 CFR 1910.7 (July 31, 2000). This incorporation does not include any later amendments or editions. NRTLs perform independent safety testing and product certification. Each NRTL shall meet the requirements as set forth by OSHA in its NRTL program.

UTILITIES DIVISION[199](cont'd)

*"Parallel operation"* or *"parallel"* means a distributed generation facility that is connected electrically to the electric distribution system for longer than 100 milliseconds.

*"Point of interconnection"* means the point where the distributed generation facility is electrically connected to the electric distribution system. Point of interconnection has the same meaning as the term "point of common coupling" defined in Section 3.1.13 of IEEE Standard 1547.

*"Primary line"* means an electric distribution system line operating at greater than 600 volts.

*"Qualifying facility"* means a cogeneration facility or a small power production facility that is a qualifying facility under 18 CFR Part 292, Subpart B, used by an interconnection customer to generate electricity that operates in parallel with the electric distribution system. A qualifying facility typically includes an electric generator and the interconnection equipment required to interconnect safely with the electric distribution system or local electric power system.

*"Queue position"* means, for each distribution circuit or line section, the order of a completed interconnection request relative to all other pending completed interconnection requests on that distribution circuit or line section. The queue position is established by the date that the utility receives the completed interconnection request.

*"Radial distribution circuit"* means a circuit configuration in which independent feeders branch out radially from a common source of supply.

*"Scoping meeting"* means a meeting between representatives of the applicant and utility conducted for the purpose of discussing interconnection issues and exchanging relevant information.

*"Secondary line"* means an electric distribution system line, or service line, operating at 600 volts or less.

*"Shared transformer"* means a transformer that supplies secondary voltage to more than one customer.

*"Spot network"* means a type of electric distribution system that uses two or more inter-tied transformers to supply an electrical network circuit. A spot network is generally used to supply power to a single customer or a small group of customers. Spot network has the same meaning as the term "spot network" defined in Section 4.1.4 of IEEE Standard 1547.

*"Standard distributed generation interconnection agreement"* means the Standard Distributed Generation Interconnection Agreements in Appendix A (rule 199—45.14(476)) and Appendix D (rule 199—45.17(476)) applicable to interconnection requests for distributed generation facilities.

*"UL Standard 1741"* means the standard titled "Inverters, Converters, and Controllers for Use in Independent Power Systems," November 7, 2005, edition, Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, IL 60062-2096. This incorporation does not include any later amendments or editions.

*"Utility"* means an electric utility that is subject to rate regulation by the Iowa utilities board.

*"Witness test"* for lab-certified equipment means a verification either by an on-site observation or review of documents that the interconnection installation evaluation required by IEEE Standard 1547, Section 5.3 and the commissioning test required by IEEE Standard 1547, Section 5.4 have been adequately performed. For interconnection equipment that has not been lab-certified, the witness test shall also include verification of the on-site design tests as required by IEEE Standard 1547, Section 5.1 and verification of production tests required by IEEE Standard 1547, Section 5.2. All verified tests are to be performed in accordance with the test procedures specified by IEEE Standard 1547.1.

**199—45.2(476) Scope.** This chapter applies to utilities, and distributed generation facilities seeking to operate in parallel with utilities subject to the following criteria: (1) The nameplate capacity of the facility is equal to or less than 10 MVA; and (2) The facility is not subject to the interconnection requirements of the Federal Energy Regulatory Commission (FERC), the Midwest Independent Transmission System Operator, Inc. (MISO), or the Mid-Continent Area Power Pool (MAPP).

**199—45.3(476) Technical standards.** The technical standard to be used in evaluating interconnection requests governed by this chapter is IEEE Standard 1547, unless otherwise noted.

**45.3(1)** *Acceptable standards.* The interconnection of distributed generation facilities and associated interconnection equipment to an electric utility system shall meet the applicable provisions of the publications listed below:

*a.* Standard for Interconnecting Distributed Resources with Electric Power Systems, IEEE Standard 1547.

*b.* Underwriters Laboratories Standard for Inverters, Converters, and Controllers for Use in Independent Power Systems, UL 1741-2005.

*c.* Provisions of the following publications, but only to the extent the functional equivalents of these provisions are not incorporated in the provisions of paragraphs 45.3(1)*"a"* or *"b"* above:

(1) General Requirements for Synchronous Machines, ANSI C50.10-1990.

(2) IEEE Standard for Salient-Pole 50 Hz and 60 Hz, Synchronous Generators and Generator/Motors for Hydraulic Turbine Applications Rated 5 MVA and above, IEEE C50.12-2005.

(3) IEEE Standard for Cylindrical-Rotor 50 Hz and 60 Hz, Synchronous Generators Rated 10 MVA and above, IEEE C50.13-2005.

(4) IEEE Recommended Practices and Requirements for Harmonic Control in Electrical Power Systems—IEEE 519-1992.

*d.* Iowa Electrical Safety Code, as defined in 199—Chapter 25.

*e.* National Electrical Code, ANSI/NFPA 70-2008.

For those facilities which are of such design as to not be subject to the standards noted in paragraphs 45.3(1)*"a"* through *"c"* above, data on the manufacturer, type of device, and output current wave form (at full load) and output voltage wave form (at no load and at full load) shall be submitted to the utility for review and approval prior to interconnection.

**45.3(2)** *Interconnection facilities.* Interconnections between distributed generation facilities and electric utility systems shall be equipped with devices as set forth below, to protect either system from abnormalities or component failures that may occur within the facility or the electric utility system. Inclusion of the following protective systems shall be considered as a minimum standard of accepted good practice unless otherwise ordered by the board:

*a.* Distributed generation facilities shall have the capability to be isolated from the utility. For distributed generation facilities interconnecting to a primary line, the isolation shall be by means of a lockable, visible-break isolation device accessible by the utility. For distributed generation facilities interconnecting to a secondary line, the isolation shall be by means of a lockable isolation device whose status is indicated and is accessible by the utility. The isolation device shall be installed, owned and maintained by the owner of the distributed generation facility and located electrically between the distributed generation facility and the point of interconnection. A draw-out type of circuit breaker accessible to the utility with a provision for padlocking at the drawn-out position satisfies the requirement for an isolation device.

*b.* The interconnection shall include overcurrent devices on the facility to automatically disconnect the facility at all currents that exceed the full-load current rating of the facility.

*c.* Distributed generation facilities with a design capacity of 100 kVA or less must be equipped with automatic disconnection upon loss of electric utility-supplied voltage.

*d.* Those facilities that produce a terminal voltage prior to the closure of the interconnection shall be provided with synchronism-check devices to prevent closure of the interconnection under conditions other than a reasonable degree of synchronization between the voltages on each side of the interconnection switch.

**45.3(3)** *Access.* Both the operator of the distributed generation facility and the utility shall have access to the isolation device at all times. An interconnection customer may elect to provide the utility with access to an isolation device that is contained in a building or area that may be unoccupied and locked or not otherwise accessible to the utility by installing a lockbox provided by the utility that allows ready access to the isolation device. The lockbox shall be in a location determined by the utility to be accessible by the utility. The interconnection customer shall permit the utility to affix a placard in a location of its choosing that provides instructions to utility operating personnel for accessing the isolation device. If

the utility needs to isolate the distribution generation facility, the utility shall not be held liable for any damages resulting from the actions necessary to isolate the generation facility.

**45.3(4)** *Inspections.* The operator of the distributed generation facility shall adopt a program of inspection of the generator and its appurtenances and the interconnection facilities in order to determine necessity for replacement and repair. Representatives of the utility shall have access at all reasonable hours to the interconnection equipment specified in subrule 45.3(2) for inspection and testing.

**45.3(5)** *Emergency disconnection.* In the event that an electric utility or its customers experience problems of a type that could be caused by the presence of alternating currents or voltages with a frequency higher than 60 Hertz, the utility shall be permitted to open and lock the interconnection switch pending a complete investigation of the problem. Where the utility believes the condition creates a hazard to the public or to property, the disconnection may be made without prior notice. However, the utility shall notify the operator of the distributed generation facility by written notice and, where possible, verbal notice as soon as practicable after the disconnections.

**199—45.4(476) Interconnection requests.**

**45.4(1)** Applicants seeking to interconnect a distributed generation facility shall submit an interconnection request to the utility that owns the electric distribution system to which interconnection is sought. Applicants shall use interconnection request forms approved by the board.

**45.4(2)** Utilities shall specify the fee by level that the applicant shall remit to process the interconnection request. The fee shall be specified in the interconnection request forms. Utilities may charge a fee by level that applicants must remit in order to process an interconnection request. The utilities shall not charge more than the fees specified in the Standard Application Forms in Appendix A (rule 199—45.14(476)) and Appendix C (rule 199—45.16(476)).

**45.4(3)** Interconnection requests may be submitted electronically, if agreed to by the parties.

**199—45.5(476) General requirements.**

**45.5(1)** When an interconnection request for a distributed generation facility includes multiple energy production devices at a site for which the applicant seeks a single point of interconnection, the interconnection request shall be evaluated on the basis of the aggregate nameplate capacity of the multiple devices.

**45.5(2)** When an interconnection request is for an increase in capacity for an existing distributed generation facility, the interconnection request shall be evaluated on the basis of the new total nameplate capacity of the distributed generation facility.

**45.5(3)** The utility shall designate a point of contact and provide contact information on the utility's Web site. The point of contact shall be able to direct applicant questions concerning interconnection request submissions and the interconnection request process to knowledgeable individuals within the utility.

**45.5(4)** The information that the utility makes available to potential applicants can include previously existing utility studies that help applicants understand whether it is feasible to interconnect a distributed generation facility at a particular point on the utility's electric distribution system. However, the utility can refuse to provide the information to the extent that providing it violates security requirements or confidentiality agreements, or is contrary to state or federal law. In appropriate circumstances, the utility may require a confidentiality agreement prior to release of this information.

**45.5(5)** When an interconnection request is deemed complete by the utility, any modification that is not agreed to by the utility requires submission of a new interconnection request.

**45.5(6)** When an applicant is not currently a customer of the utility at the proposed site, the applicant shall provide, upon utility request, proof of the applicant's legal right to control the site, evidenced by the applicant's name on a property tax bill, deed, lease agreement or other legally binding contract.

**45.5(7)** To minimize the cost to interconnect multiple distributed generation facilities, the utility or the applicant may propose a single point of interconnection for multiple distributed generation facilities located at an interconnection customer site that is on contiguous property. If the applicant rejects the utility's proposal for a single point of interconnection, the applicant shall pay any additional cost to

provide a separate point of interconnection for each distributed generation facility. If the utility, without written technical explanation, rejects the customer's proposal for a single point of interconnection, the utility shall pay any additional cost to provide separate points of interconnection for each distributed generation facility.

**45.5(8)** Distributed generation facilities shall have the capability to be isolated from the utility. For distributed generation facilities interconnecting to a primary line, the isolation shall be by means of a lockable, visible-break isolation device accessible by the utility. For distributed generation facilities interconnecting to a secondary line, the isolation shall be by means of a lockable isolation device whose status is indicated and is accessible by the utility. The isolation device shall be installed, owned and maintained by the owner of the distributed generation facility and located electrically between the distributed generation facility and the point of interconnection. A draw-out type of circuit breaker accessible to the utility with a provision for padlocking at the drawn-out position satisfies the requirement for an isolation device.

**45.5(9)** The interconnection customer shall allow the utility to isolate the distributed generation facility. An interconnection customer may elect to provide the utility with access to an isolation device that is contained in a building or area that may be unoccupied and locked or not otherwise accessible to the utility by installing a lockbox provided by the utility that allows ready access to the isolation device. The lockbox shall be in a location determined by the utility to be accessible by the utility. The interconnection customer shall permit the utility to affix a placard in a location of its choosing that provides instructions to utility operating personnel for accessing the isolation device. If the utility needs to isolate the distribution generation facility, the utility shall not be held liable for any damages resulting from the actions necessary to isolate the generation facility.

**45.5(10)** Any metering required for a distributed generation interconnection shall be installed, operated, and maintained in accordance with the utility's metering rules filed with the board under 199—subrule 20.2(5), and inspection and testing practices adopted under rule 199–20.6(476). Any such metering requirements shall be identified in the Standard Distributed Generation Interconnection Agreement executed between the interconnection customer and the utility.

**45.5(11)** Utility monitoring and control of distributed generation facilities are permitted only when the nameplate capacity rating is greater than 2 MVA. Monitoring and control requirements shall be consistent with the utility's published requirements and shall be clearly identified in the interconnection agreement between the interconnection customer and the utility. Transfer trip shall not be considered utility monitoring and control when required and installed to protect the electric distribution system or an affected system against adverse system impacts.

**45.5(12)** The utility may require a witness test after the distributed generation facility is constructed. The applicant shall provide the utility with at least 15 business days' notice of the planned commissioning test for the distributed generation facility. The applicant and utility shall schedule the witness test at a mutually agreeable time. If the witness test results are not acceptable to the utility, the applicant shall be granted 30 business days to address and resolve any deficiencies. The time period for addressing and resolving any deficiencies may be extended upon the mutual agreement of the utility and the applicant prior to the end of the 30 business days. An initial request for extension shall not be denied by the utility; subsequent requests may be denied. If the applicant fails to address and resolve the deficiencies to the utility's satisfaction, the interconnection request shall be deemed withdrawn. Even if the utility or an entity approved by the utility does not witness a commissioning test, the applicant remains obligated to satisfy the interconnection test specifications and requirements set forth in IEEE Standard 1547, Section 5. The applicant shall, if requested by the utility, provide a copy of all documentation in its possession regarding testing conducted pursuant to IEEE Standard 1547.1.

**199—45.6(476) Lab-certified equipment.** An interconnection request may be eligible for expedited interconnection review under rule 199—45.8(476) if the distributed generation facility uses interconnection equipment that is lab-certified. Interconnection equipment shall be deemed to be lab-certified upon establishment of the following.

**45.6(1)** The interconnection equipment has been successfully tested in accordance with IEEE Standard 1547.1, and it complies with the appropriate codes and standards referenced in subrule 45.6(2) as demonstrated by any NRTL recognized by OSHA to test and certify interconnection equipment; and

*a.* The interconnection equipment has been labeled and is publicly listed by the NRTL at the time of the interconnection application; and

*b.* The NRTL testing the interconnection equipment makes all test standards and procedures that it used to perform equipment certification available and, with applicant approval, the test data itself. The NRTL may make this information readily available by publishing it on its Web site and by encouraging it to be included in the manufacturer's literature accompanying the equipment; and

*c.* The applicant's use of the interconnection equipment falls within the use or uses for which the interconnection equipment was labeled and listed by the NRTL; and

*d.* The generator, other electric sources, and interface components being utilized are compatible with the interconnection equipment and are consistent with the testing and listing specified by the NRTL for this type of interconnection equipment.

**45.6(2)** Codes and standards. To meet the requirements for lab certification, interconnection equipment shall be evaluated by an NRTL in accordance with the following codes and standards:

*a.* IEEE Standard 1547 for Interconnecting Distributed Resources with Electric Power Systems (including use of IEEE 1547.1 testing protocols to establish conformity);

*b.* UL 1741 Inverters, Converters, and Controllers and Interconnection System Requirement with Distributed Energy Resources; and

*c.* NFPA 70, National Electrical Code (2008), National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471. This incorporation does not include any later amendments or editions.

**45.6(3)** Lab-certified interconnection equipment shall not require further design testing or production testing, as specified by IEEE Standard 1547, Sections 5.1 and 5.2, or additional interconnection equipment modification to meet the requirements for expedited review; however, nothing in this subrule shall preclude the need for an interconnection installation evaluation, commissioning tests or periodic testing as specified by IEEE Standard 1547, Sections 5.3, 5.4 and 5.5 or for a witness test conducted by a utility.

**199—45.7(476) Determining the review level.** A utility shall determine whether an interconnection request should be processed under the Level 1, 2, 3, or 4 procedures by using the following screens.

**45.7(1)** A utility shall use Level 1 procedures to evaluate all interconnection requests to connect a distributed generation facility when:

*a.* The applicant has filed a Level 1 application; and

*b.* The distributed generation facility has a nameplate capacity rating of 10 kVA or less; and

*c.* The distributed generation facility is inverter-based; and

*d.* The customer interconnection equipment proposed for the distributed generation facility is lab-certified; and

*e.* No construction of facilities by the utility shall be required to accommodate the distributed generation facility.

**45.7(2)** A utility shall use Level 2 procedures for evaluating interconnection requests when:

*a.* The applicant has filed a Level 2 application; and

*b.* The nameplate capacity rating is 2 MVA or less; and

*c.* The interconnection equipment proposed for the distributed generation facility is lab-certified; and

*d.* The proposed interconnection is to a radial distribution circuit or a spot network limited to serving one customer; and

*e.* No construction of facilities by the utility shall be required to accommodate the distributed generation facility, other than minor modifications provided for in subrule 45.9(6).

**45.7(3)** A utility shall use Level 3 review procedures for evaluating interconnection requests to area networks and radial distribution circuits where power will not be exported based on the following criteria.

*a.* For interconnection requests to the load side of an area network, the following criteria shall be satisfied to qualify for a Level 3 expedited review:

(1) The applicant has filed a Level 3 application; and

(2) The nameplate capacity rating of the distributed generation facility is 50 kVA or less; and

(3) The proposed distributed generation facility uses a lab-certified inverter-based equipment package; and

(4) The distributed generation facility will use reverse power relays or other protection functions that prevent the export of power into the area network; and

(5) The aggregate of all generation on the area network does not exceed the lower of 5 percent of an area network's maximum load or 50 kVA; and

(6) No construction of facilities by the utility shall be required to accommodate the distributed generation facility.

*b.* For interconnection requests to a radial distribution circuit, the following criteria shall be satisfied to qualify for a Level 3 expedited review:

(1) The applicant has filed a Level 3 application; and

(2) The aggregated total of the nameplate capacity ratings of all of the generators on the circuit, including the proposed distributed generation facility, is 10 MVA or less; and

(3) The distributed generation facility will use reverse power relays or other protection functions that prevent power flow onto the electric distribution system; and

(4) The distributed generation facility is not served by a shared transformer; and

(5) No construction of facilities by the utility on its own system shall be required to accommodate the distributed generation facility.

**45.7(4)** A utility shall use the Level 4 study review procedures for evaluating interconnection requests when:

*a.* The applicant has filed a Level 4 application; and

*b.* The nameplate capacity rating of the small generation facility is 10 MVA or less; and

*c.* Not all of the interconnection equipment or distributed generation facilities being used for the application is lab-certified.

**199—45.8(476) Level 1 expedited review.** A utility shall use the Level 1 interconnection review procedures for an interconnection request that meet the requirements specified in subrule 45.7(1). A utility may not impose additional requirements on Level 1 reviews that are not specifically authorized under this rule unless the applicant agrees.

**45.8(1)** The utility shall evaluate the potential for adverse system impacts using the following screens, which shall be satisfied:

*a.* For interconnection of a proposed distributed generation facility to a radial distribution circuit, the total distributed generation connected to the distribution circuit, including the proposed distributed generation facility, may not exceed 15 percent of the maximum load normally supplied by the distribution circuit.

*b.* The total capacity of distributed generation facilities connected on the load side of spot network protectors, including the proposed facility, shall not exceed 5 percent of the spot network's maximum load or 50 kVA, whichever is less.

*c.* When a proposed distributed generation facility is to be interconnected on a single-phase shared secondary line, the aggregate generation capacity on the shared secondary line, including the proposed distributed generation facility, shall not exceed 20 kVA.

*d.* When a proposed distributed generation facility is single-phase and is to be interconnected on a center tap neutral of a 240 volt service, its addition may not create an imbalance between the two sides of the 240 volt service of more than 20 percent of the nameplate rating of the service transformer.

*e.* The utility shall not be required to construct any facilities on its own system to accommodate the distributed generation facility's interconnection.

**45.8(2)** The Level 1 interconnection shall use the following procedures:

*a.* The applicant submits an interconnection request using the appropriate Standard Application Form in Appendix A (rule 199—45.14(476)) along with the Level 1 application fee.

*b.* Within seven business days after receipt of the interconnection request, the utility shall inform the applicant whether the interconnection request is complete or not. If the request is incomplete, the utility shall specify what information is missing and the applicant has ten business days after receiving notice from the utility to provide the missing information or the interconnection request shall be deemed withdrawn.

*c.* Within 15 business days after the utility notifies the applicant that its interconnection request is complete, the utility shall verify whether the distributed generation facility passes all the relevant Level 1 screens.

*d.* If the utility determines and demonstrates that a distributed generation facility does not pass all relevant Level 1 screens, the utility shall provide a letter to the applicant explaining the reasons that the facility did not pass the screens.

*e.* Otherwise, the utility shall approve the interconnection request and provide to the applicant a signed version of the standard "Conditional Agreement to Interconnect Distributed Generation Facility" in Appendix A (rule 199—45.14(476)) subject to the following conditions:

(1) The distributed generation facility has been approved by local or municipal electric code officials with jurisdiction over the interconnection;

(2) The Standard Certificate of Completion in Appendix B (rule 199—45.15(476)) has been returned to the utility. Completion of local inspections may be designated on inspection forms used by local inspecting authorities;

(3) The witness test has either been successfully completed or waived by the utility in accordance with Section (2)(c)(ii) of the Terms and Conditions for Interconnection in Appendix A (rule 199—45.14(476)); and

(4) The applicant has signed the standard "Conditional Agreement to Interconnect Distributed Generation Facility" in Appendix A (rule 199—45.14(476)). When an applicant does not sign the agreement within 30 business days after receipt of the agreement from the utility, the interconnection request is deemed withdrawn unless the applicant requests to have the deadline extended for no more than 15 business days. An initial request for extension shall not be denied by the utility, but subsequent requests may be denied.

*f.* If a distributed generation facility is not approved under a Level 1 review, and the utility's reasons for denying Level 1 status are not subject to dispute, the applicant may submit a new interconnection request for consideration under Level 2, Level 3, or Level 4 procedures.

**199—45.9(476) Level 2 expedited review.** A utility shall use the Level 2 review procedure for interconnection requests that meet the Level 2 criteria in subrule 45.7(2). A utility may not impose additional requirements for Level 2 reviews that are not specifically authorized under this rule unless the applicant agrees.

**45.9(1)** The utility shall evaluate the potential for adverse system impacts using the following screens, which shall be satisfied:

*a.* For interconnection of a proposed distributed generation facility to a radial distribution circuit, the total distributed generation connected to the distribution circuit, including the proposed distributed generation facility, may not exceed 15 percent of the maximum normal load normally supplied by the distribution circuit.

*b.* For interconnection of a proposed distributed generation facility to the load side of spot network protectors, the proposed distributed generation facility shall utilize an inverter-based equipment package. The customer interconnection equipment proposed for the distributed generation facility must be lab-certified and, when aggregated with other generation, may not exceed 5 percent of a spot network's maximum load.

*c.* The proposed distributed generation facility, in aggregation with other generation on the distribution circuit, may not contribute more than 10 percent to the distribution circuit's maximum fault current at the point on the primary line nearest the point of interconnection.

*d.* The proposed distributed generation facility, in aggregate with other generation on the distribution circuit, shall not cause any distribution protective devices and equipment including substation breakers, fuse cutouts, and line reclosers, or other customer equipment on the electric distribution system to be exposed to fault currents exceeding 90 percent of their short-circuit interrupting capability. The interconnection may not occur under Level 2 if equipment on the utility's distribution circuit is already exposed to fault currents of between 90 and 100 percent of the utility's equipment short-circuit interrupting capability. However, if fault currents exceed 100 percent of the utility's equipment short-circuit interrupting capability even without the distributed generation being interconnected, the utility shall replace the equipment at its own expense, and interconnection may proceed under Level 2.

*e.* When a customer-generator facility is to be connected to 3-phase, 3-wire primary utility distribution lines, a 3-phase or single-phase generator shall be connected phase-to-phase.

*f.* When a customer-generator facility is to be connected to 3-phase, 4-wire primary utility distribution lines, a 3-phase or single-phase generator shall be connected line-to-neutral and shall be grounded.

*g.* When the proposed distributed generation facility is to be interconnected on a single-phase shared secondary line, the aggregate generation capacity on the shared secondary line, including the proposed distributed generation facility, may not exceed 20 kVA.

*h.* When a proposed distributed generation facility is single-phase and is to be interconnected on a center tap neutral of a 240-volt service, its addition may not create an imbalance between the two sides of the 240-volt service of more than 20 percent of the nameplate rating of the service transformer.

*i.* A distributed generation facility, in aggregate with other generation interconnected to the distribution side of a substation transformer feeding the circuit where the distributed generation facility proposes to interconnect, may not exceed 10 MVA in an area where there are known or posted transient stability limitations to generating units located in the general electrical vicinity.

*j.* Except as permitted by additional review in subrule 45.9(6), the utility shall not be required to construct any facilities on its own system to accommodate the distributed generation facility's interconnection.

**45.9(2)** The Level 2 interconnection shall use the following procedures:

*a.* The applicant submits an interconnection request using the appropriate Standard Application Form in Appendix C (rule 199—45.16(476)) along with the Level 2 application fee.

*b.* Within ten business days after receiving the interconnection request, the utility shall inform the applicant as to whether the interconnection request is complete. If the request is incomplete, the utility shall specify what materials are missing and the applicant has ten business days to provide the missing information or the interconnection request shall be deemed withdrawn.

*c.* After an interconnection request is deemed complete, the utility shall assign a queue position based upon the date that the interconnection request is determined to be complete. The utility shall then inform the applicant of its queue position.

*d.* If, after determining that the interconnection request is complete, the utility determines that it needs additional information to evaluate the distributed generation facility's adverse system impact, it shall request this information. The utility may not restart the review process or alter the applicant's queue position because it requires the additional information. The utility can extend the time to finish its evaluation only to the extent of the delay required for receipt of the additional information. If the additional information is not provided by the applicant within 15 business days, the interconnection request shall be deemed withdrawn.

*e.* Within 20 business days after the utility notifies the applicant it has received a completed interconnection request, the utility shall:

(1) Evaluate the interconnection request using the Level 2 screening criteria.

(2) Provide the applicant with the utility's evaluation, including a written technical explanation. If a utility does not have a record of receipt of the interconnection request and the applicant can demonstrate that the original interconnection request was delivered, the utility shall expedite its review to complete the evaluation of the interconnection request within 20 business days after applicant's demonstration.

**45.9(3)** When a utility determines that the interconnection request passes the Level 2 screening criteria, or the utility determines that the distributed generation facility can be interconnected safely and will not cause adverse system impacts, even if it fails one or more of the Level 2 screening criteria, it shall provide the applicant with the Standard Distributed Generation Interconnection Agreement in Appendix D (rule 199—45.17(476)) on the day the utility makes its determination.

**45.9(4)** Within 30 business days after receipt of the Standard Distributed Generation Interconnection Agreement, the applicant shall sign and return the agreement to the utility. If the applicant does not sign and return the agreement within 30 business days, the interconnection request shall be deemed withdrawn unless the applicant requests a 15-business-day extension in writing. The initial request for extension may not be denied by the utility. When the utility conducts an additional review under the provisions of subrule 45.9(6), the interconnection of the distributed generation facility shall proceed according to milestones agreed to by the parties in the Standard Distributed Generation Interconnection Agreement.

**45.9(5)** The Standard Distributed Generation Interconnection Agreement is not final until:

*a.* All requirements in the agreement are satisfied;

*b.* The distributed generation facility is approved by the electric code officials with jurisdiction over the interconnection;

*c.* The applicant provides the Standard Certificate of Completion in Appendix B (rule 199—45.15(476)) to the utility. Completion of local inspections may be designated on inspection forms used by local inspecting authorities; and

*d.* The witness test has either been successfully completed or waived by the utility in accordance with Article 2.1.1 of the Standard Distributed Generation Interconnection Agreement.

**45.9(6)** Additional review may be appropriate when a distributed generation facility fails to meet one or more of the Level 2 screens. The utility shall offer to perform additional review to determine whether there are minor modifications to the distributed generation facility or electric distribution system that would enable the interconnection to be made safely and so that it will not cause adverse system impacts. The utility shall provide the applicant with a nonbinding estimate for the costs of additional review and the costs of minor modifications to the electric distribution system. The utility shall undertake the additional review only after the applicant pays for the additional review. The utility shall undertake the modifications only after the applicant pays for the modifications.

**45.9(7)** If the distributed generation facility is not approved under a Level 2 review, the utility shall provide the applicant with written notification explaining its reasons for denying the interconnection request. The applicant may submit a new interconnection request for consideration under a Level 4 interconnection review. The queue position assigned to the Level 2 interconnection request shall be retained, provided that the request is made by the applicant within 15 business days after notification that the current interconnection request is denied.

**199—45.10(476) Level 3 expedited review.** A utility shall use the Level 3 expedited review procedure for an interconnection request that meets the criteria in subrule 45.7(3) or 45.7(4). A utility may not impose additional requirements for Level 3 reviews not specifically authorized under this rule unless the applicant agrees.

**45.10(1)** A Level 3 interconnection shall use the following procedures:

*a.* The applicant submits an interconnection request using the appropriate Standard Application Form in Appendix C (rule 199—45.16(476)) along with the Level 3 application fee.

*b.* Within ten business days after receiving the interconnection request, the utility shall inform the applicant as to whether the interconnection request is complete. If the request is incomplete, the utility shall specify what materials are missing and the applicant has ten business days to provide the missing information, or the interconnection request shall be deemed withdrawn.

*c.* After an interconnection request is deemed complete, the utility shall assign a queue position to it based upon the date the interconnection request is determined to be complete. The utility shall then inform the applicant of its queue position.

*d.* If, after determining that the interconnection request is complete, the utility determines that it needs additional information to evaluate the distributed generation facility's adverse system impact,

it shall request this information. The utility may not restart the review process or alter the applicant's queue position because it requires the additional information. The utility can extend the time to finish its evaluation only to the extent the delay is required for receipt of the additional information. If this additional information is not provided by the applicant within 15 business days, the interconnection request shall be deemed withdrawn.

*e.* Interconnection requests meeting the requirements set forth in paragraph 45.7(3)*"a"* for nonexporting distributed generation facilities interconnecting to an area network shall be presumed to be appropriate for interconnection. The utility shall process the interconnection requests using the following procedures:

(1) The utility shall evaluate the interconnection request under Level 2 interconnection review procedures as set forth in subrule 45.9(1) except that the utility has 25 business days to evaluate the interconnection request against the screens to determine whether interconnecting the distributed generation facility to the utility's area network has any potential adverse system impacts.

(2) If the Level 2 screens for area networks identify potential adverse system impacts, the utility may determine at its sole discretion that it is inappropriate for the distributed generation facility to interconnect to the area network under Level 3 review, and the interconnection request is denied. The applicant may submit a new interconnection request for consideration under Level 4 procedures at the queue position assigned to the Level 3 interconnection request, if the request is made within 15 business days after notification that the current application is denied.

*f.* For interconnection requests that meet the requirements of paragraph 45.7(3)*"b"* for nonexporting distributed generation facilities interconnecting to a radial distribution circuit, the utility shall evaluate the interconnection request under the Level 2 expedited review in subrule 45.9(1).

**45.10(2)** For a distributed generation facility that satisfies the criteria in paragraph 45.10(1)*"e"* or 45.10(1)*"f,"* the utility shall approve the interconnection request and provide the Standard Distributed Generation Interconnection Agreement in Appendix D (rule 199—45.17(476)) for the applicant to sign on the day the utility makes its determination.

**45.10(3)** Within 30 business days after receipt of the Standard Distributed Generation Interconnection Agreement, the applicant shall complete, sign, and return the agreement to the utility. If the applicant does not sign the agreement within 30 business days, the request shall be deemed withdrawn, unless the applicant requests a 15-business-day extension in writing. An initial request for extension may not be denied by the utility. After the agreement is signed by the parties, interconnection of the distributed generation facility shall proceed according to any milestones agreed to by the parties in the Standard Distributed Generation Interconnection Agreement.

**45.10(4)** The Standard Distributed Generation Interconnection Agreement shall not be final until:

*a.* All requirements in the agreement are satisfied; and

*b.* The distributed generation facility is approved by the electric code officials with jurisdiction over the distributed generation facility; and

*c.* The applicant provides the Standard Certificate of Completion in Appendix B (rule 199—45.15(476)) to the utility; and

*d.* The witness test has either been successfully completed or waived by the utility in accordance with Article 2.1.1 of the Standard Distributed Generation Interconnection Agreement.

**45.10(5)** If the distributed generation facility is not approved under a Level 3 review, the utility shall provide the applicant with written notification explaining its reasons for denying the interconnection request. The applicant may submit a new interconnection request for consideration under a Level 4 interconnection review. The queue position assigned to the Level 3 interconnection request shall be retained, provided that the request is made within 15 business days after notification that the current interconnection request is denied.

**199—45.11(476) Level 4 review.** A utility shall use the following Level 4 study review procedures for an interconnection request that meets the criteria in subrule 45.7(4).

**45.11(1)** The applicant submits an interconnection request using the appropriate Standard Application Form in Appendix C (rule 199—45.16(476)) along with the Level 4 application fee.

**45.11(2)** Within ten business days after receipt of an interconnection request, the utility shall notify the applicant whether the request is complete. When the interconnection request is not complete, the utility shall provide the applicant with a written list detailing the information required to complete the interconnection request. The applicant has ten business days to provide the required information or the interconnection request is considered withdrawn. The parties may agree to extend the time for receipt of the additional information. The interconnection request is deemed complete when the required information has been provided by the applicant, or the parties have agreed that the applicant may provide additional information at a later time.

**45.11(3)** After an interconnection request is deemed complete, the utility shall assign a queue position to it based upon the date the interconnection request is determined to be complete. When assigning a queue position, a utility may consider whether there are any other interconnection projects on the same distribution circuit. If there are other interconnection projects on the same distribution circuit, the utility may consider them together. If a utility assigns a queue position based on the existence of interconnection projects on the same distribution circuit, the utility shall notify the applicant of that fact when it assigns the queue position. The queue position of an interconnection request is used to determine the cost responsibility for the facilities necessary to accommodate the interconnection. The utility shall notify the applicant as to its position in the queue. If the interconnection request is subsequently amended, it shall receive a new queue position based on the date that it was amended.

**45.11(4)** After the interconnection request has been assigned to the queue, the following procedures shall be followed in performing a Level 4 study review:

*a.* By mutual agreement of the parties, the scoping meeting, interconnection feasibility study, interconnection impact study, or interconnection facilities study provided for in a Level 4 review and discussed in this rule may be waived or combined.

*b.* If agreed to by the parties, a scoping meeting on a mutually agreed-upon date and time shall be held, after the utility has notified the applicant that the Level 4 interconnection request is deemed complete, or the applicant has requested that its interconnection request proceed under Level 4 review after failing the requirements of a Level 2 or Level 3 review. The meeting's purpose is to review the interconnection request, existing studies relevant to the interconnection request, and the results of the Level 1, Level 2, or Level 3 screening criteria.

*c.* When the parties agree that an interconnection feasibility study shall be performed, the utility shall provide to the applicant, no later than ten business days after receipt of a complete interconnection request or, if held, the scoping meeting, the Standard Interconnection Feasibility Study Agreement in Appendix E (rule 199—45.18(476)), including an outline of the scope of the study and an estimate of the cost to perform the study. If the applicant does not sign and return the study agreement within 15 business days, the application shall be deemed withdrawn.

*d.* When the parties agree that an interconnection feasibility study is not required, the utility shall provide to the applicant, no later than ten business days after the receipt of a complete interconnection request or, if held, the scoping meeting, the Standard Interconnection System Impact Study Agreement in Appendix F (rule 199—45.19(476)), including an outline of the scope of the study and an estimate of the cost to perform the study. If the applicant does not sign and return the study agreement within 15 business days, the application shall be deemed withdrawn.

*e.* If the parties agree that neither an interconnection feasibility study nor a system impact study is required, the utility shall provide to the applicant, no later than ten business days after receipt of a complete interconnection request or, if held, the scoping meeting, the Standard Interconnection Facilities Study Agreement in Appendix G (rule 199—45.20(476)), including an outline of the scope of the study and an estimate of the cost to perform the study. If the applicant does not sign and return the study agreement within 15 business days, the application shall be deemed withdrawn.

**45.11(5)** Interconnection feasibility study.

*a.* An interconnection feasibility study shall include any necessary analyses for the purpose of identifying a potential adverse system impact to the utility's electric distribution system that would result from the interconnection from among the following:

(1) Initial identification of any circuit breaker short circuit capability limits exceeded as a result of the interconnection.

(2) Initial identification of any thermal overload or voltage limit violations resulting from the interconnection.

(3) Initial review of grounding requirements and system protection.

*b.* The utility shall provide the applicant a description and nonbinding estimated cost of facilities required to interconnect the distributed generation facility to the utility's electric distribution system in a safe and reliable manner.

*c.* If an applicant requests that the interconnection feasibility study evaluate multiple potential points of interconnection, additional evaluations may be required. Additional evaluations shall be paid for by the applicant.

*d.* An interconnection system impact study is not required when the interconnection feasibility study concludes that there is no adverse system impact, or when the study identifies an adverse system impact but the utility is able to identify a remedy without the need for an interconnection system impact study.

*e.* Either party can require that the Standard Interconnection Feasibility Study Agreement in Appendix E (rule 199—45.18(476)) be used. However, if both parties agree, an alternative form can be used.

**45.11(6)** Interconnection system impact study. An interconnection system impact study evaluates the impact of the proposed interconnection on both the safety and reliability of the utility's electric distribution system. The study identifies and details the system impacts that interconnecting the distributed generation facility to the distribution system has if there are no system modifications. It focuses on the potential or actual adverse system impacts identified in the interconnection feasibility study, including those that were identified in the scoping meeting. The study shall consider all other distributed generating facilities that, on the date the interconnection system impact study is commenced, are directly interconnected with the utility's system, have a pending higher queue position to interconnect to the electric distribution system, or have signed an interconnection agreement.

*a.* A distribution interconnection system impact study shall be performed when a potential distribution system adverse system impact is identified in the interconnection feasibility study. The utility shall send the applicant the Standard Interconnection System Impact Study Agreement in Appendix F (rule 199—45.19(476)) within ten business days after transmittal of the interconnection feasibility study report. The agreement shall include an outline of the scope of the study and a nonbinding estimate of the cost to perform the study. The impact study shall include any pertinent elements from among the following:

(1) A load flow study;

(2) Identification of affected systems;

(3) An analysis of equipment interrupting ratings;

(4) A protection coordination study;

(5) Voltage drop and flicker studies;

(6) Protection and set point coordination studies;

(7) Grounding reviews;

(8) Impact on system operation.

*b.* An interconnection system impact study shall consider any necessary criteria from among the following:

(1) A short-circuit analysis;

(2) A stability analysis;

(3) Alternatives for mitigating adverse system impacts on affected systems;

(4) Voltage drop and flicker studies;

(5) Protection and set point coordination studies;

(6) Grounding reviews.

*c.* The final interconnection system impact study shall provide the following:

(1) The underlying assumptions of the study;

(2) The results of the analyses;
(3) A list of any potential impediments to providing the requested interconnection service;
(4) Required distribution upgrades; and
(5) A nonbinding estimate of cost and time to construct any required distribution upgrades.

*d.* Either party can require that the Standard Interconnection System Impact Study Agreement in Appendix F (rule 199—45.19(476)) be used. However, if both parties agree, an alternative form can be used.

**45.11(7)** Interconnection facilities study. The interconnection facilities study shall be conducted as follows:

*a.* A report shall be transmitted to the applicant with the Standard Interconnection Facilities Study Agreement in Appendix G (rule 199—45.20(476)), that includes an outline of the scope of the study and a nonbinding estimate of the cost to perform the study within ten business days after completion of the interconnection system impact study.

*b.* The interconnection facilities study shall estimate the cost of the equipment, engineering, procurement and construction work, including overheads, needed to implement the conclusions of the interconnection feasibility study and the interconnection system impact study. The interconnection facilities study shall identify:

(1) The electrical switching configuration of the equipment, including transformer, switchgear, meters and other station equipment;
(2) The nature and estimated cost of the utility's interconnection facilities and distribution upgrades necessary to accomplish the interconnection; and
(3) An estimate for the time required to complete the construction and installation of the facilities.

*c.* The utility may agree to permit an applicant to arrange separately for a third party to design and construct the required interconnection facilities. In such a case, when the applicant agrees to separately arrange for design and construction, and to comply with security and confidentiality requirements, the utility shall make all relevant information and required specifications available to the applicant to permit the applicant to obtain an independent design and cost estimate for the facilities, which shall be built in accordance with the utility's specifications.

*d.* Upon completion of the interconnection facilities study, and after the applicant agrees to pay for the interconnection facilities and distribution upgrades identified in the interconnection facilities study, the utility shall provide the Standard Distributed Generation Interconnection Agreement in Appendix D (rule 199—45.17(476)) for the applicant to sign the day the utility makes its determination.

*e.* In the event that distribution upgrades are identified in the impact study that shall be added only in the event that higher-queued customers not yet interconnected eventually complete and interconnect their generation facilities, the applicant may elect to interconnect without paying for such upgrades at the time of the interconnection, provided that it agrees to pay for such upgrades at the time the higher-queued customer is ready to interconnect. If the applicant does not pay for such upgrades at that time, the utility shall require the applicant to immediately disconnect its distributed generation facility to accommodate the higher-queued customer.

*f.* Either party can require that the Standard Interconnection Facilities Study Agreement in Appendix G (rule 199—45.20(476)) be used. However, if both parties agree, an alternative form can be used.

**45.11(8)** When a utility determines, as a result of the studies conducted under a Level 4 review, that it is appropriate to interconnect the distributed generation facility, the utility shall provide the applicant with the Standard Distributed Generation Interconnection Agreement in Appendix D (rule 199—45.17(476)). If the interconnection request is denied, the utility shall provide the applicant with a written explanation as to its reasons for denying interconnection. If denied, the interconnection request does not retain its position in the queue.

**45.11(9)** Within 30 business days after receipt of the Standard Distributed Generation Interconnection Agreement, the applicant shall provide all necessary information required of the applicant by the agreement, and the utility shall develop all other information required of the utility by the agreement. After completing the agreement with the additional information, the applicant shall sign

and return the agreement to the utility. If the applicant does not sign and return the agreement within 30 business days after its completion, the interconnection request shall be deemed withdrawn, unless the applicant requests in writing to have the deadline extended by no more than 15 business days. The initial request for extension may not be denied by the utility. If the applicant does not sign the agreement after the 15-business-day extension, the interconnection request shall be deemed withdrawn. If withdrawn, the interconnection request does not retain its position in the queue. When construction is required, the interconnection of the distributed generation facility shall proceed according to milestones agreed to by the parties in the Standard Distributed Generation Interconnection Agreement.

**45.11(10)** The Standard Distributed Generation Interconnection Agreement is not final until:

*a.* The requirements of the agreement are satisfied; and

*b.* The distributed generation facility is approved by electric code officials with jurisdiction over the interconnection; and

*c.* The applicant provides the Standard Certificate of Completion in Appendix B (rule 199—45.15(476)) to the utility. Completion of local inspections may be designated on inspection forms used by local inspecting authorities; and

*d.* The witness test has either been successfully completed or waived by the utility in accordance with Article 2.1.1 of the Standard Distributed Generation Interconnection Agreement in Appendix D (rule 199—45.17(476)).

**199—45.12(476) Disputes.**

**45.12(1)** A party shall attempt to resolve all disputes regarding interconnection promptly and in a good-faith manner. A party shall provide prompt written notice of the existence of the dispute, including sufficient detail to identify the scope of the dispute, to the other party in order to attempt to resolve the dispute in a good-faith manner.

**45.12(2)** An informal meeting between the parties shall be held within ten business days after receipt of the written notice. Persons with decision-making authority from each party shall attend such meeting. In the event said dispute involves technical issues, persons with sufficient technical expertise and familiarity with the issue in dispute from each party shall also attend the informal meeting. If the parties agree, such a meeting may be conducted by teleconference.

**45.12(3)** Subsequent to the informal meeting referred to in subrule 45.12(2) above, a party may seek resolution of any disputes through the 199—Chapter 6 complaint procedures of the board. Dispute resolution under these procedures will initially be conducted informally under 199—6.2(476) through 199—6.4(476) to reach resolution with minimal cost and delay. If any party is dissatisfied with the outcome of the informal process, the party may file a formal complaint with the board under 199—6.5(476).

**45.12(4)** Pursuit of dispute resolution shall not affect an interconnection applicant with regard to consideration of an interconnection request or an interconnection applicant's position in the utility's interconnection queue.

**199—45.13(476) Records and reports.**

**45.13(1)** For each completed interconnection request received by the utility, the utility shall maintain records of the following for a minimum of three years:

*a.* The total nameplate capacity and fuel type of the distributed generation facility;

*b.* The level of review received (Level 1, Level 2, Level 3, or Level 4); and

*c.* Whether the interconnection was approved or denied.

**45.13(2)** Beginning May 1, 2011, each utility shall file a nonconfidential annual report detailing the information required in subrule 45.13(1) for the previous calendar year.

**45.13(3)** Each utility shall retain copies of studies it performs to determine the feasibility of, system impacts of, or facilities required by the interconnection of any distributed generation facility. The utility shall provide the applicant copies of any studies performed in analyzing the applicant's interconnection request upon applicant request. However, a utility has no obligation to provide any future applicants any information regarding prior interconnection requests to the extent that providing the information

would violate security requirements or confidentiality agreements, or is contrary to state or federal law. In appropriate circumstances, the utility may require a confidentiality agreement prior to release of this information.

**199—45.14(476) Appendix A — Level 1 standard application form and standard distributed generation interconnection agreement.**

LEVEL 1:
STANDARD APPLICATION FORM AND INTERCONNECTION AGREEMENT

Interconnection Request Application Form and
Conditional Agreement to Interconnect
(For Lab-Certified Inverter-Based Distributed Generation Facilities 10 kVA or Smaller)

AN APPLICATION FEE OF $50.00 MUST BE SUBMITTED WITH THE APPLICATION

Interconnection Applicant Contact Information

Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Telephone (Daytime): _____ (Evening): _____
Facsimile Number: _____ E-Mail Address: _____

Alternate Contact Information (if different from Applicant)

Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Telephone (Daytime): _____ (Evening): _____
Facsimile Number: _____ E-Mail Address: _____

Equipment Contractor

Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Telephone (Daytime): _____ (Evening): _____
Facsimile Number: _____ E-Mail Address: _____
License number (if applicable): _____
Active License? (if applicable) Yes ___ No ___

Electrical Contractor (if Different from Equipment Contractor):

Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Telephone (Daytime): _____ (Evening): _____
Facsimile Number: _____ E-Mail Address: _____
License number: _____
Active License? Yes ___ No ___

Is the Interconnection Customer requesting Net Metering in accordance with Iowa Utilities Board rule 199 IAC 15.11(5) and the utility's net metering or net billing tariff?
Yes ___ No ___

Distributed Generation Facility ("Facility") Information

Facility Address: _____
City: _____ State: _____ Zip Code: _____
Utility serving Facility site: _____
Account Number of Facility site (existing utility customers): _____
Inverter Manufacturer: _____ Model: _____

Is the inverter lab-certified as that term is defined in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation (199 IAC 45.1)?
Yes ___ No ___

(If yes, attach manufacturer's technical specifications and label information from a nationally recognized testing laboratory.)

Generation Facility Nameplate Rating: _____(kW) _____ (kVA) _____(AC Volts)

Energy Source: Wind ____ Solar ____ Biomass ____ Hydro ____ Diesel ____
Natural Gas ___ Fuel Oil ___ Other: _____

Energy Converter Type: Wind Turbine ____ Photovoltaic Cell ____ Fuel Cell ____
Reciprocating Engine ____ Other: _____

Commissioning Date: _____

(If the Commissioning Date changes, the interconnection customer must inform the utility as soon as it is aware of the changed date.)

Insurance Disclosure

The attached terms and conditions contain provisions related to liability and indemnification and should be carefully considered by the interconnection customer. The interconnection customer shall carry general liability insurance coverage, such as, but not limited to, homeowner's insurance. Whenever possible, the interconnection customer shall name the utility as an additional insured on its homeowner's insurance policy, or similar policy covering general liability.

Customer Signature

I hereby certify that: (1) I have read and understand the terms and conditions, which are attached hereto by reference; (2) I hereby agree to comply with the attached terms and conditions; and (3) to the best of my knowledge, all of the information provided in this application request form is complete and true.

Applicant Signature: _____
Title: _____ Date:_____

.....

Conditional Agreement to Interconnect Distributed Generation Facility

Receipt of the application fee is acknowledged and, by its signature below, the utility has determined the interconnection request is complete. Interconnection of the distributed generation facility is conditionally approved contingent upon the attached terms and conditions of this Agreement, the return of the attached Certificate of Completion, duly executed verification of electrical inspection and successful witness test.

Utility Signature: _____ Date: _____
Name: _____ Title: _____

ATTACHMENT
Level 1: Standard Interconnection Agreement

Terms and Conditions for Interconnection

1) Construction of the Distributed Generation Facility. The interconnection customer may proceed to construct (including operational testing not to exceed 2 hours) the distributed generation facility, once the conditional Agreement to interconnect a distributed generation facility has been signed by the utility.

2) Final Interconnection and Operation. The interconnection customer may operate the distributed generation facility and interconnect with the utility's electric distribution system after all of the following have occurred:
   a) Electrical Inspection: Upon completing construction, the interconnection customer shall cause the distributed generation facility to be inspected by the local electrical inspection authority who shall establish that the distributed generator facility meets local code requirements.
   b) Certificate of Completion: The interconnection customer shall provide the utility with a copy of the Certificate of Completion with all relevant and necessary information fully completed by the interconnection customer, as well as an inspection form from the local electrical inspection authority demonstrating that the distributed generation facility passed inspection.
   c) The utility has completed its witness test as per the following:
      i) Within 10 business days of the commissioning date, the utility must, upon reasonable notice and at a mutually convenient time, conduct a witness test of the distributed generation facility to ensure that all equipment has been appropriately installed and that all electrical connections have been made in accordance with the applicable codes.
      ii) If the utility does not perform the witness test within the 10 business days after the commissioning date or such other time as is mutually agreed to by the Parties, the witness test is deemed waived, unless the utility cannot do so for good cause. In these cases, upon utility request, the interconnection customer shall agree to another date for the test within 10 business days after the original scheduled date.

3) IEEE 1547. The distributed generation facility shall be installed, operated and tested in accordance with the requirements of The Institute of Electrical and Electronics Engineers, Inc. (IEEE), 3 Park Avenue, New York, NY 10016-5997, Standard 1547 (2003) "Standard for Interconnecting Distributed Resources with Electric Power Systems."

4) Access. The utility shall have direct, unabated access to the isolation device or disconnect switch and metering equipment of the distributed generation facility at all times. The utility shall provide 5 business days notice to the customer prior to using its right of access except in emergencies.

5) Metering. Any required metering shall be installed pursuant to the utility's metering rules filed with the Iowa Utilities Board under subrule 199 IAC 20.2(5).

6) Disconnection. The utility may disconnect the distributed generation facility upon any of the following conditions, but must reconnect the distributed generation facility once the condition is cured:
   a) For scheduled outages, provided that the distributed generation facility is treated in the same manner as utility's load customers;
   b) For unscheduled outages or emergency conditions;
   c) If the distributed generation facility does not operate in the manner consistent with this Agreement;
   d) Improper installation or failure to pass the witness test;
   e) If the distributed generation facility is creating a safety, reliability or a power quality problem; or
   f) The interconnection equipment used by the distributed generation facility is de-listed by the Nationally Recognized Testing Laboratory that provided the listing at the time the interconnection was approved.

7) Indemnification. The interconnection customer shall indemnify and defend the utility and the utility's directors, officers, employees, and agents from all damages and expenses resulting from any third-party claim arising out of or based upon the interconnection customer's (a) negligence or willful misconduct or (b) breach of this Agreement. The utility shall indemnify and defend the interconnection customer and the interconnection customer's directors, officers, employees, and agents from all damages and expenses resulting from a third-party claim arising out of or based upon the utility's (a) negligence or willful misconduct or (b) breach of this Agreement.

8) Insurance. The interconnection customer shall provide the utility with proof that it has a current homeowner's insurance policy, or other general liability policy, and, when possible, the interconnection customer shall name the utility as an additional insured on its homeowner's insurance policy, or similar policy covering general liability.

9) Limitation of Liability. Each Party's liability to the other Party for any loss, cost, claim, injury, liability, or expense, including reasonable attorney's fees, relating to or arising from any act or omission in its performance of this Agreement, shall be limited to the amount of direct damage actually incurred. In no event shall either Party be liable to the other Party for any indirect, incidental, special, consequential, or punitive damages of any kind whatsoever.

10) Termination. This Agreement may be terminated under the following conditions:
   a) By interconnection customer - The interconnection customer may terminate this interconnection agreement by providing written notice to the utility. If the interconnection customer ceases operation of the distributed generation facility, the interconnection customer must notify the utility.
   b) By the utility - The utility may terminate this Agreement if the interconnection customer fails to remedy a violation of terms of this Agreement within 30 calendar days after notice, or such other date as may be mutually agreed to prior to the expiration of the 30 calendar day remedy period. The termination date may be no less than 30 calendar days after the interconnection customer receives notice of its violation from the utility.

11) Modification of Distributed Generation Facility. The interconnection customer must receive written authorization from the utility before making any changes to the distributed generation facility that could affect the utility's distribution system. If the interconnection customer makes such modifications without the utility's prior written authorization, the utility shall have the right to disconnect the distributed generation facility.

12) Permanent Disconnection. In the event the Agreement is terminated, the utility shall have the right to disconnect its facilities or direct the interconnection customer to disconnect its distributed generation facility.

13) Disputes. Each Party agrees to attempt to resolve all disputes regarding the provisions of this agreement that cannot be resolved between the two Parties pursuant to the dispute resolution provisions found in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.12).

14) Governing Law, Regulatory Authority, and Rules. The validity, interpretation, and enforcement of this Agreement and each of its provisions shall be governed by the laws of the State of Iowa. Nothing in this Agreement is intended to affect any other agreement between the utility and the interconnection customer.

15) Survival Rights. This Agreement shall remain in effect after termination to the extent necessary to allow or require either Party to fulfill rights or obligations that arose under the Agreement.

16) Assignment/Transfer of Ownership of the Distributed Generation Facility. This Agreement shall terminate upon the transfer of ownership of the distributed generation facility to a new owner unless the transferring owner assigns the Agreement to the new owner, the new owner agrees in writing to the terms of this agreement, and the transferring owner so notifies the utility in writing prior to the transfer of ownership.

17) Definitions. Any term used herein and not defined shall have the same meaning as the defined terms used in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.1).

18) Notice. The Parties may mutually agree to provide notices, demands, comments, or requests by electronic means such as e-mail. Absent agreement to electronic communication, or unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement shall be deemed properly given if delivered in person, delivered by recognized national courier service, or sent by first class mail, postage prepaid, to the person specified below:

If Notice is to Interconnection Customer:

Use the contact information provided in the interconnection customer's application. The interconnection customer is responsible for notifying the utility of any change in the contact party information, including change of ownership.

If Notice is to Utility:

Use the contact information provided below. The utility is responsible for notifying the interconnection customer of any change in the contact party information.

Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Telephone (Daytime): _____ (Evening): _____
Facsimile Number: _____ E-Mail Address: _____

**199—45.15(476) Appendix B — Standard certificate of completion.**

CERTIFICATE OF COMPLETION

(To be completed and returned to the utility when installation is complete and final electric inspector approval has been obtained – Use contact information provided on the utility's Web page for generator interconnection to obtain mailing address, fax number, and e-mail address)

Interconnection Customer Information

Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Telephone (Daytime): _____ (Evening): _____
Facsimile Number: _____ E-Mail Address: _____

Installer: _____ Check if owner-installed: ___

Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Telephone (Daytime): _____ (Evening): _____
Facsimile Number: _____ E-Mail Address: _____

Final Electric Inspection and Interconnection Customer Signature

The distributed generation facility is complete and has been approved by the local electric inspector having jurisdiction. A signed copy of the electric inspector's form indicating final approval is attached. The interconnection customer acknowledges that it shall not operate the distributed generation facility until receipt of the final acceptance and approval by the utility as provided below.

Signed: _____ Date: _____
(Signature of interconnection customer)

Printed Name: _____

Check if copy of signed electric inspection form is attached: ___
Check if copy of as built documents is attached (projects larger than 10 kVA only): ___
……

Acceptance and Final Approval for Interconnection (for utility use only)

The interconnection agreement is approved and the distributed generation facility is approved for interconnected operation upon the signing and return of this Certificate of Completion by utility:

Electric Distribution Company waives Witness Test? (Initial) Yes (_____) No (_____)

If not waived, date of successful Witness Test: _____ Passed: (Initial) (_____)

Utility Signature:_____ Date: _____

Printed Name:_____ Title: _____

**199—45.16(476) Appendix C — Levels 2 to 4: standard application form.**

LEVELS 2 TO 4:
STANDARD INTERCONNECTION REQUEST APPLICATION FORM
(For Distributed Generator Facilities 10 MVA or less)

Interconnection Customer Contact Information

Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Telephone (Daytime): _____ (Evening): _____
Facsimile Number: _____ E-Mail Address: _____

Alternative Contact Information (if different from Customer Contact Information)

Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Telephone (Daytime): _____ (Evening): _____
Facsimile Number: _____ E-Mail Address: _____

Facility Address (if different from above): _____
City: _____ State: _____ Zip Code: _____
Utility Serving Facility Site: _____
Account Number of Facility Site (existing utility customers): _____
Inverter Manufacturer:_____ Model: _____

Equipment Contractor

Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Telephone (Daytime): _____ (Evening): _____
Facsimile Number: _____ E-Mail Address: _____
License number (if applicable): _____
Active License? (if applicable) Yes ___ No ___

Electrical Contractor (if different from Equipment Contractor)

Name: _____
Mailing Address: _____
City: _____ State: _____ Zip Code: _____
Telephone (Daytime): _____ (Evening): _____
Facsimile Number: _____ E-Mail Address: _____
License Number: _____
Active License? Yes ___ No ___

Electric Service Information for Customer Facility where Generator will be Interconnected

Capacity: _____(Amps) Voltage: _____(Volts)
Type of Service: ___ Single Phase ___ Three Phase

If 3 Phase Transformer, Indicate Type:
Primary Winding ___ Wye ___ Delta
Secondary Winding ___ Wye ___ Delta

Transformer Size:_____ Impedance: _____

Intent of Generation

___ Offset Load (Unit will operate in parallel, but will not export power to utility)

___ Net Metering (Unit will operate in parallel and will export power pursuant to with Iowa Utilities Board rule 199 IAC 15.11(5) and the utility's net metering or net billing tariff)

___ Wholesale Market Transaction (Unit will operate in parallel and participate in PJM or MISO markets pursuant to a PJM Wholesale Market Participation Agreement or MISO equivalent)

___ Back-up Generation (Units that temporarily operate in parallel with the electric distribution system for more than 100 milliseconds)

Note: Backup units that do not operate in parallel for more than 100 milliseconds do not need an interconnection agreement.

Generator & Prime Mover Information

Energy Source (Hydro, Wind, Solar, Process Byproduct, Biomass, Oil, Natural Gas, Coal, etc.): _____

Energy Converter Type (Wind Turbine, Photovoltaic Cell, Fuel Cell, Steam Turbine, etc.): _____

Generator Size: _____ kW or _____ kVA Number of Units: _____

Total Capacity: _____ kW or _____ kVA

Generator Type (Check one):
___ Induction ___ Inverter ___ Synchronous ___ Other: _____

Requested Procedure Under Which to Evaluate Interconnection Request

Please indicate below which review procedure applies to the interconnection request. The review procedure used is subject to confirmation by the utility.

___ Level 2 – Lab-certified interconnection equipment with an aggregate electric nameplate capacity less than or equal to 2 MVA. Lab-certified is defined in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.1). (Application fee is $100 plus $1.00 per kVA.)

___ Level 3 – Distributed generation facility does not export power. Nameplate capacity rating is less than or equal to 50 kVA if connecting to area network or less than or equal to 10 MVA if connecting to a radial distribution feeder. (Application fee amount is $500 plus $2.00 per kVA.)

___ Level 4 – Nameplate capacity rating is less than or equal to 10 MVA and the distributed generation facility does not qualify for a Level 1, Level 2, or Level 3 review, or the distributed generation facility has been reviewed but not approved under a Level 1, Level 2, or Level 3 review. (Application fee amount is $1,000 plus $2.00 per kVA, to be applied toward any subsequent studies related to this application.)

Note: Descriptions for interconnection review categories do not list all criteria that must be satisfied. For a complete list of criteria, please refer to Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45).

Distributed Generation Facility Information:

Commissioning Date: _____

List interconnection components/systems to be used in the distributed generation facility that are lab-certified.

Component/System NRTL Providing Label & Listing

1. _____
2. _____
3. _____
4. _____
5. _____

Please provide copies of manufacturer brochures or technical specifications.

Energy Production Equipment/Inverter Information:

___ Synchronous ___ Induction ___ Inverter ___ Other: _____

Rating: _____ kW Rating: _____ kVA

Rated Voltage: _____Volts

Rated Current: _____Amps

System Type Tested (Total System): ___ Yes ___ No; attach product literature

For Synchronous Machines:

Note: Contact utility to determine if all the information requested in this section is required for the proposed distributed generation facility.

Manufacturer: _____
Model No.: _____ Version No.: _____
Submit copies of the Saturation Curve and the Vee Curve
___ Salient ___ Non-Salient
Torque: _____ lb-ft Rated RPM: _____ Field Amperes: _____ at rated generator voltage and current and _____% PF over-excited
Type of Exciter: _____
Output Power of Exciter: _____
Type of Voltage Regulator: _____
Locked Rotor Current: _____ Amps Synchronous Speed: _____RPM
Winding Connection: _____ Min. Operating Freq./Time: _____
Generator Connection: ___ Delta ___ Wye ___ Wye Grounded
Direct-axis Synchronous Reactance: (Xd) _____ ohms
Direct-axis Transient Reactance: (X'd) _____ ohms
Direct-axis Sub-transient Reactance: (X"d) _____ ohms
Negative Sequence Reactance: _____ ohms
Zero Sequence Reactance: _____ ohms
Neutral Impedance or Grounding Resister (if any): _____ ohms

For Induction Machines:

Note: Contact utility to determine if all the information requested in this section is required for the proposed distributed generation facility.

Manufacturer: _____
Model No.: _____ Version No.: _____
Locked Rotor Current: _____ Amps
Rotor Resistance (Rr):_____ ohms Exciting Current: ____ Amps
Rotor Reactance (Xr):_____ ohms Reactive Power Required: _____
Magnetizing Reactance (Xm):_____ ohms ___VARs (No Load)
Stator Resistance (Rs):_____ ohms ___VARs (Full Load)
Stator Reactance (Xs):_____ ohms
Short Circuit Reactance (X"d):_____ ohms
Phases: ___ Single ___ Three-Phase
Frame Size: _____ Design Letter: ____ Temp. Rise: _____$^{o}$C.

Reverse Power Relay Information (Level 3 Review Only):

Manufacturer: _____
Relay Type: _____ Model Number: _____
Reverse Power Setting: _____
Reverse Power Time Delay (if any): _____

Additional Information For Inverter-Based Facilities:

Inverter Information:

Manufacturer:_____ Model: _____
Type: ___ Forced Commutated ___ Line Commutated
Rated Output: _____ Watts _____ Volts
Efficiency: _____% Power Factor: _____%
Inverter UL1741 Listed: ___ Yes ___ No

DC Source / Prime Mover:

Rating: _____ kW Rating: _____ kVA
Rated Voltage: _____Volts
Open Circuit Voltage (if applicable): _____Volts
Rated Current: _____Amps
Short Circuit Current (if applicable): _____Amps

Other Facility Information:

One Line Diagram attached: ___ Yes
Plot Plan attached: ___ Yes

Customer Signature:

I hereby certify that all of the information provided in this Interconnection Request Application Form is true.

Applicant Signature: _____
Title: _____ Date: _____

An application fee is required before the application can be processed. Please verify that the appropriate fee is included with the application:

Amount: _____

Utility Acknowledgement:

Receipt of the application fee is acknowledged and this interconnection request is complete.

Utility Signature: _____ Date: _____
Printed Name: _____ Title: _____

**199—45.17(476) Appendix D — Levels 2 to 4: standard distributed generation interconnection agreement.**

LEVELS 2 TO 4:
STANDARD INTERCONNECTION AGREEMENT
(For Distributed Generation Facilities with a capacity of 10 MVA or less)

This agreement ("Agreement") is made and entered into this ____ day of _____, by and between _____ ("interconnection customer"), as an individual person, or as a _____ organized and existing under the laws of the State of _____, and _____, ("utility"), a _____ existing under the laws of the State of Iowa. Interconnection customer and utility each may be referred to as a "Party," or collectively as the "Parties."

Recitals:

Whereas, interconnection customer is proposing to install or direct the installation of a distributed generation facility, or is proposing a generating capacity addition to an existing distributed generation facility, consistent with the interconnection request application form completed by interconnection customer on _____; and

Whereas, the interconnection customer will operate and maintain, or cause the operation and maintenance of, the distributed generation facility; and

Whereas, interconnection customer desires to interconnect the distributed generation facility with utility's electric distribution system.

Now, therefore, in consideration of the premises and mutual covenants set forth in this Agreement, and other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Parties covenant and agree as follows:

Article 1. Scope and Limitations of Agreement

1.1 This Agreement shall be used for all approved interconnection requests for distributed generation facilities that fall under Levels 2, 3, and 4 according to the procedures set forth in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45).

1.2 This Agreement governs the terms and conditions under which the distributed generation facility will interconnect to, and operate in parallel with, the utility's electric distribution system.

1.3 This Agreement does not constitute an agreement to purchase or deliver the interconnection customer's power.

1.4 Nothing in this Agreement is intended to affect any other agreement between the utility and the interconnection customer.

1.5 Terms used in this agreement are defined as in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.1) unless otherwise noted.

1.6 Responsibilities of the Parties

1.6.1 The Parties shall perform all obligations of this Agreement in accordance with all applicable laws and regulations.

1.6.2 The utility shall construct, own, operate, and maintain its interconnection facilities in accordance with this Agreement.

1.6.3 The interconnection customer shall construct, own, operate, and maintain its distributed generation facility and interconnection facilities in accordance with this Agreement.

1.6.4 Each Party shall operate, maintain, repair, and inspect, and shall be fully responsible for, the facilities that it now or subsequently may own unless otherwise specified in the attachments to this Agreement. Each Party shall be responsible for the safe installation, maintenance, repair, and condition of its respective lines and appurtenances on its respective sides of the point of interconnection.

1.6.5 The interconnection customer agrees to design, install, maintain and operate its distributed generation facility so as to minimize the likelihood of causing an adverse system impact on the electric distribution system or any other electric system that is not owned or operated by the utility.

1.7 Parallel Operation Obligations

Once the distributed generation facility has been authorized to commence parallel operation, the interconnection customer shall abide by all operating procedures established in IEEE Standard 1547 and any other applicable laws, statutes or guidelines, including those specified in Attachment 4 of this Agreement.

1.8 Metering

The interconnection customer shall be responsible for the cost to purchase, install, operate, maintain, test, repair, and replace metering and data acquisition

equipment specified in Attachments 5 and 6 of this Agreement.

1.9 Reactive Power

1.9.1 Interconnection customers with a distributed generation facility larger than or equal to 1 MVA shall design their distributed generation facilities to maintain a power factor at the point of interconnection between .95 lagging and .95 leading at all times. Interconnection customers with a distributed generation facility smaller than 1 MVA shall design their distributed generation facility to maintain a power factor at the point of interconnection between .90 lagging and .90 leading at all times.

1.9.2 Any utility requirements for meeting a specific voltage or specific reactive power schedule as a condition for interconnection shall be clearly specified in Attachment 4. Under no circumstance shall the utility's additional requirements for voltage or reactive power schedules exceed the normal operating capabilities of the distributed generation facility.

1.9.3 If the interconnection customer does not operate the distributed generation facility within the power factor range specified in Attachment 4, or does not operate the distribute generation facility in accordance with a voltage or reactive power schedule specified in Attachment 4, the interconnection customer is in default, and the terms of Article 6.5 apply.

1.10 Standards of Operations

The interconnection customer must obtain all certifications, permits, licenses and approvals necessary to construct, operate and maintain the facility and to perform its obligations under this Agreement. The interconnection customer is responsible for coordinating and synchronizing the distributed generation facility with the utility's system. The interconnection customer is responsible for any damage that is caused by the interconnection customer's failure to coordinate or synchronize the distributed generation facility with the electric distribution system. The interconnection customer agrees to be primarily liable for any damages resulting from the continued operation of the distributed generation facility after the utility ceases to energize the line section to which the distributed generation facility is connected. In Attachment 4, the utility shall specify the shortest reclose time setting for its protection equipment that could affect the distributed generation facility. The utility shall notify the interconnection customer at least 10 business days prior to adopting a faster reclose time on any automatic protective equipment, such as a circuit breaker or line recloser, that might affect the distributed generation facility.

Article 2. Inspection, Testing, Authorization, and Right of Access

2.1 Equipment Testing and Inspection

The interconnection customer shall test and inspect its distributed generation facility including the interconnection equipment prior to interconnection in accordance with IEEE Standard 1547 (2003) and IEEE Standard 1547.1 (2005). The interconnection customer shall not operate its distributed generation facility in parallel with the utility's electric distribution system without prior written authorization by the utility as provided for in Articles 2.1.1-2.1.3.

2.1.1 The utility shall perform a witness test after construction of the distributed generation facility is completed, but before parallel operation, unless the utility specifically waives the witness test. The interconnection customer shall provide the utility at least 15 business days notice of the planned commissioning test for the distributed generation facility. If the utility performs a witness test at a time that is not concurrent with the commissioning test, it shall contact the interconnection customer to schedule the witness test at a mutually agreeable time within 10 business days after the scheduled commissioning test designated on the application. If the utility does not perform the witness test within 10 business days after the commissioning test, the witness test is deemed waived unless the Parties mutually agree to extend the date for scheduling the witness test, or unless the utility cannot do so for good cause, in which case, the Parties shall agree to another date for scheduling the test within 10 business days after the original scheduled date. If the witness test is not acceptable to the utility, the interconnection customer has 30 business days to address and resolve any deficiencies. This time period may be extended upon agreement between the utility and the interconnection customer. If the interconnection customer fails to address and resolve the deficiencies to the satisfaction of the utility, the applicable cure provisions of Article 6.5 shall apply. The interconnection customer shall, if requested by the utility, provide a copy of all documentation in its possession regarding testing conducted pursuant to IEEE Standard 1547.1.

2.1.2 If the interconnection customer conducts interim testing of the distributed generation facility prior to the witness test, the interconnection customer shall obtain permission from the utility before each occurrence of operating the distributed generation facility in parallel with the electric distribution system. The utility may, at its own expense, send qualified personnel to the distributed generation facility to observe such interim testing, but it cannot mandate that these tests be considered in the final witness test. The utility is not required to observe the interim testing or precluded from requiring the tests be repeated at the final witness test.

2.1.3 After the distributed generation facility passes the witness test, the utility shall affix an authorized signature to the certificate of completion and return it to the interconnection customer approving the interconnection and

authorizing parallel operation. The authorization shall not be conditioned or delayed.

2.2 Commercial Operation

The interconnection customer shall not operate the distributed generation facility, except for interim testing as provided in Article 2.1, until such time as the certificate of completion is signed by all Parties.

2.3 Right of Access

The utility must have access to the isolation device or disconnect switch and metering equipment of the distributed generation facility at all times. When practical, the utility shall provide notice to the customer prior to using its right of access.

Article 3. Effective Date, Term, Termination, and Disconnection

3.1 Effective Date

This Agreement shall become effective upon execution by all Parties.

3.2 Term of Agreement

This Agreement shall become effective on the effective date and shall remain in effect unless terminated in accordance with Article 3.3 of this Agreement.

3.3 Termination

3.3.1 The interconnection customer may terminate this Agreement at any time by giving the utility 30 calendar days prior written notice.

3.3.2 Either Party may terminate this Agreement after default pursuant to Article 6.5.

3.3.3 The utility may terminate, upon 60 calendar days prior written notice, for failure of the interconnection customer to complete construction of the distributed generation facility within 12 months after the in-service date as specified by the Parties in Attachment 2, which may be extended by agreement between the Parties.

3.3.4 The utility may terminate this Agreement, upon 60 calendar days prior written notice, if the interconnection customer has abandoned, cancelled, permanently disconnected or stopped development, construction, or operation of the distributed generation facility, or if the interconnection

customer fails to operate the distributed generation facility in parallel with the utility's electric system for three consecutive years.

3.3.5 Upon termination of this Agreement, the distributed generation facility will be disconnected from the utility's electric distribution system. Terminating this Agreement does not relieve either Party of its liabilities and obligations that are owed or continuing when the Agreement is terminated.

3.3.6 If the Agreement is terminated, the interconnection customer loses its position in the interconnection queue.

3.4 Temporary Disconnection

A Party may temporarily disconnect the distributed generation facility from the electric distribution system in the event one or more of the following conditions or events occurs:

3.4.1 Emergency conditions – shall mean any condition or situation: (1) that in the judgment of the Party making the claim is likely to endanger life or property; or (2) that the utility determines is likely to cause an adverse system impact, or is likely to have a material adverse effect on the utility's electric distribution system, interconnection facilities or other facilities, or is likely to interrupt or materially interfere with the provision of electric utility service to other customers; or (3) that is likely to cause a material adverse effect on the distributed generation facility or the interconnection equipment. Under emergency conditions, the utility or the interconnection customer may suspend interconnection service and temporarily disconnect the distributed generation facility from the electric distribution system. The utility must notify the interconnection customer when it becomes aware of any conditions that might affect the interconnection customer's operation of the distributed generation facility. The interconnection customer shall notify the utility when it becomes aware of any condition that might affect the utility's electric distribution system. To the extent information is known, the notification shall describe the condition, the extent of the damage or deficiency, the expected effect on the operation of both Parties' facilities and operations, its anticipated duration, and the necessary corrective action.

3.4.2 Scheduled maintenance, construction, or repair – the utility may interrupt interconnection service or curtail the output of the distributed generation facility and temporarily disconnect the distributed generation facility from the utility's electric distribution system when necessary for scheduled maintenance, construction, or repairs on utility's electric distribution system. To the extent possible, the utility shall provide the interconnection customer with notice five business days before an interruption. The utility shall coordinate the reduction or temporary disconnection with the

interconnection customer; however, the interconnection customer is responsible for out-of-pocket costs incurred by the utility for deferring or rescheduling maintenance, construction or repair at the interconnection customer's request.

3.4.3 Forced outages – The utility may suspend interconnection service to repair the utility's electric distribution system. The utility shall provide the interconnection customer with prior notice, if possible. If prior notice is not possible, the utility shall, upon written request, provide the interconnection customer with written documentation, after the fact, explaining the circumstances of the disconnection.

3.4.4 Adverse system impact – the utility must provide the interconnection customer with written notice of its intention to disconnect the distributed generation facility, if the utility determines that operation of the distributed generation facility creates an adverse system impact. The documentation that supports the utility's decision to disconnect must be provided to the interconnection customer. The utility may disconnect the distributed generation facility if, after receipt of the notice, the interconnection customer fails to remedy the adverse system impact, unless emergency conditions exist, in which case, the provisions of Article 3.4.1 apply. The utility may continue to leave the generating facility disconnected until the adverse system impact is corrected.

3.4.5 Modification of the distributed generation facility – The interconnection customer must receive written authorization from the utility prior to making any change to the distributed generation facility, other than a minor equipment modification. If the interconnection customer modifies its facility without the utility's prior written authorization, the utility has the right to disconnect the distributed generation facility until such time as the utility concludes the modification poses no threat to the safety or reliability of its electric distribution system.

3.4.6 The utility is not responsible for any lost opportunity or other costs incurred by interconnection customer as a result of an interruption of service under Article 3.

Article 4. Cost Responsibility for Interconnection Facilities and Distribution Upgrades

4.1 Interconnection Facilities

4.1.1 The interconnection customer shall pay for the cost of the interconnection facilities itemized in Attachment 3. The utility shall identify the additional interconnection facilities necessary to interconnect the distributed generation facility with the utility's electric distribution system, the cost of those facilities, and the time required to build and install those facilities, as well as an estimated date of completion of the building or installation of those facilities.

4.1.2 The interconnection customer is responsible for its expenses, including overheads, associated with owning, operating, maintaining, repairing, and replacing its interconnection equipment.

4.2 Distribution Upgrades

The utility shall design, procure, construct, install, and own any distribution upgrades. The actual cost of the distribution upgrades, including overheads, shall be directly assigned to the interconnection customer whose distributed generation facility caused the need for the distribution upgrades.

Article 5. Billing, Payment, Milestones, and Financial Security

5.1 Billing and Payment Procedures and Final Accounting (Applies to additional reviews conducted under a Level 2 review and Level 4 reviews)

5.1.1 The utility shall bill the interconnection customer for the design, engineering, construction, and procurement costs of utility-provided interconnection facilities and distribution upgrades contemplated by this Agreement as set forth in Attachment 3. The billing shall occur on a monthly basis, or as otherwise agreed to between the Parties. The interconnection customer shall pay each bill within 30 calendar days after receipt, or as otherwise agreed to between the Parties.

5.1.2 Within 90 calendar days after completing the construction and installation of the utility's interconnection facilities and distribution upgrades described in Attachments 2 and 3 to this Agreement, the utility shall provide the interconnection customer with a final accounting report of any difference between (1) the actual cost incurred to complete the construction and installation of the utility's interconnection facilities and distribution upgrades; and (2) the interconnection customer's previous deposit and aggregate payments to the utility for the interconnection facilities and distribution upgrades. If the interconnection customer's cost responsibility

exceeds its previous deposit and aggregate payments, the utility shall invoice the interconnection customer for the amount due and the interconnection customer shall make payment to the utility within 30 calendar days. If the interconnection customer's previous deposit and aggregate payments exceed its cost responsibility under this Agreement, the utility shall refund to the interconnection customer an amount equal to the difference within 30 calendar days after the final accounting report. Upon request from the interconnection customer, if the difference between the budget estimate and the actual cost exceeds 20%, the utility will provide a written explanation for the difference.

5.1.3 If a Party disputes any portion of its payment obligation pursuant to this Article 5, the Party shall pay in a timely manner all non-disputed portions of its invoice, and the disputed amount shall be resolved pursuant to the dispute resolution provisions contained in Article 8. A Party disputing a portion of an Article 5 payment shall not be considered to be in default of its obligations under this Article.

5.2 Interconnection Customer Deposit

At least 20 business days prior to the commencement of the design, procurement, installation, or construction of the utility's interconnection facilities and distribution upgrades, the interconnection customer shall provide the utility with a deposit equal to 100% of the estimated, non-binding cost to procure, install, or construct any such facilities. However, when the estimated date of completion of the building or installation of facilities exceeds three months from the date of notification, pursuant to Article 4.1.1 of this Agreement, this deposit may be held in escrow by a mutually agreed-upon third-party, with any interest to inure to the benefit of the interconnection customer.

Article 6. Assignment, Limitation on Damages, Indemnity, Force Majeure, and Default

6.1 Assignment

This Agreement may be assigned by either Party. If the interconnection customer attempts to assign this Agreement, the assignee must agree to the terms of this Agreement in writing and such writing must be provided to the utility. Any attempted assignment that violates this Article is void and ineffective. Assignment shall not relieve a Party of its obligations, nor shall a Party's obligations be enlarged, in whole or in part, by reason of the assignment. An assignee is responsible for meeting the same obligations as the assignor.

6.1.1 Either Party may assign this Agreement without the consent of the other Party to any affiliate (including mergers, consolidations, or transfers or a sale of a substantial portion of the Party's assets, between the Party and

another entity), of the assigning Party that has an equal or greater credit rating and the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement.

6.1.2 The interconnection customer can assign this Agreement, without the consent of the utility, for collateral security purposes to aid in providing financing for the distributed generation facility.

6.2 Limitation on Damages

Except for cases of gross negligence or willful misconduct, the liability of any Party to this Agreement shall be limited to direct actual damages and reasonable attorney's fees, and all other damages at law are waived. Under no circumstances, except for cases of gross negligence or willful misconduct, shall any Party or its directors, officers, employees and agents, or any of them, be liable to another Party, whether in tort, contract or other basis in law or equity for any special, indirect, punitive, exemplary or consequential damages, including lost profits, lost revenues, replacement power, cost of capital or replacement equipment. This limitation on damages shall not affect any Party's rights to obtain equitable relief, including specific performance, as otherwise provided in this Agreement. The provisions of this Article 6.2 shall survive the termination or expiration of the Agreement.

6.3 Indemnity

6.3.1 This provision protects each Party from liability incurred to third parties as a result of carrying out the provisions of this Agreement. Liability under this provision is exempt from the general limitations on liability found in Article 6.2.

6.3.2 The interconnection customer shall indemnify and defend the utility and the utility's directors, officers, employees, and agents, from all damages and expenses resulting from a third-party claim arising out of or based upon the interconnection customer's (a) negligence or willful misconduct or (b) breach of this Agreement.

6.3.3 The utility shall indemnify and defend the interconnection customer and the interconnection customer's directors, officers, employees, and agents from all damages and expenses resulting from a third-party claim arising out of or based upon the utility's (a) negligence or willful misconduct or (b) breach of this Agreement.

6.3.4 Within 5 business days after receipt by an indemnified Party of any claim or notice that an action or administrative or legal proceeding or investigation as to which the indemnity provided for in this Article may apply has commenced, the indemnified Party shall notify the indemnifying

Party of such fact. The failure to notify, or a delay in notification, shall not affect a Party's indemnification obligation unless that failure or delay is materially prejudicial to the indemnifying Party.

6.3.5 If an indemnified Party is entitled to indemnification under this Article as a result of a claim by a third party, and the indemnifying Party fails, after notice and reasonable opportunity to proceed under this Article, to assume the defense of such claim, that indemnified Party may, at the expense of the indemnifying Party, contest, settle or consent to the entry of any judgment with respect to, or pay in full, the claim.

6.3.6 If an indemnifying Party is obligated to indemnify and hold any indemnified Party harmless under this Article, the amount owing to the indemnified person shall be the amount of the indemnified Party's actual loss, net of any insurance or other recovery.

6.4 Force Majeure

6.4.1 As used in this Article, a force majeure event shall mean any act of God, labor disturbance, act of the public enemy, war, acts of terrorism, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment through no direct, indirect, or contributory act of a Party, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A force majeure event does not include an act of gross negligence or intentional wrongdoing by the Party claiming force majeure.

6.4.2 If a force majeure event prevents a Party from fulfilling any obligations under this Agreement, the Party affected by the force majeure event ("Affected Party") shall notify the other Party of the existence of the force majeure event within one business day. The notification must specify the circumstances of the force majeure event, its expected duration, and the steps that the Affected Party is taking and will take to mitigate the effects of the event on its performance. If the initial notification is verbal, it must be followed up with a written notification within one business day. The Affected Party shall keep the other Party informed on a continuing basis of developments relating to the force majeure event until the event ends. The Affected Party may suspend or modify its obligations under this Agreement (other than the obligation to make payments) only to the extent that the effect of the force majeure event cannot be otherwise mitigated.

6.5 Default

6.5.1 No default shall exist when the failure to discharge an obligation (other than the payment of money) results from a force majeure event as defined in this Agreement, or the result of an act or omission of the other Party.

6.5.2 A Party shall be in default ("Default") of this Agreement if it fails in any material respect to comply with, observe or perform, or defaults in the performance of, any covenant or obligation under this Agreement and fails to cure the failure within 60 calendar days after receiving written notice from the other Party. Upon a default of this Agreement, the non-defaulting Party shall give written notice of the default to the defaulting Party. Except as provided in Article 6.5.3, the defaulting Party has 60 calendar days after receipt of the default notice to cure the default; provided, however, if the default cannot be cured within 60 calendar days, the defaulting Party shall commence the cure within 20 calendar days after original notice and complete the cure within six months from receipt of the default notice; and, if cured within that time, the default specified in the notice shall cease to exist.

6.5.3 If a Party has assigned this Agreement in a manner that is not specifically authorized by Article 6.1, fails to provide reasonable access pursuant to Article 2.3, and is in default of its obligations pursuant to Article 7, or if a Party is in default of its payment obligations pursuant to Article 5 of this Agreement, the defaulting Party has 30 calendar days from receipt of the default notice to cure the default.

6.5.4 If a default is not cured as provided for in this Article, or if a default is not capable of being cured within the period provided for in this Article, the non-defaulting Party shall have the right to terminate this Agreement by written notice, and be relieved of any further obligation under this Agreement and, whether or not that Party terminates this Agreement, to recover from the defaulting Party all amounts due under this Agreement, plus all other damages and remedies to which it is entitled at law or in equity. The provisions of this Article shall survive termination of this Agreement.

Article 7. Insurance

7.1 For distributed generation facilities with a nameplate capacity less than 1 MVA, the interconnection customer shall carry general liability insurance coverage, such as, but not limited to, homeowner's insurance. Whenever possible, the interconnection customer shall name the utility as an additional insured on its homeowner's insurance policy, or similar policy covering general liability.

7.2 For distributed generation facilities with a nameplate capacity of 1 MVA or above, the interconnection customer shall carry sufficient insurance coverage so that the maximum comprehensive/general liability coverage that is continuously maintained by the interconnection customer during the term shall be not less than $2,000,000 for each occurrence, and an aggregate, if any, of at least $4,000,000. The utility, its officers, employees, and agents shall be added as an additional insured on this policy. The interconnection customer agrees to provide the utility with at least 30 calendar days advance written notice of cancellation, reduction in limits, or non-renewal of any insurance policy required by this Article.

Article 8. Dispute Resolution

8.1 Parties shall attempt to resolve all disputes regarding interconnection as provided in this Article in a good faith manner.

8.2 If there is a dispute between the Parties about an interpretation of the Agreement, the aggrieved Party shall issue a written notice to the other Party to the agreement that specifies the dispute and the Agreement articles that are disputed.

8.3 A meeting between the Parties shall be held within 10 days after receipt of the written notice. Persons with decision-making authority from each Party shall attend the meeting. If the dispute involves technical issues, persons with sufficient technical expertise and familiarity with the issue in dispute from each Party shall also attend the meeting. The meeting may be conducted by teleconference.

8.4 After the first meeting, each Party may seek resolution through the Iowa Utilities Board Chapter 6 complaint procedures (199 IAC 6). Dispute resolution under these procedures will initially be conducted informally under 199 IAC 6.2 through 6.4 to minimize cost and delay. If any party is dissatisfied with the outcome of the informal process, they may file a formal complaint with the Board under 199 IAC 6.5.

8.5 Pursuit of dispute resolution may not affect an interconnection request or an interconnection applicant's position in the utility's interconnection queue.

8.6 If the Parties fail to resolve their dispute under the dispute resolution provisions of this Article, nothing in this Article shall affect any Party's rights to obtain equitable relief, including specific performance, as otherwise provided in this Agreement.

Article 9. Miscellaneous

9.1 Governing Law, Regulatory Authority, and Rules

The validity, interpretation, and enforcement of this Agreement and each of its provisions shall be governed by the laws of the State of Iowa, without regard to its conflicts of law principles. This Agreement is subject to all applicable laws and regulations. Each Party expressly reserves the right to seek change in, appeal, or otherwise contest any laws, orders, or regulations of a governmental authority. The language in all parts of this Agreement shall in all cases be construed as a whole, according to its fair meaning, and not strictly for or against the utility or interconnection customer, regardless of the involvement of either Party in drafting this Agreement.

9.2 Amendment

Modification of this Agreement shall be only by a written instrument duly executed by both Parties.

9.3 No Third-Party Beneficiaries

This Agreement is not intended to and does not create rights, remedies, or benefits of any character whatsoever in favor of any persons, corporations, associations, or entities other than the Parties, and the obligations in this Agreement assumed are solely for the use and benefit of the Parties, their successors in interest and, where permitted, their assigns.

9.4 Waiver

9.4.1 Except as otherwise provided in this Agreement, a Party's compliance with any obligation, covenant, agreement, or condition in this Agreement may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting the waiver, but the waiver or failure to insist upon strict compliance with the obligation, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

9.4.2. Failure of any Party to enforce or insist upon compliance with any of the terms or conditions of this Agreement, or to give notice or declare this Agreement or the rights under this Agreement terminated, shall not constitute a waiver or relinquishment of any rights set out in this Agreement, but the same shall be and remain at all times in full force and effect, unless and only to the extent expressly set forth in a written document signed by that Party granting the waiver or relinquishing any such rights. Any waiver granted, or relinquishment of any right, by a Party shall not operate as a relinquishment of any other rights or a waiver of any

other failure of the Party granted the waiver to comply with any obligation, covenant, agreement, or condition of this Agreement.

9.5 Entire Agreement

Except as provided in Article 9.1, this Agreement, including all attachments, constitutes the entire Agreement between the Parties with reference to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements, oral or written, between the Parties with respect to the subject matter of this Agreement. There are no other agreements, representations, warranties, or covenants that constitute any part of the consideration for, or any condition to, either Party's compliance with its obligations under this Agreement.

9.6 Multiple Counterparts

This Agreement may be executed in two or more counterparts, each of which is deemed an original, but all constitute one and the same instrument.

9.7 No Partnership

This Agreement shall not be interpreted or construed to create an association, joint venture, agency relationship, or partnership between the Parties, or to impose any partnership obligation or partnership liability upon either Party. Neither Party shall have any right, power, or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as or be an agent or representative of, or to otherwise bind, the other Party.

9.8 Severability

If any provision or portion of this Agreement shall for any reason be held or adjudged to be invalid or illegal or unenforceable by any court of competent jurisdiction or other governmental authority (1) that portion or provision shall be deemed separate and independent, (2) the Parties shall negotiate in good faith to restore insofar as practicable the benefits to each Party that were affected by the ruling, and (3) the remainder of this Agreement shall remain in full force and effect.

9.9 Environmental Releases

Each Party shall notify the other Party of the release of any hazardous substances, any asbestos or lead abatement activities, or any type of remediation activities related to the distributed generation facility or the interconnection facilities, each of which may reasonably be expected to affect the other Party. The notifying Party shall (1) provide the notice as soon as practicable, provided that Party makes a good faith effort to provide the notice no

later than 24 hours after that Party becomes aware of the occurrence, and (2) promptly furnish to the other Party copies of any publicly available reports filed with any governmental authorities addressing such events.

9.10 Subcontractors

Nothing in this Agreement shall prevent a Party from using the services of any subcontractor it deems appropriate to perform its obligations under this Agreement; provided, however, that each Party shall require its subcontractors to comply with all applicable terms and conditions of this Agreement in providing services and each Party shall remain primarily liable to the other Party for the performance of the subcontractor.

9.10.1 A subcontract relationship does not relieve any Party of any of its obligations under this Agreement. The hiring Party remains responsible to the other Party for the acts or omissions of its subcontractor. Any applicable obligation imposed by this Agreement upon the hiring Party shall be equally binding upon, and shall be construed as having application to, any subcontractor of the hiring Party.

9.10.2 The obligations under this Article cannot be limited in any way by any limitation of subcontractor's insurance.

Article 10. Notices

10.1 General

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person, delivered by recognized national courier service, or sent by first class mail, postage prepaid, to the person specified below:

If Notice is to Interconnection Customer:

Interconnection Customer: _____
Attention: _____
Address: _____
City: _____ State:_____ Zip:_____
Phone: _____ Fax: _____ E-mail: _____

If Notice is to Utility:

Utility: _____
Attention: _____
Address: _____
City: _____ State:_____ Zip:_____
Phone: _____ Fax: _____ E-mail: _____

Alternative Forms of Notice:

Any notice or request required or permitted to be given by either Party to the other Party and not required by this Agreement to be in writing may be given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out above.

10.2 Billing and Payment

Billings and payments shall be sent to the addresses set out below:

If Billing or Payment is to Interconnection Customer:

Interconnection Customer: _____
Attention: _____
Address: _____
City: _____ State:_____ Zip:_____

If Billing or Payment is to Utility:

Utility: _____
Attention: _____
Address: _____
City: _____ State:_____ Zip:_____

10.3 Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications that may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Interconnection Customer's Operating Representative:

Name: _____
Attention: _____
Address: _____
City: _____ State:_____ Zip:_____

Utility's Operating Representative:

Name: _____
Attention: _____
Address: _____
City: _____ State:_____ Zip:_____

10.4 Changes to the Notice Information

Either Party may change this notice information by giving five business days written notice before the effective date of the change.

Article 11. Signatures

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized representatives.

For the Interconnection Customer:

Name: _____
Title: _____
Date: _____

For the Utility:

Name: _____
Title: _____
Date: _____

ATTACHMENT 1
Levels 2 to 4: Standard Interconnection Agreement

Definitions

Adverse system impact – A negative effect that compromises the safety or reliability of the electric distribution system or materially affects the quality of electric service provided by the utility to other customers.

AEP facility – An AEP facility as defined in 199 IAC 15 (Iowa Utilities Board Chapter 15 rules on Cogeneration and Small Power Production), used by an interconnection customer to generate electricity that operates in parallel with the electric distribution system. An AEP facility typically includes an electric generator and the interconnection equipment required to interconnect safely with the electric distribution system or local electric power system.

Applicable laws and regulations – All duly promulgated applicable federal, state and local laws, regulations, rules, ordinances, codes, decrees, judgments, directives, or judicial or administrative orders, permits, and other duly authorized actions of any governmental authority, having jurisdiction over the Parties.

Commissioning test – Tests applied to a distributed generation facility by the applicant after construction is completed to verify that the facility does not create adverse system impacts. At a minimum, the scope of the commissioning tests performed shall include the commissioning test specified IEEE Standard 1547 Section 5.4 "Commissioning tests."

Distributed generation facility – A qualifying facility or an AEP facility.

Distribution upgrades – A required addition or modification to the utility's electric distribution system at or beyond the point of interconnection to accommodate the interconnection of a distributed generation facility. Distribution upgrades do not include interconnection facilities.

Electric distribution system – The facilities and equipment used to transmit electricity to ultimate usage points such as homes and industries from interchanges with higher voltage transmission networks that transport bulk power over longer distances. The voltage levels at which electric distribution systems operate differ among areas but generally carry less than 100 kilovolts of electricity. Electric distribution system has the same meaning as the term Area EPS, as defined in 3.1.6.1 of IEEE Standard 1547.

Facilities study – An engineering study conducted by the utility to determine the required modifications to the utility's electric distribution system, including the cost and the time required to build and install the modifications, as necessary to accommodate an interconnection request.

Force majeure event – Any act of God, labor disturbance, act of the public enemy, war, acts of terrorism, insurrection, riot, fire, storm or flood, explosion, breakage or accident to machinery or equipment through no direct, indirect, or contributory act of a Party, any order, regulation or restriction imposed by governmental, military or lawfully established civilian authorities, or any other cause beyond a Party's control. A force majeure event does not include an act of gross negligence or intentional wrongdoing.

Governmental authority – Any federal, state, local or other governmental regulatory or administrative agency, court, commission, department, board, other governmental subdivision, legislature, rule making board, tribunal, or other governmental authority having jurisdiction over the Parties, their respective facilities, or the respective services they provide, and exercising or entitled to exercise any administrative, executive, police, or taxing authority or power; provided, however, that this term does not include the interconnection customer, utility or any affiliate of either.

IEEE Standard 1547 – The Institute of Electrical and Electronics Engineers, Inc. (IEEE), 3 Park Avenue, New York, NY 10016-5997, Standard 1547 (2003), "Standard for Interconnecting Distributed Resources with Electric Power Systems."

IEEE Standard 1547.1 – The IEEE Standard 1547.1 (2005), "Conformance Test Procedures for Equipment Interconnecting Distributed Resources with Electric Power Systems."

Interconnection agreement or Agreement – The agreement between the interconnection customer and the utility. The interconnection agreement governs the connection of the distributed generation facility to the utility's electric distribution system and the ongoing operation of the distributed generation facility after it is connected to the utility's electric distribution system.

Interconnection customer – The entity entering into this Agreement for the purpose of interconnecting a distributed generation facility to the utility's electric distribution system.

Interconnection equipment – A group of components or an integrated system connecting an electric generator with a local electric power system or an electric distribution system that includes all interface equipment, including switchgear, protective devices, inverters or other interface devices. Interconnection equipment may be installed as part of an integrated equipment package that includes a generator or other electric source.

Interconnection facilities – Facilities and equipment required by the utility to accommodate the interconnection of a distributed generation facility. Collectively, interconnection facilities include all facilities, and equipment between the distributed generation facility and the point of interconnection, including modification, additions, or upgrades that are necessary to physically and electrically interconnect the distributed

generation facility to the electric distribution system. Interconnection facilities are sole use facilities and do not include distribution upgrades.

Interconnection request – An interconnection customer's request, on the required form, for the interconnection of a new distributed generation facility, or to increase the capacity or change the operating characteristics of an existing distributed generation facility that is interconnected with the utility's electric distribution system.

Interconnection study – Any of the following studies, as determined to be appropriate by the utility: the interconnection feasibility study, the interconnection system impact study, and the interconnection facilities study.

Iowa standard distributed generation interconnection rules – The most current version of the procedures for interconnecting distributed generation facilities adopted by the Iowa Utilities Board. See Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45).

Parallel operation or Parallel – The state of operation that occurs when a distributed generation facility is connected electrically to the electric distribution system for loner than 100 milliseconds.

Point of interconnection – The point where the distributed generation facility is electrically connected to the electric distribution system. Point of interconnection has the same meaning as the term "point of common coupling" defined in 3.1.13 of IEEE Standard 1547.

Qualifying facility – A cogeneration facility or a small power production facility that is a qualifying facility under 18 CFR Part 292, Subpart B, used by an interconnection customer to generate electricity that operates in parallel with the electric distribution system. A qualifying facility typically includes an electric generator and the interconnection equipment required to interconnect safely with the electric distribution system or local electric power system.

Utility – Any electric utility that is subject to rate regulation by the Iowa Utilities Board.

Witness test – For lab-certified equipment, verification (either by an on-site observation or review of documents) by the utility that the interconnection installation evaluation required by IEEE Standard 1547, Section 5.3 and the commissioning test required by IEEE Standard 1547, Section 5.4 have been adequately performed. For interconnection equipment that has not been lab-certified, the witness test shall also include verification by the utility of the on-site design tests required by IEEE Standard 1547, Section 5.1 and verification by the utility of production tests required by IEEE Standard 1547, Section 5.2. All tests verified by the utility are to be performed in accordance with the test procedures specified by IEEE Standard 1547.1.

ATTACHMENT 2
Levels 2 to 4: Standard Interconnection Agreement

Construction Schedule, Proposed Equipment & Settings

This attachment is to be completed by the interconnection customer and shall include the following:

1. The construction schedule for the distributed generation facility.

2. A one-line diagram indicating the distributed generation facility, interconnection equipment, interconnection facilities, metering equipment, and distribution upgrades.

3. Component specifications for equipment identified in the one-line diagram.

4. Component settings.

5. Proposed sequence of operations.

6. A three line diagram showing current potential circuits for protective relays.

7. Relay tripping and control schematic diagram.

ATTACHMENT 3
Levels 2 to 4: Standard Interconnection Agreement

Description, Costs and Time Required to
Build and Install the Utility's Interconnection Facilities

This attachment is to be completed by the utility and shall include the following:

1. Required interconnection facilities, including any required metering.

2. An estimate of itemized costs charged by the utility for interconnection, including overheads, based on results from prior studies.

3. An estimate for the time required to build and install the utility's interconnection facilities based on results from prior studies and an estimate of the date upon which the facilities will be completed.

## ATTACHMENT 4
Levels 2 to 4: Standard Interconnection Agreement

### Operating Requirements for Distributed Generation Facilities Operating in Parallel

The utility shall list specific operating practices that apply to this distributed generation interconnection and the conditions under which each listed specific operating practice applies.

ATTACHMENT 5
Levels 2 to 4: Standard Interconnection Agreement

Monitoring and Control Requirements

This attachment is to be completed by the utility and shall include the following:

1. The utility's monitoring and control requirements must be specified, along with a reference to the utility's written requirements documents from which these requirements are derived.

2. An Internet link to the requirements documents.

ATTACHMENT 6
Levels 2 to 4: Standard Interconnection Agreement

Metering Requirements

This attachment is to be completed by the utility and shall include the following:

1. The metering requirements for the distributed generation facility.

2. Identification of the appropriate metering rules filed with the Iowa Utilities Board under subrule 199 IAC 20.2(5), and inspection and testing practices adopted under rule 199 IAC 20.6 that establish these requirements.

3. An Internet link to these rules and practices.

ATTACHMENT 7
Levels 2 to 4: Standard Interconnection Agreement

As Built Documents

This attachment is to be completed by the interconnection customer and shall include the following:

When it returns the certificate of completion to the utility, the interconnection customer shall provide the utility with documents detailing the as-built status of the following:

1. A one-line diagram indicating the distributed generation facility, interconnection equipment, interconnection facilities, and metering equipment.

2. Component specifications for equipment identified in the one-line diagram.

3. Component settings.

4. Proposed sequence of operations.

5. A three-line diagram showing current potential circuits for protective relays.

6. Relay tripping and control schematic diagram.

**199—45.18(476) Appendix E — Standard interconnection feasibility study agreement.**

INTERCONNECTION FEASIBILITY STUDY AGREEMENT

This agreement ("Agreement") is made and entered into this _____ day of _____, by and between _____ ("interconnection customer"), as an individual person, or as a _____ organized and existing under the laws of the State of _____, and _____, ("utility"), a _____ existing under the laws of the State of Iowa. Interconnection customer and utility each may be referred to as a "Party," or collectively as the "Parties."

Recitals:

Whereas, interconnection customer is proposing to develop a distributed generation facility or modify an existing distributed generation facility consistent with the interconnection request application form submitted by interconnection customer on _____; and

Whereas, interconnection customer desires to interconnect the distributed generation facility with utility's electric distribution system; and

Whereas, interconnection customer has requested utility to perform an interconnection feasibility study to assess the feasibility of interconnecting the proposed distributed generation facility to utility's electric distribution system;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agree as follows:

1. All terms defined in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.1) shall have the meanings indicated in that rule when used in this Agreement.
2. Interconnection customer elects and utility shall cause to be performed an interconnection feasibility study consistent with Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.11).
3. The scope of the interconnection feasibility study shall be based upon the information set forth in the interconnection request application form and Attachment A to this Agreement.
4. The interconnection feasibility study shall be based on the technical information provided by interconnection customer in the interconnection request application form, as modified with the agreement of the Parties. Utility has the right to request additional technical information from interconnection customer during the course of the interconnection feasibility study. If the interconnection customer

modifies its interconnection request, the time to complete the interconnection feasibility study may be extended by the utility.

5. In performing the study, utility shall rely on existing studies of recent vintage to the extent practical. The interconnection customer will not be charged for such existing studies; however, interconnection customer is responsible for the cost of applying any existing study to the interconnection customer specific requirements and for any new study that the utility performs.
6. The interconnection feasibility study report must provide the following information:
   - 6.1 Identification of any equipment short circuit capability limits exceeded as a result of the interconnection,
   - 6.2 Identification of any thermal overload or voltage limit violations resulting from the interconnection, and
   - 6.3 A description and non-binding estimated cost of facilities required to interconnect the distributed generation facility to utility's electric distribution system as required under Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.11(5)"a").
7. Interconnection customer shall provide a study deposit equal to 100% of the estimated non-binding study costs at least 20 business days prior to the date upon which the study commences.
8. The interconnection feasibility study shall be completed and the results shall be transmitted to interconnection customer within 25 business days after this Agreement is signed by the Parties.
9. Study fees shall be based on actual costs and will be invoiced to interconnection customer after the study is transmitted to interconnection customer. The invoice must include an itemized listing of employee time and costs expended on the study.
10. Interconnection customer shall pay any actual study costs that exceed the deposit without interest within 30 calendar days on receipt of the invoice. Utility shall refund any excess deposit amount without interest within 30 calendar days after the invoice.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of interconnection customer]

Signed: _____

Name (Printed): _____ Title: _____

[Insert name of utility]

Signed: _____

Name (Printed): _____ Title: _____

ATTACHMENT A
Interconnection Feasibility Study Agreement

Assumptions Used in Conducting the Interconnection Feasibility Study

The interconnection feasibility study will be based upon the information in the interconnection request application form, agreed upon on _____:

1. Point of interconnection and configuration to be studied.

_____
_____
_____
_____
_____

2. Alternative points of interconnection and configurations to be studied.

_____
_____
_____
_____
_____

Note: 1 and 2 are to be completed by the interconnection customer. Any additional assumptions (explained below) may be provided by either the interconnection customer or the utility.

_____
_____
_____
_____
_____
_____
_____

**199—45.19(476) Appendix F — Standard interconnection system impact study agreement.**

INTERCONNECTION SYSTEM IMPACT STUDY AGREEMENT

This agreement ("Agreement") is made and entered into this ____ day of _____, by and between _____ ("interconnection customer"), as an individual person, or as a _____ organized and existing under the laws of the State of _____, and _____, ("utility"), a _____ existing under the laws of the State of Iowa. Interconnection customer and utility each may be referred to as a "Party," or collectively as the "Parties."

Recitals:

Whereas, interconnection customer is proposing to develop a distributed generation facility or modifying an existing distributed generation facility consistent with the interconnection request application form completed by interconnection customer on _____; and

Whereas, interconnection customer desires to interconnect the distributed generation facility to utility's electric distribution system; and

Whereas, utility has completed an interconnection feasibility study and provided the results of said study to interconnection customer (this recital to be omitted if the Parties have agreed to forego the interconnection feasibility study); and

Whereas, interconnection customer has requested utility to perform an interconnection system impact study to assess the impact of interconnecting the distributed generation facility to utility's electric distribution system;

Now, therefore, in consideration of and subject to the mutual covenants contained herein the Parties agree as follows:

1. All terms defined in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.1) shall have the meanings indicated in that rule when used in this Agreement.
2. Interconnection customer elects and utility shall cause to be performed an interconnection system impact study consistent with Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.11).

3. The scope of the interconnection system impact study shall be based upon the information set forth in the interconnection request application form and in Attachment A to this Agreement.
4. The interconnection system impact study shall be based upon the interconnection feasibility study and the technical information provided by interconnection customer in the interconnection request application form. Utility reserves the right to request additional technical information from interconnection customer. If interconnection customer modifies its proposed point of interconnection, interconnection request, or the technical information provided therein is modified, the time to complete the interconnection system impact study may be extended.
5. The interconnection system impact study report shall provide the following information:
   - 5.1 Identification of any equipment short circuit capability limits exceeded as a result of the interconnection,
   - 5.2 Identification of any thermal overload or voltage limit violations resulting from the interconnection,
   - 5.3 Identification of any instability or inadequately damped response to system disturbances resulting from the interconnection, and
   - 5.4 Description and non-binding estimated cost of facilities required to interconnect the distributed generation facility to utility's electric distribution system and to address the identified short circuit, thermal overload, voltage, and instability issues as required under Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.11(5)"b").
6. Interconnection customer shall provide a study deposit equal to 100% of the estimated non-binding study costs at least 20 business days prior to the date upon which the study commences.
7. The interconnection system impact study, if required, shall be completed and the results transmitted to interconnection customer within 25 business days after this Agreement is signed by the Parties.
8. Study fees shall be based on actual costs and shall be invoiced to interconnection customer after the study is transmitted to interconnection customer. The invoice shall include an itemized listing of employee time and costs expended on the study.
9. Interconnection customer shall pay any study costs that exceed the deposit within 30 calendar days after receipt of the invoice. Utility shall refund any excess deposit amount within 30 calendar days of the invoice.

In witness thereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of interconnection customer]

Signed: _____

Name (Printed): _____ Title: _____

[Insert name of utility]

Signed: _____

Name (Printed): _____ Title: _____

ATTACHMENT A
Interconnection System Impact Study Agreement

Assumptions Used in Conducting the Interconnection System Impact Study

The interconnection system impact study shall be based upon the results of the interconnection feasibility study, subject to any modifications in accordance with Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.11), and the following assumptions:

1. Point of interconnection and configuration to be studied.

_____
_____
_____
_____

2. Alternative Points of interconnection and configurations to be studied.

_____
_____
_____
_____

Note: 1 and 2 are to be completed by the interconnection customer. Any additional assumptions (explained below) may be provided by either the interconnection customer or the utility.

_____
_____
_____
_____
_____
_____

**199—45.20(476) Appendix G — Standard interconnection facilities study agreement.**

INTERCONNECTION FACILITIES STUDY AGREEMENT

This agreement ("Agreement") is made and entered into this _____ day of _____, by and between _____ ("interconnection customer"), as an individual person, or as a _____ organized and existing under the laws of the State of _____, and _____, ("utility"), a _____ existing under the laws of the State of Iowa. Interconnection customer and utility each may be referred to as a "Party," or collectively as the "Parties."

Recitals:

Whereas, interconnection customer is proposing to develop a distributed generation facility or modifying an existing distributed generation facility consistent with the interconnection request application form completed by interconnection customer on _____; and

Whereas, interconnection customer desires to interconnect the distributed generation facility with utility's electric distribution system; and

Whereas, utility has completed an interconnection system impact study and provided the results of said study to interconnection customer; and

Whereas, interconnection customer has requested utility to perform an interconnection facilities study to specify and estimate the cost of the equipment, engineering, procurement and construction work needed to interconnect the distributed generation facility;

Now, therefore, in consideration of and subject to the mutual covenants contained in this Agreement, the Parties agree as follows:

1. All terms defined in Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.1) shall have the meanings indicated in that rule when used in this Agreement.
2. Interconnection customer elects and utility shall cause to be performed an interconnection facilities study consistent with Iowa Utilities Board Chapter 45 rules on Electric Interconnection of Distributed Generation Facilities (199 IAC 45.11).
3. The scope of the interconnection facilities study shall be determined by the information provided in Attachment A to this Agreement.
4. An interconnection facilities study report (1) shall provide a description, estimated

cost of distribution upgrades, and a schedule for required facilities to interconnect the distributed generation facility to utility's electric distribution system; and (2) shall address all issues identified in the interconnection system impact study (or identified in this study if the system impact study is combined herein).

5. Interconnection customer shall provide a study deposit of 100% of the estimated non-binding study costs at least 20 business days prior to the date upon which the study commences.
6. In cases where no distribution upgrades are required, the interconnection facilities study shall be completed and the results shall be transmitted to interconnection customer within 15 business days after this Agreement is signed by the Parties. In cases where distribution upgrades are required, the interconnection facilities study shall be completed and the results shall be transmitted to interconnection customer within 30 business days after this Agreement is signed by the Parties.
7. Study fees shall be based on actual costs and will be invoiced to interconnection customer after the study is transmitted to interconnection customer. The invoice shall include an itemized listing of employee time and costs expended on the study.
8. Interconnection customer shall pay any actual study costs that exceed the deposit within 30 calendar days on receipt of the invoice. Utility shall refund any excess deposit amount within 30 calendar days after the invoice.

In witness whereof, the Parties have caused this Agreement to be duly executed by their duly authorized officers or agents on the day and year first above written.

[Insert name of interconnection customer]

Signed: _____
Name (Printed): _____ Title: _____

[Insert name of utility]

Signed: _____
Name (Printed): _____ Title: _____

ATTACHMENT A
Interconnection Facilities Study Agreement

Minimum Information that the Interconnection Customer Must Provide with the Interconnection Facilities Study Agreement

Provide location plan and simplified one-line diagram of the distributed generation facilities.

For staged projects, please indicate size and location of planned additional future generation.

On the one-line diagram, indicate the generation capacity attached at each metering location. (Maximum load on CT/PT).

On the one-line diagram, indicate the location of auxiliary power. (Minimum load on CT/PT) Amps.

One set of metering is required for each generation connection to the utility's electric distribution system.

Number of generation connections: _____

Will an alternate source of auxiliary power be available during CT/PT maintenance? Yes _____ No_____

Will a transfer bus on the generation side of the metering require that each meter set be designed for the total distributed generation capacity? Yes _____ No _____ (Please indicate on the one-line diagram).

What type of control system or PLC will be located at the distributed generation facility? _____.

What protocol does the control system or PLC use? _____.

Please provide a scale drawing of the site. Indicate the point of common coupling, distribution line, and property lines.

Number of third party easements required for utility's interconnection facilities: _____

UTILITIES DIVISION[199](cont'd)

To be Completed in Coordination with the Utility

Is the distributed generation facility located in utility's service area?
Yes _____No _____

If No, please provide name of local provider: _____

Please provide the following proposed schedule dates:

Begin construction date: _____

Generator step-up transformers receive back feed power date: _____

Generation testing date: _____

Commercial operation date: _____

## ARC 8227B

# 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 the authority of Iowa Code sections 17A.4, 476.1, and 476.2, the Utilities Board (Board) gives notice that on September 18, 2009, the Board issued an order in Docket No. RMU 2009-0009, In re: High-Volume Access Service [199 IAC 22], "Order Commencing Rule Making," that proposes amendments to the Board's rules regarding switched access service provided by local exchange carriers. The Board is proposing amendments to these rules based upon the facts established in re: Qwest Communications Corp. v. Superior Telephone Cooperative, et al., Docket No. FCU-07-2. The order commencing this rule making and containing the background and support for this proceeding can be found on the Board's Web site, www.state.ia.us/iub.

Pursuant to Iowa Code sections 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 October 27, 2009. The statement should be filed electronically through the Board's Electronic Filing System (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 shall 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, 350 Maple Street, Des Moines, Iowa 50319-0069.

An oral presentation to receive oral comments on the proposed amendments will be held at 9 a.m. on December 8, 2009, in the Board's hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the Utilities Board at

(515)281-5256 at least five days in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code sections 17A.4, 476.1, 476.2, 476.4, 476.5, 476.11, and 476.95.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of "High-volume access service (HVAS)" in subrule **22.1(3)**:

*"High-volume access service (HVAS)"* is any service that results in an increase in total billings for intrastate exchange access for a local exchange utility in excess of 100 percent in less than six months. By way of illustration and not limitation, HVAS typically results in significant increases in interexchange call volumes and can include chat lines, conference bridges, call center operations, help desk provisioning, or similar operations. These services may be advertised to consumers as being free or for the cost of a long-distance call. The call service operators often provide marketing activities for HVAS in exchange for direct payments, revenue sharing, concessions, or commissions from local service providers.

ITEM 2. Adopt the following **new** subparagraph **22.14(2)"d"(8)**:

(8) A provision prohibiting the application of association access service rates to HVAS traffic.

ITEM 3. Adopt the following **new** paragraph **22.14(2)"e"**:

*e.* A local exchange utility that is adding a new HVAS customer or otherwise reasonably anticipates an HVAS situation shall notify interexchange utilities of the situation, the telephone numbers that will be assigned to the HVAS customer (if applicable), and the expected date service to the HVAS customer will be initiated, if applicable. Notice should be sent to each interexchange utility that paid for intrastate access services from the local exchange carrier in the preceding 12 months, by a method calculated to provide adequate notice. Any interexchange utility may request negotiations concerning the access rates applicable to calls to or from the HVAS customer.

A local exchange utility that experiences an increase in intrastate access billings that qualifies as an HVAS situation, but did not add a new HVAS customer or otherwise anticipate the situation, shall notify interexchange utilities of the HVAS situation at the earliest reasonable opportunity, as described in the preceding paragraph. Any interexchange utility may request negotiations concerning whether the local exchange utility's access rates, as a whole or for HVAS only, should be changed to reflect the increased access traffic.

When a utility requests negotiations concerning intrastate access services, the parties shall negotiate in good faith to achieve reasonable terms and procedures for the exchange of traffic. No access charges shall apply to the HVAS traffic until an access tariff for HVAS is accepted for filing by the board and has become effective. At any time that any party believes negotiations will not be successful, any party may file a written complaint with the board pursuant to Iowa Code section 476.11. In any such proceeding, the board will consider setting the rate for access services for HVAS traffic based upon the incremental cost of providing HVAS, although any other relevant evidence may also be considered. The incremental cost will not include marketing or other payments made to HVAS customers. The resulting rates for access services may include a range of rates based upon the volume of access traffic or other relevant factors.

ITEM 4. Amend subrule 22.20(5), introductory paragraph, as follows:

**22.20(5)** *Certificate revocation.* Any five subscribers or potential subscribers, an interexchange utility, or consumer advocate upon filing a sworn statement showing a generalized pattern of inadequate telephone service or facilities may petition the board to begin formal certificate revocation proceedings against a local exchange utility. For the purposes of this rule, inadequate telephone service or facilities may include the failure to treat HVAS charges in a manner consistent with the requirements of 199—paragraph 22.14(2)*"e."* While similar in nature to a complaint filed under rule 199—6.2(476), a petition under this rule shall be addressed by the board under the following procedure and not the procedure found in 199—Chapter 6.

# ARC 8218B
# ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

**Adopted and Filed Emergency**

Pursuant to the authority of 2009 Iowa Acts, Senate File 376, section 13(5)"b," the Iowa Department of Economic Development adopts new Chapter 410, "Board Structure and Procedures," Chapter 411, "Iowa Broadband Deployment Program," and Chapter 412, "Fair Information Practices, Waiver and Variance, and Petition for Rule Making," Iowa Administrative Code.

These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5). The rules establish the structure and procedures for new Part XIII, the Iowa Broadband Deployment Governance Board, specify board duties, and establish eligibility requirements and application and evaluation procedures for the Iowa Broadband Deployment Program.

On September 11, 2009, the Iowa Broadband Deployment Governance Board approved and recommended to the Iowa Economic Development Board the adoption of these new rules.

The Iowa Economic Development Board adopted the rules on September 17, 2009.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest because of federal deadlines for application for federal funds for which the state funds are to be used as matching funds. On July 1, 2009, the federal agencies implementing broadband funding initiatives included in the American Recovery and Reinvestment Act of 2009 announced the rules governing the disbursement of federal funds. Applications for the first round of federal funding were to be submitted no later than August 14, 2009. The federal government anticipates that it will award the initial round of federal funding in November 2009. As stated in 2009 Iowa Acts, Senate File 376, the state appropriation is to be used to access federal funds. Therefore, rules governing the Iowa Broadband Deployment Program must be in place as soon as possible in order to notify potential applicants of eligibility requirements and application procedures governing the award of state funds.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules should be waived and these rules made effective on September 17, 2009. These rules confer a benefit on the public by ensuring that the state's Iowa Broadband Deployment Program is in place in time to permit applicants to access the state funds and use the state money as match for purposes of receiving federal funds.

These rules are also published herein under Notice of Intended Action as **ARC 8219B** to allow for public comment.

These rules became effective on September 17, 2009.

These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5).

The following rules are adopted.

ITEM 1. Adopt the following **new** Part XIII heading:

PART XIII
IOWA BROADBAND DEPLOYMENT GOVERNANCE BOARD

ITEM 2. Adopt the following **new** 261—Chapter 410 to Chapter 412:

## CHAPTER 410
## BOARD STRUCTURE AND PROCEDURES

**261—410.1(83GA,SF376) Purpose.** Pursuant to 2009 Iowa Acts, Senate File 376, section 13(5), the Iowa broadband deployment governance board is charged with establishing a comprehensive broadband plan and a competitive process for granting funds to deploy and sustain high-speed broadband services. The Iowa broadband deployment governance board was established by the IUB, IDED and ITTC. Administrative support and planning costs will be provided jointly by the IUB, IDED and ITTC.

**261—410.2(83GA,SF376) Definitions.** As used in these rules, unless the context otherwise requires:

*"Administrative support and planning costs"* means costs that include, but are not limited to, providing staff to perform the following functions for the governance board:

1. Review and summarize grant applications.
2. Offer technical and other advice to the board.
3. Prepare and distribute public notices, record meetings, prepare minutes, attend board meetings, and complete other tasks related to board meetings.
4. Assist and advise the board in preparing a comprehensive plan for high-speed broadband access.
5. Assist and advise the board in developing and implementing a competitive process for disbursing funds.
6. Establish and maintain separate accounts for the use of bond proceeds and non-bond proceeds.

*"Board"* or *"governance board"* means the Iowa broadband deployment governance board created by IUB, IDED, and ITTC as authorized by 2009 Iowa Acts, Senate File 376, section 13(5).

*"IDED"* means the Iowa department of economic development created by Iowa Code section 15.103.

*"ITTC"* means the telecommunications and technology commission created by Iowa Code section 8D.3.

*"IUB"* means the Iowa utilities board created by Iowa Code section 474.1.

**261—410.3(83GA,SF376) Iowa broadband deployment governance board.**

**410.3(1)** *Composition.* The board shall be comprised of one member from each of the following categories:

1. Educational users.
2. Cities.
3. Counties.
4. Urban residential users.
5. Rural residential users.
6. Cable providers.
7. Wireline providers.
8. Wireless providers.
9. Utilities board.
10. Economic development board.
11. Telecommunications and technology commission.
12. House majority party (nonvoting member).
13. House minority party (nonvoting member).
14. Senate majority party (nonvoting member).
15. Senate minority party (nonvoting member).

**410.3(2)** *Quorum.* A quorum of the board shall be a majority of the voting members.

**410.3(3)** *Terms.* Board members shall be appointed for three-year terms.

**410.3(4)** *Officers.* The board shall annually elect a chairperson of the board and a vice-chairperson of the board. The board may annually elect such other officers as the board deems proper. The chairperson, vice-chairperson, and any other officers of the board shall be elected by a majority vote of the voting members who are present.

**410.3(5)** *Board committees.*

*a. Advisory committees.* The board may establish an application review committee and may create such other advisory committees as deemed necessary by the board to perform its duties. The board shall elect the members of committees by majority vote. The board chairperson shall designate the chairperson and vice-chairpersons of all committees.

*b. Nominations committee.* The board chairperson may appoint a nominations committee for the purpose of making recommendations regarding the election of a board chairperson, board vice-chairperson, and membership on board committees and the appointment of committee chairpersons and committee vice-chairpersons.

**261—410.4(83GA,SF376) Board duties.** The board shall perform the duties as outlined in 2009 Iowa Acts, Senate File 376, section 13(5), and other functions as necessary and proper to carry out its responsibilities. The board's duties include the following:

**410.4(1)** *Comprehensive plan for broadband access.* The board shall establish a comprehensive statewide plan for the deployment and sustainability of high-speed broadband access in areas capable of timely implementation of such access. The plan shall be consistent with federal requirements established for federal funds made available for the purposes of projects that may be considered by the board. The plan shall require collaboration involving qualified private providers and public entities as appropriate. The plan shall allow for the participation of public entities to accomplish project purposes that are financially feasible in areas of the state that remain unserved or underserved as a result of a lack of private sector investment.

**410.4(2)** *Competitive grant program for broadband deployment.* The board shall establish a competitive process for the disbursement of funds in the form of grants for the deployment and sustainability of high-speed broadband services.

**410.4(3)** *Legislative recommendations.* The board shall make recommendations to the general assembly regarding any necessary legislation needed to further the purposes of the board.

**410.4(4)** *Program oversight and transparency.* The board shall establish a process for the oversight and transparency of grants distributed by the board.

**261—410.5(83GA,SF376) Board and committee procedures.**

**410.5(1)** *Meetings and agendas.* Meetings of the board and committee(s) are generally held monthly. By notice of the regularly published meeting agenda, the board and committee may hold regular or special meetings at locations within the state. Meeting agendas are available at the following Web site: www.broadband.iowa.gov.

**410.5(2)** *Meeting procedures.*

*a.* Any interested party may attend and observe board and committee meetings except for such portion as may be closed pursuant to Iowa Code section 21.5.

*b.* Observers may use cameras or recording devices during the course of a meeting so long as the use of such devices does not materially hinder the proceedings. The chairperson may order that the use of these devices be discontinued if they cause interference and may exclude any person who fails to comply with that order.

*c.* Open-session proceedings may be electronically recorded. Minutes of open meetings shall be available for viewing at www.broadband.iowa.gov.

**261—410.6(83GA,SF376) Conflicts of interest.**

**410.6(1)** *Definition.*

*"Conflict of interest"* means that a member of the board:

1. Has a significant employment relationship with an applicant; or
2. Is a member of the board of directors or a stockholder of a corporate applicant; or
3. Has a financial relationship with an applicant, including but not limited to an investor, a contractor, or a consultant; or
4. Is an immediate family member of a person who has a conflict of interest under this rule. For the purposes of this rule, "immediate family" means a member's spouse, children, grandchildren and parents.

**410.6(2)** *Procedures.* As soon as a member of the board or a committee becomes aware of a conflict of interest in a project for which applications are filed with the board or for which potential applications are discussed by the board or committee, the member shall follow these procedures:

*a.* If the conflict is known before a meeting, the member shall fully disclose the interest to the chairperson of the board in writing at least 24 hours before the meeting.

*b.* If the conflict is discovered during a meeting, the member shall orally inform the board, and the nature of the conflict shall be reported in writing to the chairperson of the board within 24 hours after the meeting.

*c.* The member who has the conflict shall not participate in discussion or vote on any issues concerned with the project.

These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5).

## CHAPTER 411
## IOWA BROADBAND DEPLOYMENT PROGRAM

**261—411.1(83GA,SF376) Purpose.** These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5), relating to public broadband technology grants for the deployment and sustainability of high-speed broadband access. The purpose of the Iowa broadband deployment program is to promote universal access to sustainable high-speed broadband services, at speeds to exceed federal requirements, throughout the state for the benefit of Iowans, by awarding state grant funds to be used as matching funds for the federal funds available for broadband infrastructure projects.

**261—411.2(83GA,SF376) Definitions.** In addition to the definitions in 261—Chapter 410, the following definitions shall apply to the Iowa broadband deployment program:

*"Affordable rates"* means the current price for high-speed broadband services being charged for similar services in areas with two or more broadband providers, as demonstrated by published or advertised unbundled prices. If there are no existing high-speed broadband services in the proposed funded service area or if there is only one existing provider of high-speed broadband services in the proposed funded service area, projects will be evaluated on the ability of applicants to demonstrate that their proposed pricing is affordable for the service area.

*"Areas capable of timely implementation of high-speed broadband access"* means those areas in Iowa where broadband infrastructure projects can be deployed or completed consistent with requirements established for federal funding.

*"Community anchor institutions"* means schools, libraries, medical and healthcare providers, public safety entities, community colleges and other institutions of higher education, and other community support organizations and agencies that provide outreach, access, equipment, and support services to facilitate greater use of broadband service by vulnerable populations, including low-income, unemployed, and the aged.

*"Critical community facilities"* means public facilities that provide community services essential for supporting the safety, health, and well-being of residents, including, but not limited to, emergency response and other public safety activities, hospitals and clinics, libraries and schools.

*"Economically sustainable"* means that a broadband project funded by the board will require no further government assistance beyond the funding period to remain viable into the future. A broadband project shall not be deemed "economically sustainable" if the broadband project will only continue beyond the funding period with the assistance of additional government grants. Notwithstanding anything to the contrary in this definition, "government assistance" shall not include: (1) fees or other revenues paid from government users in exchange for the ordinary use of broadband services, or (2) ongoing government funding provided by the federal Universal Service Fund. For purposes of this definition, "government" refers to any branch or level of government, including the federal government, any state government, or any political subdivision.

*"Federal funds"* means funding available for broadband infrastructure initiatives under the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (Feb. 17, 2009) that will be awarded by either the U.S. Department of Agriculture Rural Utilities Service through the Broadband Initiatives Program (BIP) or the U.S. Department of Commerce National Telecommunications and Information Administration through the Broadband Technology Opportunities Program (BTOP).

*"Federal requirements"* means requirements established for the receipt of federal funds for broadband infrastructure initiatives pursuant to the American Recovery and Reinvestment Act of 2009.

*"Grant agreement"* means the agreement between the grantee and the ITTC, on behalf of the board for grants awarded under the program, including any amendments thereto.

*"Grantee"* means the recipient of a grant under the program.

*"Grant funds"* means state funds provided pursuant to a grant made under the program.

*"High-speed broadband service"* or *"broadband"* means providing two-way data transmission with advertised speeds that exceed 768 kilobits per second (kbps) downstream and at least 200 kbps upstream to end users, or providing sufficient capacity in a middle mile project to support the provision of broadband service to end users.

*"Last mile project"* means any infrastructure project the predominant purpose of which is to provide broadband service to end users or end-user devices (including households, businesses, community anchor institutions, public safety entities, and critical community facilities).

*"Middle mile project"* means a broadband infrastructure project that does not predominantly provide broadband service to end users or to end-user devices, and may include interoffice transport, backhaul, Internet connectivity, or special access.

*"Program"* means the Iowa broadband deployment program administered by the governance board to award funds available for broadband deployment pursuant to the competitive grant process established in these rules and to oversee the establishment and implementation of a statewide high-speed broadband deployment plan.

*"Qualified private providers"* means nongovernmental local exchange carriers, cable television companies, commercial mobile radio service companies, or other entities that offer or are capable of offering broadband services in Iowa and that make minimum broadband capacity available to all business, government, educational, and residential locations within the project area.

*"State broadband mapping project"* means the statewide broadband data collection, mapping, and planning project conducted by the state's designated eligible entity in cooperation with the Iowa utilities board under the Broadband Data Improvement Act of 2008 (BDIA), Title I of Public Law 110-385, 122 Stat. 4096 (Oct. 10, 2008) and as funded by the State Broadband Data and Development Grant Program.

*"Synchronous data transmission"* means broadband transmission services where the upstream and downstream speeds are equal.

*"Underserved areas of the state"* means, for last mile projects, a proposed funded service area composed of one or more contiguous census blocks where (1) no more than 50 percent of the households have access to facilities-based, terrestrial broadband service at speeds that exceed the minimum broadband transmission speeds set forth in the definition of "broadband" above; (2) no fixed or mobile broadband service provider advertises broadband transmission speeds of at least three megabits per second downstream; or (3) the rate of broadband subscribership is 40 percent of households or less. A proposed funded service area may qualify as underserved for middle mile projects if one interconnection point terminates in a proposed funded service area that qualifies as unserved or underserved for last mile projects.

*"Unserved areas of the state"* means a proposed funded service area composed of one or more contiguous census blocks where at least 90 percent of households in the proposed funded service area lack access to facilities-based, terrestrial broadband service, either fixed or mobile, at speeds that exceed the minimum broadband transmission speeds set forth in the definition of "broadband" above. A household has access to broadband service if the household can readily subscribe to that service upon request.

**261—411.3(83GA,SF376) Eligible applicants.** The following entities are eligible to apply for assistance:

1. State agencies and local governments, including municipal utilities;
2. A nonprofit foundation, a nonprofit corporation, a nonprofit institution, or a nonprofit association, or other nonprofit entities; and
3. Qualified private providers.

**261—411.4(83GA,SF376) Forms of assistance.** Financial assistance for an application approved by the board will be provided in the form of a grant. Grants shall be subject to the provisions of 2009 Iowa Acts, Senate File 376, section 13(5), the administrative rules in 261—Chapters 410 through 412, and the terms and conditions of a grant agreement.

**261—411.5(83GA,SF376) Threshold application requirements.** Applicants must satisfy threshold eligibility requirements to qualify for funding. Applications that fail to meet threshold eligibility requirements will not be considered by the board. An applicant must meet each of the following threshold eligibility factors in order to be considered for a grant award by the board:

**411.5(1)** *Fully completed application.* Applicants must submit a complete application and provide all supporting documentation required for the application.

**411.5(2)** *Timely project completion.* A project is eligible only if the application demonstrates that the project can be completed within 24 months of the award date or by December 31, 2012, whichever date is earlier.

**411.5(3)** *Fully funded project costs.* A project is eligible only if, after approval of the grant and any federal grants and loans, all project costs can be fully funded. To demonstrate this, applicants must include with the application evidence of all funding necessary to support the project.

**411.5(4)** *Capital projects.* A project is eligible only if the proposed project is for capital expenditures. Program grant funds shall only be used for capital expenditures. The board may require applicants to submit descriptions and itemized lists of capital expenditures for which the applicants intend to use grant money. Additionally, all uses and proposed uses of grant funds shall be subject to review by the board, attorneys for the board or the state of Iowa, and any accountants or auditors retained by the board or the state of Iowa. If a use or proposed use of grant funds is not for capital expenditures, as defined by the board's legal counsel or generally accepted accounting principles, the board may withdraw all or part of a grant award and the board may seek recovery of any grant funds already disbursed to the grantee. Nothing in this subrule shall be construed as limiting the board's authority or any remedies available to the board to ensure that grant awards are spent only on capital expenditures. Furthermore, nothing in this subrule shall be construed as limiting the board's authority to impose additional restrictions on the use of grant funds in award contracts with grantees.

**411.5(5)** *Economically sustainable.* Only projects that are economically sustainable are eligible for an award. Applicants must demonstrate through a viable business plan that any project undertaken and funded by the board shall be economically sustainable.

**411.5(6)** *Minimum broadband capacity.* Only projects that intend to provide "high-speed broadband service," as defined in 261—411.2(83GA,SF376), throughout the project area are eligible for an award.

**411.5(7)** *Federal funds.* Only projects that will further the purposes of 2009 Iowa Acts, Senate File 376, section 13(5), and that have received a notice of an award of federal funds under either the BIP or BTOP Program are eligible for an award.

**411.5(8)** *Project meets statutory requirements.* 2009 Iowa Acts, Senate File 376, section 13(5), establishes minimum eligibility requirements for the program. Only projects that meet these statutory requirements for assistance are eligible for an award. To qualify, projects must be designed to accomplish all of the following:

*a.* Provide minimum broadband capacity throughout the area as determined by the governance board consistent with any applicable state and federal law or guidelines. The governance board shall ensure that the minimum broadband capacity established exceeds any federal requirements established with regard to the availability of federal funds.

*b.* Make broadband connections available to all business, government, educational, and residential locations within the project area, as appropriate for the type of project.

*c.* Utilize, where appropriate and feasible, existing privately owned telecommunications fiber infrastructure and wireless facilities to establish universal access to high-speed broadband services, as appropriate and consistent with the priorities established by the governance board for the program.

*d.* Demonstrate that any project undertaken and funded by the governance board shall be economically sustainable with no further government assistance based upon expected revenue generation.

**261—411.6(83GA,SF376) Application process.**

**411.6(1)** *Notice of intent to apply for state broadband deployment funds.* Potential applicants are encouraged to submit a Notice of Intent to Apply form to the board prior to submitting an application

with the board. A copy of the form is available at www.broadband.iowa.gov. Failure to complete and submit a Notice of Intent to Apply form shall not preclude an entity from applying for or receiving a grant from the board. Furthermore, the board shall not prejudice or take other adverse action against an entity because that entity failed to complete and submit a Notice of Intent to Apply form.

**411.6(2)** *Application contents.* The board shall develop a standardized application for the program and make the application available at www.broadband.iowa.gov.

**411.6(3)** *Application time line and submittal.* Applicants for state broadband deployment funds shall submit a completed application within 15 calendar days after being notified that the applicant has been awarded federal funds under either the BIP or BTOP Program. Along with the completed state broadband grant application, all applicants shall submit: (1) a copy of the applicant's federal application and all information required to be submitted with the applicant's federal application, and (2) all records the applicant received from the BIP and BTOP Programs that relate to the applicant's federal award, including but not limited to any award letters. Completed state broadband grant applications and all information required to be submitted with the application shall be submitted to ITTC via the Iowa Grant Notification Storefront and Electronic Grant Management System (www.iowagrants.gov).

**411.6(4)** *Request for confidential treatment.* Applicants who would like to request that the board treat a record or part of a record as a confidential record must comply with the fair information practices listed at 751—Chapter 2.

**261—411.7(83GA,SF376) Application review procedures.**

**411.7(1)** *Application review committee and final board action.*

*a. Application review committee.* Applications meeting the threshold requirements of rule 261—411.5(83GA,SF376) will be reviewed by an application review committee ("the committee"). The committee shall consist of at least two board members and at least five staff members jointly provided by IDED, ITTC, and IUB.

*b. Committee review and recommendation to the board.* The committee members will score the applications according to the criteria set forth in subrule 411.7(2). A copy of the application scoring sheet that will be used by the committee is available for viewing at www.broadband.iowa.gov. The committee shall use consensus scoring and shall rank order the applications. The committee shall prepare a summary of the applications and the rank order scoring results and shall present to the board the committee's recommendations for approval, denial, or deferral of applications.

*c. Board action.* All eligible applications and any summaries and recommendations by the application review committee will be reviewed by the board. Summaries, scores, and recommendations by the application review committee shall be wholly advisory and shall be for the board's convenience. The board shall not be bound by any findings or conclusions of the application review committee, and the board shall not be required to give deference to any determination by the application review committee. The board may create summaries, award scores, or make conclusions that depart in whole or in part from those conclusions reached by the application review committee. The board shall make the final decision on all applications.

**411.7(2)** *Evaluation criteria.* The application review committee shall evaluate and score applications based on the following criteria:

*a. Project purpose.* (0-25 points) An application will be reviewed to evaluate the purpose of the project and its consistency with statutory intent for this program. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Promote universal access. The degree to which a project will provide service to unserved areas or improve service to underserved areas of Iowa as identified by current broadband availability data or as ultimately determined by the state broadband mapping project.

1. If a project proposes to serve an unserved area, the percentage of households in the proposed service area (as defined by census block) that will be served by the project.

2. If a project proposes to improve service to an underserved area, the percentage of households in the proposed service area (as defined by census block) that will have improved service.

Points will be awarded on a sliding scale. The higher the percentage of households that will be served or that will have improved service, the more points awarded.

(2) Private enterprise. Whether the applicant is a qualified private provider. Additional consideration will be given to applications from qualified private providers of broadband service.

(3) Public-private partnership. Whether public and private collaboration is required for the project, as appropriate.

(4) Public entities. Whether participation by the public entity will promote access in an area that remains unserved or underserved due to lack of private sector investment.

*b. Project benefits.* (0-25 points) Applications will be reviewed to evaluate the degree to which the proposed project will offer service at an advertised speed which exceeds the federal requirements. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Advertised speeds above federal minimums. For wireline last mile projects and wireless last mile projects, the advertised downstream and upstream speeds. More points will be awarded for higher speeds.

(2) Middle mile projects. For middle mile projects, the degree to which the proposed project is sustainable and supports the goal of universal access to high-speed broadband service for the benefit of Iowans. Consideration will be given to the project's impact on the area, including proposed connections to last mile networks and benefit to community anchor institutions or public safety entities; the level of need for the project in the area, including whether projected end users are located in unserved or underserved areas; and network capacity, i.e., whether the network provides sufficient capacity to serve last mile networks, community anchor institutions and public safety entities.

(3) Synchronous data transmission. Whether the proposal contemplates synchronous data transmission capabilities and at what speed.

(4) Affordability of services offered. Proposed pricing will be evaluated based on comparison to published unbundled prices and speeds for existing broadband services in the proposed funded service area. If there are no existing broadband services present, an applicant must demonstrate that proposed pricing is appropriate for the proposed service area.

(5) Community impact. How the project impacts job creation and economic development and provides other benefits to the targeted community.

(6) Speed of completion. How quickly the project will be completed.

*c. Project viability.* (0-25 points) Applications will be reviewed to evaluate the viability of the proposed project. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Economic sustainability. The extent to which the proposed project will not require any additional funding from the state in the course of normal operations.

(2) Applicant's track record. Whether the applicant possesses a record of accomplishment for historically similar projects.

(3) Financial metrics. How the project compares to similar projects, including but not limited to return on investment, internal rate of return, net present value, payback, break-even analysis, capital cost per household, and debt metrics.

*d. Project budget and sustainability.* (0-25 points) Applications will be reviewed to evaluate the reasonableness of the budget and sustainability of the proposed project. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Reasonableness of the budget. Points will be awarded based on adequacy and completeness of the proposed budget.

(2) Ratio of state funding request to number of households passed (cost of funding request per household). Points will be awarded on a sliding scale. More points will be awarded for lower cost per household.

(3) Funding leverage (outside funding/government funding). The degree to which the proposed project leverages outside funding sources. The higher the ratio, the more points awarded.

**261—411.8(83GA,SF376) Administration of awards.**

**411.8(1)** *Notice of award and conditions.* Applicants will be notified in writing of the board's decision, including any conditions and terms of approval. Award conditions may include but are not limited to the following:

*a. Awards conditioned on completion of external requirements.* Certain activities may require that permits or clearances be obtained from other state or local agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

*b. Awards conditioned on other financial sources.* Awards may be conditioned upon commitment of other sources of funds necessary to complete the activity, including the receipt of federal grants or loans.

*c. Awards conditioned on implementation plan.* Awards may be conditioned upon ITTC's receipt and approval on behalf of the board of an implementation plan for the funded activity.

**411.8(2)** *Contract required.*

*a. Contract contents.* A contract shall be executed between the recipient and ITTC on behalf of the board. The rules in 261—Chapters 410 to 412 and applicable state laws and regulations shall be part of the contract. The agreement will include, but is not limited to:

(1) A description of the project to be completed by the recipient.

(2) Length of the project period.

(3) Conditions to disbursement as approved by the board.

(4) Reporting requirements, to be made to the board consistent with federal requirements, on the use and effectiveness of the grant funding.

(5) The reimbursement requirements of the recipient or other penalties imposed on the recipient in the event the recipient does not meet the commitments set forth in the contract, in the documentation provided to establish eligibility, or in other provisions negotiated on a project-by-project basis.

*b. Contract amendments.* Any substantive change to a funded project will require a contract amendment approved by the board. Substantive changes include, but are not limited to, contract time extension, budget revisions, and significant alterations of existing activities or beneficiaries.

**411.8(3)** *Deadline for contract execution.* A recipient must execute and return the contract to ITTC within 60 days after the contract is sent to the recipient. Failure to do so may be cause for the board to terminate the award.

**411.8(4)** *Accounting.* On behalf of the board, the telecommunications and technology commission shall establish separate accounts for the bond proceeds and non-bond proceeds received to fund Iowa broadband deployment program grants.

**411.8(5)** *Grant information posted on Web site.* All disbursements and related, nonconfidential information for each grant will be posted on www.broadband.iowa.gov and will be accessible by the public within 30 days after distribution of funds.

**411.8(6)** *Project status reports.*

*a. Quarterly status reports and contents.* Each grantee shall submit a quarterly state status report to the board on or before each of the following dates: March 31, June 30, September 30, and December 31. Each quarterly status report shall, at a minimum, include the following information:

(1) The total amount of the grant from the board;

(2) The total amount of grant funds that the grantee has expended or obligated; and

(3) A detailed list of all projects or activities for which Iowa grants were expended or obligated, including:

1. The name of the project or activity,
2. A description of the project or activity,
3. An evaluation of the completion status of the project or activity, and
4. An estimate of the number of jobs created and the number of jobs retained by the project or activity.

*b. Copies of federal status reports.* At the time the grantee submits this state quarterly status report, the grantee shall also submit copies of the grantee's most recent federal status reports.

*c.* *Final project completion report.* Within 30 days of completing a project funded by grant funds, a grantee shall submit to the board a final report that summarizes the grantee's quarterly filings, describes the nature of the completed project, and states whether the project's goals have been satisfied.

**411.8(7)** *Report to legislature.* The board shall provide a report to the general assembly, the legislative services agency, and the department of management on the status of all projects completed or in progress. The board shall submit the report each year, on or before January 15.

*a.* The report shall include the following information about each project funded by grants awarded by the board:

(1) A description of the project,
(2) The work completed on the project,
(3) The total estimated costs of the project,
(4) A list of all revenue sources being used to fund the project,
(5) The amount of funds expended on the project,
(6) The amount of funds obligated to the project, and
(7) The date the project was completed or an estimated completion date of the project.

*b.* The report may include any other information related to the board and the board's activities, including but not limited to descriptions of significant board actions and requests for additional legislation that would further the purposes of the board.

These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5).

## CHAPTER 412
## FAIR INFORMATION PRACTICES, WAIVER AND VARIANCE, AND PETITION FOR RULE MAKING

**261—412.1(83GA,SF376) Fair information practices.** The board shall follow ITTC's rules in 751—Chapter 2, regarding public records and fair information practices.

**261—412.2(83GA,SF376) Waiver and variance.** The board shall follow IDED's rules in 261—Chapter 199, regarding waivers and variances of administrative rules.

**261—412.3(83GA,SF376) Petition for rule making.** The board shall follow IDED's rules in 261—Chapter 197, regarding petitions for rule making.

These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 13(5).

[Filed Emergency 9/17/09, effective 9/17/09]
[Published 10/7/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

# ARC 8210B
# ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 103, "Information Technology Training Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 12, 2009, as **ARC 8032B**.

The amendments update Iowa Code citations; add references to 2009 Iowa Acts, Senate File 142, which permits moneys in the Innovation and Commercialization Fund to be used for information technology training; expand the program to businesses outside the targeted industries of biosciences, advanced manufacturing, and information technology; and limit eligible equipment or software costs to $1,000, respectively.

A public hearing about the proposed amendments was held on September 2, 2009. The following comments were received:

• We would support the rule change to include companies outside the targeted industries. As a member of the technology community, we certainly can see the benefit of expanding the definition to offer the ability for many companies to better provide training and improve the technology image and climate of the state. – Michael Bird, President/Owner, Spindustry Interactive, Des Moines

• I support these changes. – Dr. Eugene Wallingford, Department of Computer Science, Department Head, University of Northern Iowa

• I have three specific businesses I work with who have expressed interest in this grant to me but they currently do not qualify. These are just a few companies that this grant can help curb the cost of training during these economic times. – Justin Johnson, Account Executive, New Horizons of Cedar Rapids

As a result of these comments, no changes were made to the final amendments. The final amendments are identical to the proposed amendments.

The Iowa Economic Development Board adopted these amendments on September 17, 2009.

These amendments will become effective on November 11, 2009.

These amendments are intended to implement Iowa Code section 15.411 as amended by 2009 Iowa Acts, Senate File 142.

The following amendments are adopted.

ITEM 1. Amend **261—Chapter 103,** parenthetical implementation statutes, as follows:
(15,83GA,SF142)

ITEM 2. Amend rule 261—103.1(15,83GA,SF142) as follows:

**261—103.1(15,83GA,SF142) Authority.** The authority for establishing rules governing the information technology training program under this chapter is provided in ~~2007 Iowa Acts, House File 829, section 1(5)~~ Iowa Code section 15.411(10).

ITEM 3. Amend subrule 103.6(2) as follows:

**103.6(2)** Equipment and software, when used for training, may be an allowable cost. If equipment or software is purchased for use in training but is subsequently retained for use in the general operation of the applicant's business, only the prorated portion of the equipment or software costs directly related to the training shall be eligible for program funding. Prorated costs for equipment or software shall not exceed $1,000, respectively.

ITEM 4. Amend rule 261—103.7(15,83GA,SF142) as follows:

**261—103.7(15,83GA,SF142) Eligible business.** To be eligible for this program, the business, or a department of the business, must be engaged in the delivery of information technology services ~~in the~~

~~targeted industries of biosciences, advanced manufacturing, or information technology as identified by the North American Industry Classification System,~~ and the business must be located in Iowa.

ITEM 5. Amend subrule 103.13(3) as follows:

**103.13(3)** *Reporting.* An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to ~~2007 Iowa Acts, House File 829, section 10,~~ Iowa Code section 15.104(9)*"l"* and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

ITEM 6. Amend **261—Chapter 103**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ section 15.411(5) and 2009 Iowa Acts, Senate File 142.

[Filed 9/17/09, effective 11/11/09]
[Published 10/7/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

## ARC 8211B
## ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development rescinds Chapter 110, "Lean Manufacturing Institute," and amends Chapter 111, "Supplier Capacity and Product Database Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 12, 2009, as **ARC 8031B**.

These amendments update Iowa Code citations; add references to 2009 Iowa Acts, Senate File 142, section 1, which permits moneys in the Innovation and Commercialization Fund to be used for supply chain initiatives; revise the title of Chapter 111; add a definition of "performance improvement programs"; and rescind Chapter 110, "Lean Manufacturing Institute." The revised Supply Chain Development Program incorporates activities currently found in Chapter 110. These amendments will allow applicants with projects that qualified under the Lean Manufacturing Institute to qualify under the Supply Chain Development Program.

A public hearing about the proposed amendments was held on September 11, 2009. No written or oral comments were received about the proposed amendments. The final amendments are identical to the proposed amendments.

The Iowa Economic Development Board adopted these amendments on September 17, 2009.

These amendments will become effective on November 11, 2009.

These amendments are intended to implement Iowa Code section 15.411 as amended by 2009 Iowa Acts, Senate File 142, section 1.

The following amendments are adopted.

ITEM 1. Rescind and reserve **261—Chapter 110**.

ITEM 2. Amend **261—Chapter 111**, title, as follows:

~~SUPPLIER CAPACITY AND PRODUCT DATABASE~~ SUPPLY CHAIN DEVELOPMENT PROGRAM

ITEM 3. Amend **261—Chapter 111**, parenthetical implementation statutes, as follows:

(~~82GA,ch122~~ 15,83GA,SF142)

ITEM 4. Amend rule 261—111.1(15,83GA,SF142) as follows:

**261—111.1(15,83GA,SF142) Authority.** The authority for establishing rules governing the ~~supplier capacity and product database~~ supply chain development program is ~~2007 Iowa Acts, chapter 122, section 7(2)~~ Iowa Code section 15.411(10).

ITEM 5. Rescind the definition of "Supplier capacity and product database" in rule **261—111.3(15,83GA,SF142)**.

ITEM 6. Adopt the following **new** definition of "Performance improvement programs" in rule **261—111.3(15,83GA,SF142)**:

*"Performance improvement programs"* means process management philosophies, best practices, and appropriate tools from methodologies in use in manufacturing total quality and value systems that support supply chain development and provide a competitive advantage.

ITEM 7. Amend subrule 111.4(2) as follows:

**111.4(2)** Funds shall be used for the analysis of targeted industry clusters and the development and delivery of manufacturing supply chain development programs. Funds may be used for personnel salaries, software, research data services, and ~~training~~ the development and delivery of performance improvement programs. ~~Funds shall not be used to purchase equipment.~~ Funds may be used for the systematic design and layout planning for manufacturing operational areas and to purchase machinery and equipment.

ITEM 8. Amend subrule 111.11(3) as follows:

**111.11(3)** *Reporting.* An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to ~~2008 Iowa Acts, House File 2450, section 6(9)"l,"~~ Iowa Code section 15.104(9)*"l"* and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

ITEM 9. Amend **261—Chapter 111**, implementation sentence, as follows:

These rules are intended to implement ~~2007 Iowa Acts, chapter 122, section 7(2)~~ Iowa Code section 15.411 as amended by 2009 Iowa Acts, Senate File 142, section 1.

[Filed 9/17/09, effective 11/11/09]
[Published 10/7/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

## ARC 8212B

# ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 112, "Management Talent Recruitment Program," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 12, 2009, as **ARC 8030B**.

These amendments update Iowa Code citations; add references to 2009 Iowa Acts, Senate File 142, which permits moneys in the Innovation and Commercialization Fund to be used for recruiting management talent; revise the purpose of the program to include recruitment of in-state management talent; and revise the definition of "early-stage company" to mean a company with five or fewer years of operating experience.

A public hearing about the proposed amendments was held on September 11, 2009. No written or oral comments were received about the proposed amendments. The final amendments are identical to the proposed amendments.

The Iowa Economic Development Board adopted these amendments on September 17, 2009.

These amendments will become effective on November 11, 2009.

These amendments are intended to implement Iowa Code section 15.411 as amended by 2009 Iowa Acts, Senate File 142.

The following amendments are adopted.

ITEM 1. Amend **261—Chapter 112**, parenthetical implementation statutes, as follows:

(~~82GA,ch122~~ 15,83GA,SF142)

ITEM 2. Amend rule 261—112.1(15,83GA,SF142) as follows:

**261—112.1(15,83GA,SF142) Authority.** The authority for establishing rules governing the management talent recruitment program is ~~2007 Iowa Acts, chapter 122, section 7(8)~~ Iowa Code section 15.411(10).

ITEM 3. Amend rule 261—112.2(15,83GA,SF142) as follows:

**261—112.2(15,83GA,SF142) Purpose.** The purpose of this program is to develop activities for the recruitment of ~~out-of-state~~ executive and operations management personnel. New or expanding targeted industries will be provided technical assistance to identify a network of potential human capital resources appropriate for the targeted industries' business life cycle.

ITEM 4. Amend rule **261—112.3(15,83GA,SF142)**, definition of "Early-stage company," as follows:

*"Early-stage company"* means a company with ~~three~~ five or fewer years of operating experience.

ITEM 5. Amend subrule 112.11(3) as follows:

**112.11(3)** *Reporting.* An applicant shall submit any information requested by the department in sufficient detail to permit the department to prepare the report required pursuant to ~~2008 Iowa Acts, House File 2450, section 6(9)"l,"~~ Iowa Code section 15.104(9)*"l"* and any other reports deemed necessary by the department, the board, the general assembly or the governor's office.

ITEM 6. Amend **261—Chapter 112**, implementation sentence, as follows:

These rules are intended to implement ~~2007 Iowa Acts, chapter 122, section 7(8)~~ Iowa Code section 15.411 as amended by 2009 Iowa Acts, Senate File 142.

[Filed 9/17/09, effective 11/11/09]

[Published 10/7/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

## ARC 8213B

# ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development amends Chapter 211, "Community Attraction and Tourism Development (CATD) Programs," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 12, 2009, as **ARC 8033B**. These amendments were also simultaneously Adopted and Filed Emergency as **ARC 8034B** on that same date.

The amendments incorporate recent legislative changes made by 2009 Iowa Acts, House File 822, that impact the committee structure within the Vision Iowa Board. Pursuant to 2009 Iowa Acts, House File 822, the Community Attraction and Tourism (CAT) Review Committee will continue to review CAT applications and the Vision Iowa Review Committee will evaluate and rank River Enhancement Community Attraction and Tourism (RECAT) applications. Pursuant to 2009 Iowa Acts, Senate File 336,

an applicant for financial assistance under the CAT or RECAT program may apply to the Vision Iowa Board for a waiver of any local or private matching moneys required by the Board. These amendments establish a process by which the Vision Iowa Board will review requests to waive any local or private matching moneys.

A public hearing was held on September 3, 2009. No written or oral comments were received about the proposed amendments. At the September 8, 2009, Administrative Rules Review Committee meeting, there were two comments from Committee members about the amendments. The first commenter asked why the Department changed the definition of "river enhancement community attraction and tourism project." This definition was changed to incorporate the legislative revisions made by 2009 Iowa Acts, House File 822. The definition is identical to the language in House File 822. The second comment was about the definition of "good cause" in subrule 211.103(2). Some Committee members expressed concern about expanding the ability of the Vision Iowa Board to approve waivers in circumstances other than those related to applicants from a disaster area. The final amendments revised this subrule to limit its application only to waivers from applicants within a disaster area. Subrule 211.103(2) now reads as follows:

"**211.103(2)** *Definition of 'good cause.'* For purposes of this rule, 'good cause' includes only a proposed project that is located or plans to locate in an area declared a disaster area by the governor or by a federal official. To qualify for a waiver on the basis of a disaster area, an applicant shall meet all of the following criteria:

"*a.* The project must be located within an area declared a disaster area by the governor or by a federal official.

"*b.* The community must apply for the waiver within 24 months of the date of the disaster declaration.

"*c.* The community must document why a waiver is necessary as a result of the natural disaster."

The Iowa Economic Development Board adopted these amendments on September 17, 2009.

These amendments will become effective on November 11, 2009, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code chapter 15F as amended by 2009 Iowa Acts, House File 822 and Senate File 336.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [211.2, 211.8, 211.9, 211.103] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 8033B** and Adopted and Filed Emergency as **ARC 8034B**, IAB 8/12/09.

[Filed 9/17/09, effective 11/11/09]

[Published 10/7/09]

[For replacement pages for IAC, see IAC Supplement 10/7/09.]

## ARC 8187B

# EDUCATION DEPARTMENT[281]

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby rescinds Chapter 22, "Postsecondary Enrollment Options," and adopts new Chapter 22, "Senior Year Plus Program," Iowa Administrative Code.

2008 Iowa Acts, chapter 1181, division II, created a new chapter in the Iowa Code, chapter 261E, "Senior Year Plus Program." The Senior Year Plus Program established in legislation provides Iowa high school students increased access to advanced placement coursework and postsecondary credit. The variety of means for the latter includes postsecondary enrollment options, concurrent enrollment in community college courses for both secondary and postsecondary credit, career academies, and courses delivered via the Iowa Communications Network (ICN) or Internet.

Notice of Intended Action was published in the March 11, 2009, Iowa Administrative Bulletin as **ARC 7612B**. A public hearing was held March 31, 2009, at 15 sites via the ICN, and public comments were allowed until close of business on March 31, 2009. Approximately 30 persons, all of them representing community colleges, attended the public hearing, and 6 of them provided comment. Five additional written comments were received.

The majority of those comments centered around conditions that are statutory, e.g., complaints about funding, the new proficiency requirements, the prohibition against any student being enrolled full-time at any one postsecondary institution, and the background check required for instructors. Many of the comments asked questions about implementation. Two comments asked why the statutory language regarding the transportation requirement for concurrent enrollment courses is not duplicated in the rules. The Department's guidance to school districts has long been that districts receiving supplementary weighting for concurrent enrollment courses have an obligation to use some of those funds to provide transportation to students who take advantage of concurrent enrollment courses, and the Department is seeking clarification from the Legislature regarding this issue. Until then, the rule (281—22.12) is silent on the issue; Iowa Code subsection 261E.8(5) presently states that such transportation is the obligation of the student and the student's parent or guardian.

In addition to the comments received during the formal public comment period, several comments were received after the public comment period had closed. The Department chose to take those comments into consideration. The majority of these comments again were from persons representing community colleges, and all of these persons objected to the definition of "full time," wanting it to allow eligible students to take more than 24 postsecondary credit hours in an academic year. Representatives of one school district raised the same objection and cited the challenges to students who attend a high school that uses block scheduling rather than a traditional eight-period school day.

As a result of the challenge raised by the school district, the Department has changed the definition of "full time" to give more flexibility to students while not increasing the burden on property taxpayers. However, the Department is not further changing that definition to allow students to take 24 or more credit hours of postsecondary credit in any one academic year for the following reasons:

- The definition used by the Department is consistent with the definition federally mandated for use by the Iowa College Student Aid Commission, and the Department believes it would be confusing at best and disingenuous at worst to craft a different definition.
- There is no prejudice to students. A student is not confined to taking less than 24 hours of postsecondary credit in any one academic year.

– The student may take 12 or more credit hours per grading period from more than one postsecondary institution. The rules only prohibit a student from enrolling via Senior Year Plus programs as a full-time student in the same postsecondary institution. In theory, a student could take 6 credit hours at NIACC, 6 from Wartburg College, and another 3 from Upper Iowa University, all in the same grading period.

– The student may take 12 or more credit hours from the same postsecondary institution, but any course or courses that render the student "full time" cannot be claimed by the district for supplementary weighting. Thus, the student either pays for those extra credit hours or the community college reaches an agreement with the district whereby the student pays nothing.

As a result of public comment, the following additional changes were made to the rules as published under Notice:

- An explanation of "supplement, not supplant" has been added to paragraph 22.4(2)"a." A parallel change was made to rule 281—22.18(261E) to explain "comparable" course. These are the same concepts.
- A definition for "Dually enrolled" has been added to rule 281—22.6(261E).
- The requirement that community colleges collect and report the course title and whether the course supplements, rather than supplants, a school district course has been omitted from subrule 22.11(7) (and the remaining paragraphs have been relettered accordingly) because this is a requirement already imposed on school districts in paragraph 22.4(2)"a."

- A minor change has been made to subrule 22.16(2) to be consistent with the terminology used in 281—Chapter 31, Competent Private Instruction. The phrase "under the same terms and conditions" was changed to "on the same basis."
- Regarding the proficiency of students under competent private instruction, subparagraph 22.2(2)"b"(3) was amended to direct school districts to accept assessments permitted pursuant to Iowa Code section 299A.2 or 299A.4. Subrules 22.7(5) and 22.16(2) were amended nonsubstantively for the purpose of reflecting the change to subparagraph 22.2(2)"b"(3).

As a result of staff review, rules 281—22.2(261E) and 22.16(261E) were amended to clarify that the statutory requirement that students show proficiency as a condition of participation in Senior Year Plus programs does apply to 281—Chapter 22, Division V (Postsecondary Enrollment Options), and to advanced placement coursework and career academy courses if those courses are taken for postsecondary credit and secondary credit. This change is not favored by the Home School Legal Defense Association (HSLDA), which represents families who provide competent private instruction to their children. The HSLDA believes that the Legislature did not intend to impose the requirement of proficiency on any student who desires to access postsecondary enrollment options courses. Based on communications with the Department's legislative liaison, the Department disagrees with the HSLDA. The complete comment from the HSLDA will be given to all members of the Administrative Rules Review Committee, its staff, and pertinent caucus staff members and is available to any other person upon request.

Also, as a result of staff review, the last sentence in rule 281—22.8(261E) was deleted in order to be consistent with changes made to the statute. In addition, nonsubstantive changes were made to subrule 22.21(2).

An agencywide waiver provision is provided in 281—Chapter 4.

This amendment is intended to implement Iowa Code chapter 261E.

This amendment will become effective November 11, 2009.

The following amendment is adopted.

Rescind 281—Chapter 22 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 22
## SENIOR YEAR PLUS PROGRAM

### DIVISION I
### GENERAL PROVISIONS

**281—22.1(261E) Scope.** The senior year plus program provides Iowa high school students access to advanced placement courses and a variety of means by which to concurrently access secondary and postsecondary credit.

**281—22.2(261E) Student eligibility.** A student shall meet all of the following criteria as a condition of participation in the programs described in Divisions IV and V of this chapter. To the extent that postsecondary credit is available to a student under the programs described in Divisions III and VI, the student shall meet all of the following criteria. A student who desires to participate in the postsecondary enrollment options program under Division V of these rules also shall meet the eligibility requirements set forth in rule 281—22.16(261E).

**22.2(1)** *Requirements established by postsecondary institution.*

*a.* The student shall meet the enrollment requirements established by the eligible postsecondary institution providing the course credit.

*b.* The student shall meet or exceed the minimum performance measures on any academic assessments that may be required by the eligible postsecondary institution.

*c.* The student shall have taken the appropriate course prerequisites, if any, prior to enrollment in the eligible postsecondary course, as determined by the eligible postsecondary institution delivering the course.

**22.2(2)** *Requirements established by school district.*

*a.* The student shall have attained the approval of the school board or its designee and the eligible postsecondary institution to register for the postsecondary course.

*b.* The student shall have demonstrated proficiency in all of the content areas of reading, mathematics, and science as evidenced by achievement scores on the most recent administration of the Iowa tests of basic skills (ITBS) or the Iowa tests of educational development (ITED) for which scores are available for the student. If the student was absent for the most recent administration of either the ITBS or ITED, and such absence was not excused by the student's school of enrollment, the student is deemed not to be proficient in any of the content areas. The school district may determine whether such student is eligible for qualification under an equivalent qualifying performance measure.

(1) If a student is not proficient in one or more of the content areas of reading, mathematics, and science, the school board may establish alternative but equivalent qualifying performance measures. The school board is not required to establish equivalent performance measures, but if it does so, such measures may include but are not limited to additional administrations of the state assessment, portfolios of student work, student performance rubric, or end-of-course assessments. A school board that establishes equivalent performance measures shall also establish criteria by which its district personnel shall determine comparable student proficiency.

(2) A student who attends an accredited nonpublic school and desires to access advanced placement coursework or postsecondary enrollment options shall meet the same eligibility criteria as students in the school district in which the accredited nonpublic school is located.

(3) A student under competent private instruction shall meet the same proficiency standard as students in the school district in which the student is dually enrolled and shall have the approval of the school board in that school district to register for the postsecondary course. In lieu of ITBS or ITED scores as the state assessment, a school district shall accept either the annual assessment instrument used by a student under competent private instruction pursuant to Iowa Code section 299A.4 or the written recommendation of the licensed practitioner providing supervision to the student under competent private instruction pursuant to Iowa Code section 299A.2.

**281—22.3(261E) Teacher eligibility, responsibilities.** A teacher employed to provide instruction under this chapter shall meet the following criteria:

**22.3(1)** *Eligibility.* The teacher shall meet the standards and requirements set forth which other full-time instructors teaching within the academic department are required to meet and which are approved by the appropriate postsecondary administration. An individual under suspension or revocation of an educational license or statement of professional recognition issued by the board of educational examiners shall not be allowed to provide instruction for any program authorized by this chapter. If the instruction for any program authorized by this chapter is provided at a school district facility or a neutral site, the teacher or instructor shall have successfully passed a background investigation conducted in accordance with Iowa Code section 272.2(17) prior to providing such instruction. The background investigation also applies to a teacher or instructor who is employed by an eligible postsecondary institution if the teacher or instructor provides instruction under this chapter at a school district facility or a neutral site. For purposes of this rule, "neutral site" means a facility that is not owned or operated by an institution.

**22.3(2)** *Responsibilities.* A teacher employed to provide instruction under this chapter shall do all of the following:

*a.* Collaborate, as appropriate, with other secondary or postsecondary faculty of the institution that employs the teacher regarding the subject area;

*b.* As assisted by the school district, provide ongoing communication about course expectations, teaching strategies, performance measures, resource materials used in the course, and academic progress to the student and, in the case of students of minor age, to the parent or guardian of the student;

*c.* Provide curriculum and instruction that are accepted as college-level work as determined by the institution;

*d.* Use valid and reliable student assessment measures, to the extent available.

**281—22.4(261E) Institutional eligibility, responsibilities.**

**22.4(1)** *Requirements of both school district and eligible postsecondary institution.*

*a.* The institutions shall ensure that students, or in the case of minor students, parents or guardians, receive appropriate course orientation and information, including but not limited to a summary of applicable policies and procedures, the establishment of a permanent transcript, policies on dropping courses, a student handbook, information describing student responsibilities, and institutional procedures for academic credit transfer.

*b.* The institutions shall ensure that students have access to student support services, including but not limited to tutoring, counseling, advising, library, writing and math labs, and computer labs, and student activities, excluding postsecondary intercollegiate athletics. If a fee is charged to other students of the eligible postsecondary institution for any of the above services, that fee may also be charged to participating secondary students on the same basis as it is charged to postsecondary students.

*c.* The institutions shall ensure that students are properly enrolled in courses that will carry college credit.

*d.* The institutions shall ensure that teachers and students receive appropriate orientation and information about the institution's expectations.

*e.* The institutions shall ensure that the courses provided achieve the same learning outcomes as similar courses offered in the subject area and are accepted as college-level work.

*f.* The institutions shall review the course on a regular basis for continuous improvement, shall follow up with students in order to use information gained from the students to improve course delivery and content, and shall share data on course progress and outcomes with the collaborative partners involved with the delivery of the programming and with the department, as needed.

*g.* The institutions shall not require a minimum or a maximum number of postsecondary credits to be earned by a high school student under this chapter. However, no student shall be enrolled as a full-time student in any one postsecondary institution.

*h.* The institutions shall not place restrictions on participation in senior year plus programming beyond that which is specified in statute or administrative rule.

*i.* The institutions shall provide the teacher or instructor appropriate orientation and training in secondary and postsecondary professional development related to curriculum, pedagogy, assessment, policy implementation, technology, and discipline issues.

*j.* The institutions shall provide the teacher or instructor adequate notification of an assignment to teach a course under this chapter, as well as adequate preparation time to ensure that the course is taught at the college level. The specifics of this paragraph shall be locally determined.

**22.4(2)** *Requirements of school district only.*

*a.* The school district shall certify annually to the department, as an assurance in the district's basic education data survey, that the course provided to a high school student for postsecondary credit in accordance with this chapter supplements, and does not supplant, a course provided by the school district in which the student is enrolled. For purposes of these rules, to comply with the "supplement, not supplant" requirement, the content of a course provided to a high school student for postsecondary credit shall not consist of substantially the same concepts and skills as the content of a course provided by the school district.

*b.* The school district shall ensure that the background investigation requirement of subrule 22.3(1) is satisfied. The school district shall pay for the background investigation but may charge the teacher or instructor a fee not to exceed the actual cost charged the school district for the background investigation conducted. If the teacher or instructor is employed by an eligible postsecondary institution, the school district shall pay for the background investigation but may request reimbursement of the actual cost to the eligible postsecondary institution.

**22.4(3)** *Requirements of eligible postsecondary institution only.*

*a.* All eligible postsecondary institutions providing programming under this chapter shall include the unique student identifier assigned to students while in the kindergarten through grade 12 system as a part of the institution's student data management system.

(1) Eligible postsecondary institutions providing programming under this chapter shall cooperate with the department on data requests related to the programming.

(2) All eligible postsecondary institutions providing programming under this chapter shall collect data and report to the department on the proportion of females and minorities enrolled in science-, technology-, engineering-, and mathematics-oriented educational opportunities provided in accordance with this chapter.

*b.* The eligible postsecondary institution shall provide the teacher or instructor with ongoing communication and access to instructional resources and support, and shall encourage the teacher or instructor to participate in the postsecondary institution's academic departmental activities.

**281—22.5(261E)** Reserved.

DIVISION II
DEFINITIONS

**281—22.6(261E) Definitions.** For the purposes of this chapter, the indicated terms are defined as follows:

*"Concurrent enrollment"* means any course offered to students in grades 9 through 12 during the regular school year approved by the board of directors of a school district through a contractual agreement between a community college and the school district that meets the provisions of Iowa Code section 257.11(3).

*"Department"* means the department of education.

*"Director"* means the director of the department of education.

*"Dually enrolled"* means the status of a student who receives competent private instruction under Iowa Code chapter 299A and whose parent, guardian, or legal custodian has registered the student pursuant to Iowa Code section 299A.8 in a school district for any of the purposes listed therein, including, for purposes of these rules, participation in any part of the senior year plus program on the same basis as public school students.

*"Eligible postsecondary institution"* means an institution of higher learning under the control of the state board of regents, a community college established under Iowa Code chapter 260C, or an accredited private institution as defined in Iowa Code section 261.9.

*"Full time"* means enrollment in any one academic year, exclusive of any summer term, of 24 or more postsecondary credit hours.

*"ICN"* means Iowa communications network, the statewide system of educational telecommunications including narrowcast and broadcast systems under the public broadcasting division of the department of education and live interactive systems which allow, at a minimum, one-way video and two-way audio communication.

*"Institution"* means a school district or eligible postsecondary institution delivering the instruction in a given program as authorized by this chapter.

*"School board"* means the board of directors of a school district or a collaboration of boards of directors of school districts.

*"State board"* means the state board of education.

*"Student"* means any individual in grades 9 through 12 enrolled or dually enrolled in a school district who meets the criteria in rule 281—22.2(261E). For purposes of Division III (Advanced Placement Program) and Division V (Postsecondary Enrollment Options Program) only, "student" also includes a student enrolled in an accredited nonpublic school or the Iowa School for the Deaf or the Iowa Braille and Sight Saving School.

DIVISION III
ADVANCED PLACEMENT PROGRAM

**281—22.7(261E) School district obligations.** All school districts shall comply with the following obligations but may do so through direct instruction, collaboration with another school district, or use

of the Iowa online advanced placement academy. An international baccalaureate program is not an advanced placement program.

**22.7(1)** A school district shall provide descriptions of the advanced placement courses available to students using a course registration handbook.

**22.7(2)** A school district shall ensure that advanced placement course teachers are appropriately licensed by the board of educational examiners in accordance with Iowa Code chapter 272 and meet the minimum certification requirements of the national organization that administers the advanced placement program.

**22.7(3)** A school district shall establish prerequisite coursework for each advanced placement course offered and shall describe the prerequisites in the course registration handbook, which shall be provided to every junior high school or middle school student prior to the development of a core curriculum plan pursuant to Iowa Code section 279.61.

**22.7(4)** A school district shall make advanced placement coursework available to a dually enrolled student under competent private instruction if the student meets the same criteria as a regularly enrolled student of the district.

**22.7(5)** A school district shall make advanced placement coursework available to a student enrolled in an accredited nonpublic school located in the district if the student meets the criteria in subparagraph 22.2(2)*"b"*(3).

**281—22.8(261E) Obligations regarding registration for advanced placement examinations.** The board of directors of a school district and the authorities in charge of an accredited nonpublic school shall ensure that any student enrolled who is interested in taking an advanced placement examination is properly registered for the examination. An accredited nonpublic school shall provide a list of students registered for advanced placement examinations to the school district in which the accredited nonpublic school is located. The school district and the accredited nonpublic school shall ensure that any student enrolled in the school district or school, as applicable, who is interested in taking an advanced placement examination and qualifies for a reduced fee for the examination is properly registered for the fee reduction.

**281—22.9(261E)** Reserved.

**281—22.10(261E)** Reserved.

DIVISION IV
CONCURRENT ENROLLMENT PROGRAM

**281—22.11(261E) Applicability.** The concurrent enrollment program, also known as district-to-community college sharing, promotes rigorous academic or career and technical pursuits by providing opportunities to high school students to enroll part-time in eligible nonsectarian courses at or through community colleges established under Iowa Code chapter 260C.

**22.11(1)** The program shall be made available to all resident students in grades 9 through 12.

*a.* Notice of the availability of the program shall be included in a school district's student registration handbook, and the handbook shall identify which courses, if successfully completed, generate college credit under the program.

*b.* A student and the student's parent or guardian shall also be made aware of this program as a part of the development of the student's core curriculum plan in accordance with Iowa Code section 279.61.

**22.11(2)** A student enrolled in an accredited nonpublic school may access the program through the school district in which the accredited nonpublic school is located. A student receiving competent private instruction may access the program through the school district in which the student is dually enrolled and may enroll in the same number of concurrent enrollment courses as a regularly enrolled student of the district.

**22.11(3)** A student may make application to a community college and the school district to allow the student to enroll for college credit in a nonsectarian course offered by the community college. A

comparable course, as defined in rules adopted by the board of directors of the school district, must not be offered by the school district or accredited nonpublic school which the student attends. The school board shall annually approve courses to be made available for high school credit using locally developed criteria that establish which courses will provide the student with academic rigor and will prepare the student adequately for transition to a postsecondary institution. A school district may not use concurrent enrollment courses to meet the accreditation requirements in Division V of 281—Chapter 12 other than for career-technical courses.

**22.11(4)** If an eligible postsecondary institution accepts a student for enrollment under this division, the school district, in collaboration with the community college, shall send written notice to the student, the student's parent or guardian in the case of a minor child, and the student's school district. The notice shall list the course, the clock hours the student will be attending the course, and the number of hours of college credit that the student will receive from the community college upon successful completion of the course.

**22.11(5)** A school district shall grant high school credit to a student enrolled in a course under this division if the student successfully completes the course as determined by the community college and the course was previously approved by the school board pursuant to 22.11(3). The board of directors of the school district shall determine the number of high school credits that shall be granted to a student who successfully completes a course. Students shall not "audit" a concurrent enrollment course; the student must take the course for credit.

**22.11(6)** School districts that participate in district-to-community college sharing agreements or concurrent enrollment programs that meet the requirements of Iowa Code section 257.11(3) are eligible to receive supplementary weighted funding under that provision. Regardless of whether a district receives supplementary weighted funding, the district shall not charge tuition of any of its students who participate in a concurrent enrollment course.

**22.11(7)** Community colleges shall comply with the data collection requirements of Iowa Code section 260C.14(22). The data elements shall include but not be limited to the following:

*a.* An unduplicated enrollment count of eligible students participating in the program.

*b.* The actual costs and revenues generated for concurrent enrollment. An aligned unique student identifier system shall be established by the department for students in kindergarten through grade 12 and community college.

*c.* Degree, certifications, and other qualifications to meet the minimum hiring standards.

*d.* Salary information including regular contracted salary and total salary.

*e.* Credit hours and laboratory contact hours and other data on instructional time.

*f.* Other information comparable to the data regarding teachers collected in the basic education data survey.

**281—22.12(261E) Transportation.** Reserved.

**281—22.13(261E)** Reserved.

DIVISION V
POSTSECONDARY ENROLLMENT OPTIONS PROGRAM

**281—22.14(261E) Availability.** The senior year plus programming provided by a school district pursuant to this division may be but is not required to be available to students on a year-round basis.

**281—22.15(261E) Notification.** The availability and requirements of this program shall be included in each school district's student registration handbook. Information about the program shall be provided to the student and the student's parent or guardian prior to the development of the student's core curriculum plan under Iowa Code section 279.61. The school district shall establish a process by which students may indicate interest in and apply for enrollment in the program.

**281—22.16(261E) Student eligibility.** Persons who have graduated from high school are not eligible for this program. Eligible students shall be residents of Iowa. "Eligible student" includes a student classified by the board of directors of a school district, by the state board of regents for students of the Iowa School for the Deaf and the Iowa Braille and Sight Saving School, or by the authorities in charge of an accredited nonpublic school as a ninth or tenth grade student who is identified according to the school district's gifted and talented criteria and procedures, pursuant to Iowa Code section 257.43, as a gifted and talented child, or an eleventh or twelfth grade student, during the period the student is participating in the postsecondary enrollment options program. To be eligible to participate in a program under this division, a student must meet all criteria in rule 281—22.2(261E).

**22.16(1)** A student enrolled in an accredited nonpublic school who meets all eligibility requirements may apply to take courses under this division in the school district where the accredited nonpublic school is located, provided that neither the accredited nonpublic school nor the school district offers a comparable course.

**22.16(2)** A student under competent private instruction who meets the eligibility requirements in this rule and those in subparagraph 22.2(2)*"b"*(3) may apply to take courses under this division through the public school district in which the student is dually enrolled, provided that the resident school district does not offer a comparable course, and shall be allowed to take such courses on the same basis as a regularly enrolled student of the district.

**22.16(3)** Postsecondary institutions may require students to meet appropriate standards or requirements for entrance into a course. Such requirements may include prerequisite courses, scores on national academic aptitude and achievement tests, or other evaluation procedures to determine competency. Acceptance of a student into a course by a postsecondary institution is not a guarantee that a student will be enrolled in all requested courses. Priority may be given to postsecondary students before eligible secondary students are enrolled in courses. However, once an eligible secondary student has enrolled in a postsecondary course, the student cannot be displaced by another student for the duration of the course. Students shall not "audit" postsecondary courses. The student must take the course for credit and must meet all of the requirements of the course which are required of postsecondary students.

**281—22.17(261E) Eligible postsecondary courses.** These rules are intended to implement the policy of the state to promote rigorous academic pursuits. Therefore, postsecondary courses eligible for students to enroll in under this division shall be limited to: nonsectarian courses; courses that are not comparable to courses offered by the school district where the student attends which are defined in rules adopted by the board of directors of the public school district; credit-bearing courses that lead to an educational degree; courses in the discipline areas of mathematics, science, social sciences, humanities, and vocational-technical education; and also the courses in career option programs offered by area schools established under the authorization provided in Iowa Code chapter 260C. A school district or accredited nonpublic school district shall grant academic or vocational-technical credit to an eligible student enrolled in an eligible postsecondary course.

**281—22.18(261E) Application process.** To participate in this program, an eligible student shall make application to an eligible postsecondary institution to allow the eligible student to enroll for college credit in a nonsectarian course offered at the institution. A comparable course must not be offered by the school district or accredited nonpublic school the student attends. For purposes of these rules, "comparable" is not synonymous with identical, but means that the content of a course provided to a high school student for postsecondary credit shall not consist of substantially the same concepts and skills as the content of a course provided by the school district or accredited nonpublic school. If the postsecondary institution accepts an eligible student for enrollment under this division, the institution shall send written notice to the student, the student's parent or guardian in the case of a minor child, and the student's school district or accredited nonpublic school and the school district in the case of a nonpublic school student or student under competent private instruction, or the Iowa School for the Deaf or the Iowa Braille and Sight Saving School. The notice shall list the course, the clock hours the student will be attending the

course, and the number of hours of college credit that the eligible student will receive from the eligible postsecondary institution upon successful completion of the course.

**281—22.19(261E) Credits.** A school district, the Iowa School for the Deaf, the Iowa Braille and Sight Saving School, or an accredited nonpublic school shall grant high school credit to an eligible student enrolled in a course under this division if the eligible student successfully completes the course as determined by the eligible postsecondary institution.

**22.19(1)** The board of directors of the school district, the board of regents for the Iowa School for the Deaf and the Iowa Braille and Sight Saving School, or authorities in charge of an accredited nonpublic school shall determine the number of high school credits that shall be granted to an eligible student who successfully completes a course.

**22.19(2)** Eligible students may take up to seven semester hours of credit during the summer months when school is not in session and receive credit for that attendance, if the student pays the cost of attendance for those summer credit hours.

**22.19(3)** The high school credits granted to an eligible student under this division shall count toward the graduation requirements and subject area requirements of the school district of residence, the Iowa School for the Deaf, the Iowa Braille and Sight Saving School, or the accredited nonpublic school of the eligible student. Evidence of successful completion of each course and high school credits and college credits received shall be included in the student's high school transcript.

**281—22.20(261E) Transportation.** The parent or guardian of an eligible student who has enrolled in and is attending an eligible postsecondary institution under this division shall furnish transportation to and from the postsecondary institution for the student.

**281—22.21(261E) Tuition payments.**

**22.21(1)** Not later than June 30 of each year, a school district shall pay a tuition reimbursement amount to a postsecondary institution that has enrolled its resident eligible students under this division, unless the eligible student is participating in open enrollment under Iowa Code section 282.18, in which case, the tuition reimbursement amount shall be paid by the receiving district. However, if a child's residency changes during a school year, the tuition shall be paid by the district in which the child was enrolled as of the date specified in Iowa Code section 257.6(1) or the district in which the child was counted under Iowa Code section 257.6(1)*"a"*(6). For students enrolled at the Iowa School for the Deaf and the Iowa Braille and Sight Saving School, the state board of regents shall pay a tuition reimbursement amount by June 30 of each year. The amount of tuition reimbursement for each separate course shall equal the lesser of:

*a.* The actual and customary costs of tuition, textbooks, materials, and fees directly related to the course taken by the eligible student.

*b.* Two hundred fifty dollars.

**22.21(2)** A secondary student is not eligible to enroll on a full-time basis in an eligible postsecondary institution under this program.

**22.21(3)** An eligible postsecondary institution that enrolls an eligible student under this division shall not charge the student for tuition, textbooks, materials, or fees directly related to the course in which the student is enrolled except that the student may be required to purchase equipment that becomes the property of the student. For the purposes of this subrule, equipment shall not include textbooks.

**281—22.22(261E) Tuition reimbursements and adjustments.** The failure of a student to complete or otherwise to receive credit for an enrolled course requires the student, if 18 years of age or older, to reimburse the school district for the cost of the enrolled course. If the student is under 18 years of age, the student's parent or guardian shall sign the student registration form indicating that the parent or guardian assumes all responsibility for the costs directly related to the incomplete or failed coursework. If documentation is submitted to the school district that verifies the student was unable to complete the course for reasons including but not limited to the student's physical incapacity, a death in the student's

immediate family, or the student's move to another school district, that verification shall constitute a waiver of the requirement that the student or parent or guardian pay the costs of the course to the school district. An eligible postsecondary institution shall make pro rata adjustments to tuition reimbursement amounts based upon federal guidelines established pursuant to 20 U.S.C. §1091b.

**281—22.23(261E)** Reserved.

DIVISION VI
CAREER ACADEMIES

**281—22.24(261E) Career academies.** A career academy is a program of study as defined in 281—Chapter 47. A course offered by a career academy shall not qualify as a regional academy course.

**22.24(1)** A career academy course may qualify as a concurrent enrollment course if it meets the requirements of Iowa Code section 261E.8.

**22.24(2)** The school district providing secondary education under this division shall be eligible for supplementary weighting under Iowa Code section 257.11(2), and the community college shall be eligible for funds allocated pursuant to Iowa Code section 260C.18A.

**22.24(3)** Information regarding career academies shall be provided by the school district to a student and the student's parent or guardian prior to the development of the student's core curriculum plan under Iowa Code section 279.61.

**281—22.25(261E)** Reserved.

DIVISION VII
REGIONAL ACADEMIES

**281—22.26(261E) Regional academies.** A regional academy is a program established by a school district to which multiple school districts send students in grades 9 through 12, and which may include Internet-based coursework and courses delivered via the ICN. A regional academy shall include in its curriculum advanced level courses and may include in its curriculum career and technical courses.

**22.26(1)** A regional academy course shall not qualify as a concurrent enrollment course and does not generate any postsecondary credit.

**22.26(2)** School districts participating in regional academies are eligible for supplementary weighting as provided in Iowa Code section 257.11(2).

**22.26(3)** Information regarding regional academies shall be provided to a student and the student's parent or guardian prior to the development of the student's core curriculum plan under Iowa Code section 279.61.

**281—22.27(261E)** Reserved.

DIVISION VIII
INTERNET-BASED AND ICN COURSEWORK

**281—22.28(261E) Internet-based coursework.** The programming in this chapter may be delivered via Internet-based technologies including but not limited to the Iowa learning online program. An Internet-based course may qualify for additional supplemental weighting if it meets the requirements of Division IV or Division VI of this chapter. To qualify as a senior year plus course, an Internet-based course must comply with the appropriate provisions of this chapter.

**281—22.29(261E) ICN-based coursework.** The ICN may be used to deliver coursework for the programming provided under this chapter subject to an appropriation by the general assembly for that purpose. A school district that provides courses delivered via the ICN shall receive supplemental

funding as provided in Iowa Code section 257.11(7). To qualify as a senior year plus course, a course offered through the ICN must comply with the appropriate provisions of this chapter.

These rules are intended to implement Iowa Code chapter 261E.

[Filed 9/10/09, effective 11/11/09]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

## ARC 8188B

# EDUCATION DEPARTMENT[281]

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 97, "Supplementary Weighting," Iowa Administrative Code.

2008 Iowa Acts, chapter 1181, division II, created a new chapter in the Iowa Code, chapter 261E, "Senior Year Plus Program." The Senior Year Plus Program established in legislation provides Iowa high school students increased access to advanced placement coursework and postsecondary credit. The first seven items address funding for and various elements of the program.

Items 8 through 10 amend provisions regarding the supplementary weighting plan for operational function sharing. In Item 8, the reference to Iowa Code chapter 28E is stricken because that is not the correct authority for such agreements. In Item 9, the percentages are reworded because the present wording only works when the district does not add more sharing arrangements. Taking 20 percent of each year is the equivalent of the present wording. Additionally, new paragraph 97.7(9)"b" clarifies the order of the adjustments and phaseouts. Item 10 is amended to give more flexibility to districts that cannot show savings because they are cutting costs across all functions, including cutting instructional staff.

Notice of Intended Action was published in the March 11, 2009, Iowa Administrative Bulletin as **ARC 7611B**. A public hearing was held March 31, 2009, and public comments were allowed until close of business on March 31, 2009. No written or oral comments were received regarding these amendments.

These amendments are identical to those published under Notice.

An agencywide waiver provision is provided in 281—Chapter 4.

These amendments are intended to implement Iowa Code section 257.11(9) and Iowa Code chapter 261E.

These amendments will become effective November 11, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [97.1, 97.2, 97.4, 97.5(6)"a," 97.7] is being omitted. These amendments are identical to those published under Notice as **ARC 7611B**, IAB 3/11/09.

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[For replacement pages for IAC, see IAC Supplement 10/7/09.]

## ARC 8215B

# ENVIRONMENTAL PROTECTION COMMISSION[567]

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 22, "Controlling Pollution," Chapter 23, "Emission Standards for Contaminants," Chapter 25,

"Measurement of Emissions," Chapter 28, "Ambient Air Quality Standards," and Chapter 33, "Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality," Iowa Administrative Code.

The primary purpose of the amendments is to update state air quality rules by adopting new federal requirements, including adoption of new National Ambient Air Quality Standards (NAAQS) and adoption of two new federal air toxics standards. The amendments also revise construction permitting requirements and stack testing requirements. Additional amendments to other rules and changes to federal regulations also are being adopted.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7855B**. A public hearing was held on July 20, 2009. No oral or written comments were presented at the hearing. One set of written comments was received prior to the close of the public comment period on July 21, 2009. The submitted comments and the Department's response to the comments are summarized in a public responsiveness summary available from the Department. The Department did not make any changes to the adopted rules from those published under Notice.

Item 1 amends rule 567—20.2(455B), the definition of "volatile organic compounds" or "VOC." EPA removed two compounds, Propylene Carbonate (CAS# 108-32-7) and Dimethyl Carbonate (CAS# 616-38-6), from the definition of VOC in a final regulation published on January 21, 2009. EPA has determined that these two compounds are negligibly reactive, which means they contribute little or nothing to tropospheric ozone formation. Facilities will not be required to report Propylene Carbonate and Dimethyl Carbonate as VOC in their air emissions inventory for calendar year 2009.

Item 2 amends rule 567—20.3(455B) to update the ZIP code for the Department's Air Quality Bureau offices. The Air Quality Bureau offices remain in the current location. However, a ZIP code change for the current location took effect on July 1, 2009.

Item 3 amends subrule 22.1(2) by adding paragraph "oo," which provides for an exemption from construction permitting for certain temporary diesel engines used in periodic testing and maintenance of natural gas pipelines. Several times per year, natural gas pipelines require periodic testing and repair. Because of the lead time for this type of project, the owner or operator of the pipeline often does not have sufficient time to apply for and obtain a construction permit prior to installing the engine and must instead apply to the Department for a variance from the permitting requirements of Chapter 22. The Department has conducted an air quality assessment of these projects and has determined that an exemption from construction permitting is appropriate. The exemption contains conditions to ensure that engine emissions will not exceed the emission limits currently allowed under the small unit exemption specified in paragraph 22.1(2)"w."

Item 4 amends the introductory paragraph of subrule 22.1(3) to update the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2.

Item 5 amends the introductory paragraph of subrule 22.3(8) to update the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2.

Item 6 amends paragraph 22.8(1)"e," the provisions for applying for a permit by rule for spray booths (PBR), to include new certification requirements regarding National Emission Standards for Hazardous Air Pollutants (NESHAP) for metal fabrication and finishing at area sources (see Item 16 for an explanation of the NESHAP). The amendment is being proposed because the NESHAP for metal fabrication and finishing does not contain any de minimus usage level for materials used in spray applications. This amendment is similar to an amendment adopted earlier in 2009 regarding the NESHAP for miscellaneous surface coating at area sources. As with the earlier adopted amendment, the Department is modifying the required PBR notification form to include questions that will assist the owner or operator with the NESHAP requirements for metal fabrication and finishing operations. The amendments to the PBR rules and the revisions to the PBR notification form will help ensure that owners and operators are aware of the NESHAP requirements and realize that all spray applications must be in compliance with or otherwise be exempt from the NESHAP by the applicable compliance dates.

Item 7 amends subrule 22.9(3) to update the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2.

Item 8 amends the introductory paragraph of subrule 22.105(1), regarding the requirements for submitting a Title V operating permit application, and updates the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2. With the adopted amendment, facility owners and operators submitting electronic Title V applications are no longer required to also submit hard copy applications to EPA Region VII. The Department has given EPA access to the Department's database so that EPA may review electronic copies of Title V applications.

Item 9 amends subrule 22.128(4) to update the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2.

Item 10 amends the introductory paragraph of subrule 22.203(1) to update the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2.

Item 11 amends the introductory paragraph of rule 567—22.209(455B) to update the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2.

Item 12 amends the introductory paragraph of paragraph 22.300(8)"a" to update the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2.

Item 13 amends the introductory paragraph of subrule 22.300(12) to update the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2.

Item 14 amends the introductory paragraph of subrule 23.1(2), the provisions that adopt by reference the federal New Source Performance Standards (NSPS) contained in 40 CFR Part 60.

On December 22, 2008, EPA amended the NSPS General Conditions (Subpart A) for alternative work practices for equipment leak detection and repair. The alternative work practice is an alternative to the current leak detection and repair work practice, which is not being revised. The final regulations add a requirement to perform monitoring once per year using the current EPA Method 21 leak detection instrument.

On January 28, 2009, EPA amended the NSPS for electric utility steam generating units and the NSPS for industrial, commercial, and institutional steam generating units (Subparts A, D, Da, Db and Dc). These amendments add compliance alternatives for owners and operators; eliminate the opacity standard for facilities with a particulate matter limit of 0.030 pounds per million Btu (lb/MMBtu) or less that voluntarily install and use particulate matter continuous emission monitors to demonstrate compliance with that limit; and correct technical and editorial errors. The federal amendments are EPA's response to petitions for reconsideration of the NSPS requirements.

On March 20, 2009, EPA amended the NSPS for stationary combustion turbines (Subpart KKKK). These amendments remove requirements for additional sulfur dioxide ($SO_2$) emission control on turbines that burn more than 50 percent biogas (such as landfill gas and digester gas) and set a new sulfur dioxide ($SO_2$) limit of 0.15 lb/MMbtu for these turbines. In finalizing these amendments, EPA states that its intent was not to require $SO_2$ control on turbines that burn predominantly biogas, a fuel with relatively low sulfur content. Biogas that is not burned in a combustion turbine is usually flared or emitted directly to the atmosphere.

Item 15 amends the introductory paragraph of subrule 23.1(4), the emission standards for hazardous air pollutants for source categories, also known as National Emission Standards for Hazardous Air Pollutants or "NESHAP," to adopt recent amendments that EPA made to 40 CFR Part 63. On December 22, 2008, EPA amended the NESHAP General Conditions for alternative work practices for equipment leak detection and repair. The amendments are the same as those described in Item 14. The new NESHAP being adopted are described in Item 16.

Item 16 amends subrule 23.1(4) by adopting new paragraphs "ew" and "ex." This amendment adopts by reference two new NESHAP for new and existing area sources. Area sources are usually smaller commercial or industrial operations. Specifically, area sources have potential emissions less than 10 tons per year (tpy) of any single hazardous air pollutant (HAP) and less than 25 tpy of any combination of HAP and are classified as minor sources for HAP. Facilities that have potential HAP emissions greater than or equal to these levels are classified as major sources.

Because of the potential impacts to small businesses and previously unregulated facilities, the Department developed implementation strategies in conjunction with this rule making. The strategies include cooperative efforts with University of Northern Iowa—Iowa Air Emissions Assistance Program

(UNI), Iowa Department of Economic Development, and the local air quality programs of Linn and Polk Counties to provide outreach, education and compliance assistance to affected facilities. The Department's outreach efforts began in 2008 and are continuing during the rule-making process. It is hoped that these new rules in conjunction with the Department's outreach efforts will result in reductions in air toxics while minimizing the regulatory burden to small businesses and other affected facilities.

On July 1, 2008, EPA finalized the NESHAP area source standards for plating and polishing operations (Subpart WWWWWW). The NESHAP affects area sources engaged in specific plating and polishing activities that use or emit cadmium, chromium, lead, manganese, or nickel. The NESHAP requirements impact plating and polishing tanks, dry mechanical polishing operations, and thermal spraying operations. Owners and operators must implement management practices, such as the use of wetting agents or fume suppressants, and also must comply with equipment standards, such as the use of tank covers or control devices and the capture and control of emissions from thermal spraying and dry mechanical blasting. EPA determined that most facilities already are implementing these management and equipment standards. EPA estimates that the average, ongoing costs for each facility for record keeping and reporting will be $1100 per year for the first three years and $713 for each year thereafter.

The Department estimates that approximately 50 facilities may be subject to the NESHAP for plating and polishing. The Department in conjunction with UNI is developing compliance tools for affected businesses and is already working directly with several affected facilities. Owners and operators will have until July 2010 to comply with the NESHAP.

On July 23, 2008, EPA finalized the NESHAP for nine metal fabrication and finishing area source categories (Subpart XXXXXX). The NESHAP affects area sources that use or emit cadmium, chromium, lead, manganese, or nickel and the facility is engaged in one of the following: (1) electrical and electronic equipment finishing operations; (2) fabricated metal products; (3) fabricated plate work (boiler shops); (4) fabricated structural metal manufacturing; (5) heating equipment, except electric; (6) industrial machinery and equipment finishing operations; (7) iron and steel forging; (8) primary metal products manufacturing; and (9) valves and pipe fittings. Owners and operators of affected facilities must implement management practices to reduce air toxics from dry abrasive blasting, machining, dry grinding and dry polishing with machines, spray painting, and welding. EPA determined that most facilities already are implementing these management practices, and that the average, ongoing costs for each facility for monitoring, record keeping and reporting will be $569 per year. Facilities with spray painting operations may have additional equipment and training costs.

The Department estimates that between 50 and 150 facilities may be subject to the NESHAP for metal fabrication and finishing. The Department in conjunction with UNI is developing outreach materials for affected businesses and is already working directly with a number of affected facilities. Owners and operators of existing facilities will have until July 2011 to comply with the NESHAP.

Item 17 amends paragraph 25.1(7)"a" to better reflect the Department's current practices regarding stack testing notifications, pretest meetings, and test protocols. The amendments provide clarity and allow more flexibility.

Item 18 amends rule 567—28.1(455B) to adopt by reference new National Ambient Air Quality Standards (NAAQS). EPA recently strengthened the NAAQS for ozone and for lead to more adequately protect public health and welfare. EPA issued final rules to revise the NAAQS for ozone on March 27, 2008. EPA issued final rules to revise the NAAQS for lead on November 12, 2008.

Item 19 amends subrule 33.3(1), the definition for "volatile organic compounds" or "VOC" as described in Item 1.

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

These amendments will become effective on November 11, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 20, 22, 23, 25, 28, 33] is being omitted. These amendments are identical to those published under Notice as **ARC 7855B**, IAB 6/17/09.

[Filed 9/17/09, effective 11/11/09]
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[For replacement pages for IAC, see IAC Supplement 10/7/09.]

## ARC 8216B

# ENVIRONMENTAL PROTECTION COMMISSION[567]

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 23, "Emission Standards for Contaminants," Chapter 25, "Measurement of Emissions," and Chapter 34, "Provisions for Air Quality Emissions Trading Programs," Iowa Administrative Code.

The purpose of the adopted amendments is to remove from the state air quality rules EPA's Clean Air Mercury Rule (CAMR) provisions that were vacated by the United States Court of Appeals for the District of Columbia Circuit (the D.C. Court). The Department is also adding new mercury monitoring provisions to the state air quality rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 11, 2009, as **ARC 7622B**. A public hearing was held on April 13, 2009. No oral or written comments were presented at the hearing. At the request of EPA Region VII, the Department extended the public comment period. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on May 6, 2009, as **ARC 7738B**, extending the public comment period to May 12, 2009. Seven written comments were received prior to the close of the public comment period.

The submitted comments and the Department's response to the comments are summarized in a public responsiveness summary available from the Department.

The Department received comments in support of rescinding the federal CAMR provisions that were adopted by reference into state air quality rules. The D.C. Court found the regulations to be unauthorized under the Clean Air Act (CAA) or otherwise deficient. Although the D.C. Court vacated the federal regulations, these regulations were adopted by reference and therefore were still in effect and enforceable by the Department.

The CAMR program was intended to reduce mercury emissions from coal-fired electric utility steam generating units (EGUs) at the national level and was based upon the state's participation in an EPA-managed mercury emissions trading program. Since the federal regulations were vacated, EPA will not be running the trading program, nor will EPA be implementing any of the other CAMR provisions vacated by the D.C. Court. This negates the need for Iowa to retain the federal regulations that were adopted by reference.

The Department did not receive any comments opposing removal of the federal CAMR provisions. The Department is proceeding with adopting rules to remove the federal CAMR provisions as detailed in the following explanations for Items 1, 2, 3 and 5.

The Department received comments opposing the proposed mercury monitoring provisions. The commenters generally asserted that the department should not require additional mercury monitoring, but also suggested some alternatives to the proposed amendments. The Department also received comments from EPA Region VII commending the Department for proposing mercury monitoring requirements, while suggesting technical corrections and clarifications.

The Department is proceeding with adopting rules to require mercury monitoring because the Department has determined that the additional data collected will allow for more current and accurate

emissions estimates to support emissions inventory reporting and the development of appropriate federal and state air quality standards for mercury. The data will also be helpful in evaluating mercury deposition and the identification of water bodies in the state where additional fish tissue sampling for mercury could be conducted. In response to public comment, the Department revised the mercury monitoring provisions from those proposed in the Notice, as described in the explanation for Item 4.

Item 1 amends paragraph 23.1(2)"z," which includes new source performance standards for electric utility steam generating units (EGUs). The amendment removes the provisions associated with CAMR for mercury emissions from coal-fired units constructed or reconstructed after January 30, 2004, but retains the performance standards and requirements for other pollutants emitted from EGUs that are subject to the provisions of this paragraph. The Department is removing the mercury provisions because the D.C. Court vacated the federal CAMR program.

The Department has made an additional change in response to comments that the existing description for "electrical utility steam generating unit" could be misconstrued to apply to units not intended to be affected by these standards. The Department agrees with this comment. Since paragraph 23.1(2)"z" adopts a federal standard by reference (40 CFR 60, Subpart Da), the Department has removed the existing definition and replaced it with the exact definition from Subpart Da.

Item 2 amends subrule 23.1(4) to strike the text that provides cross references to the standards for mercury emissions from electric utility steam generating units (EGUs). Because this rule making removes the federal CAMR provisions from the administrative rules, this cross reference is no longer valid.

Item 3 rescinds paragraph 23.1(5)"d" which contains a cross reference to the emission guidelines for mercury for coal-fired EGUs. The emission guidelines are a component of the federal CAMR program, which was vacated by the D.C. Court. Because this rule making rescinds the provisions in Chapter 34 that are referenced in this paragraph, this cross reference is no longer valid.

Item 4 rescinds rule 567—25.3(455B) and adopts a new rule 567—25.3(455B). The rescinded rule adopted by reference the provisions for continuous emissions monitoring for CAMR and is being rescinded because the D.C. Court vacated the federal CAMR program.

The adopted rule includes provisions for mercury monitoring and testing that were proposed as amendments to rule 567—34.307(455B) in Item 6 of the Notice. The provisions have been moved from Chapter 34 to Chapter 25 because Chapter 34 was established for air quality emissions trading programs, such as the Clean Air Interstate Rule (CAIR) and CAMR, and because the vacated federal CAMR provisions have been removed from Chapter 34 and other state air quality rules.

Additionally, in response to the comments received, the Department has revised the adopted mercury monitoring requirements from those proposed in the Notice to increase accuracy in reported mercury emissions and to allow utilization of the appropriate mercury test methods. Also in response to comments, the Department has removed references to the vacated federal CAMR rules from the adopted amendments and replaced the references with the applicable terms and descriptions.

Several commenters noted that the proposed quarterly coal sampling may not provide sufficient data to estimate mercury emissions from affected sources and that significant costs could be imposed on some facilities to complete the sampling. Also, coal sampling is generally not being used at this time by EPA or other state agencies as a stand-alone method for estimating mercury emissions. Based on these considerations, the Department has determined that quarterly coal sampling is not an effective mercury emissions monitoring option and has removed this option from the adopted amendments.

Based on the comments received and further review of the available information, the Department considers stack testing to be the best option currently available for estimating mercury emissions from the coal-fired electric utility steam generating units affected by these amendments. In the absence of continuous emissions monitoring, conducting stack testing at regular intervals is a recognized method for obtaining periodic emissions data.

After considering the comments, the Department has limited the allowable test methods to those methods that will allow quantification of both the vapor phase mercury concentration and the particle bound mercury concentration. In response to comments submitted by EPA, a schedule for conducting the required testing has been added in the adopted amendments.

Based on the Department's consideration of the comments related to mercury stack testing, the adopted amendments require that affected sources conduct one stack test for mercury in each calendar quarter for four consecutive calendar quarters, commencing no later than the third calendar quarter in 2010 (July 1 – September 30). At such time as this testing is completed and valid results are accepted by the Department, the owner or operator of an affected source may reduce the testing frequency to one test in each subsequent calendar year.

The adopted amendments include a provision allowing the owner or operator of an affected source to request "low mass emitter" (LME) classification and to be exempt from the quarterly stack testing requirements. Several commenters requested that the eligibility criteria to qualify as an LME be clarified. In response to these comments, the adopted amendments provide that to qualify for the LME classification, the owner or operator must perform one stack test for mercury. Based on the results of the highest mercury concentration shown from any of the test runs, the owner or operator shall submit the test results and calculations sufficient to demonstrate that potential, annual mercury emissions are less than or equal to 29 lb/year.

In response to comments, the provisions in the Notice regarding mercury continuous emission monitoring systems (CEMS) have been revised to include provisions that owners and operators of affected sources may request that the Department allow mercury CEMS data in lieu of four, consecutive calendar quarters of mercury stack test data. Owners and operators are required to continue conducting the four quarters of stack testing unless and until the Department approves the use of CEMS.

As part of EPA's process of establishing new rules to replace CAMR, EPA published a proposed information collection request (ICR) in the Federal Register on July 2, 2009. EPA will require approximately 123 facilities nationally with approximately 214 coal-fired units to conduct stack testing for mercury, most likely in 2010. EPA proposes to require mercury testing and concurrent coal sampling and analysis from three affected sources in Iowa. The recommended stack test methods outlined in EPA's proposed ICR methods are consistent with the methods specified in the adopted amendments. The adopted amendments allow owners and operators of affected sources to request that the Department count EPA-required testing towards fulfilling all or part of the state's mercury testing requirements.

Item 5 rescinds rules 567—34.300(455B) through 567—34.308(455B), including Tables 3A and 3B. The rescinded rules included the provisions of CAMR adopted to implement the federal requirements for the program, including allocation of emissions allowances. As noted above, the D.C. Court vacated the federal CAMR program in its entirety. The adopted amendments include a note that explains the vacatur and indicates that adoption of the federal provisions for CAMR is rescinded. The rules are reserved as placeholders for future air emissions trading programs. The adopted amendments consolidate the removal of the CAMR provisions proposed in the Notice in Items 5, 6 and 7.

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

These amendments will become effective on November 11, 2009.

The following amendments are adopted.

ITEM 1. Amend paragraph **23.1(2)"z"** as follows:

*z. Electric utility steam generating units.* An electric utility steam generating unit that is capable of combusting more than 250 million Btus per hour (73 megawatts) heat input of fossil fuel for which construction or modification or reconstruction is commenced after September 18, 1978, or an electric utility combined cycle gas turbine that is capable of combusting more than 250 million Btus per hour (73 megawatts) heat input. ~~An electric utility steam generating unit is any fossil fuel-fired combustion unit of more than 25 megawatts electric (MW) that serves a generator that produces electricity for sale. A unit that cogenerates steam and electricity and supplies more than one-third of its potential electric output capacity and more than 25 MW output to any utility power distribution system for sale is also an electric utility steam generating unit. This standard also includes a provision for mercury emissions for any coal-fired electric utility steam generating unit other than an integrated gasification combined cycle electric steam generating unit, for which construction or reconstruction commenced after January 30, 2004.~~ "Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than

25 MW net-electrical output to any utility power distribution system for sale. Also, any steam supplied to a steam distribution system for the purpose of providing steam to a steam electric generator that would produce electrical energy for sale is considered in determining the electrical energy output capacity of the affected facility. (Subpart Da)

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 July 22, 2008, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded ($F_{bio}$) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, "hazardous air pollutant" has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an "area source" means any stationary source of hazardous air pollutants that is not a "major source" as defined in this subrule. Paragraph 23.1(4)*"a,"* general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below. ~~The provisions of 40 CFR Part 60, Subparts A, B, Da, and HHHH for the Clean Air Mercury Rule (CAMR), are found at subrules 23.1(2) and 23.1(5) and in 567—Chapter 34.~~

ITEM 3. Rescind paragraph **23.1(5)"d."**

ITEM 4. Rescind rule 567—25.3(455B) and adopt the following **new** rule in lieu thereof:

**567—25.3(455B) Mercury emissions testing and monitoring.** Any stationary, coal-fired boiler or stationary, coal-fired combustion turbine serving, at any time since the later of November 15, 1990, or the start-up of the unit's combustion chamber, a generator with a nameplate capacity of more than 25 megawatt electrical (MWe) producing electricity for sale is an affected source under the provisions of this rule.

**25.3(1)** *Testing frequency and methods.* The owner or operator of an affected source shall complete one stack test for mercury in each calendar quarter for four consecutive calendar quarters. Testing shall commence no later than the third calendar quarter in 2010 (July 1 – September 30). At such time as four consecutive quarterly stack tests are completed and the test results are approved in writing by the department, the owner or operator of an affected source shall complete one stack test for mercury in each subsequent calendar year. Stack testing to fulfill the requirements of this subrule shall meet the following conditions:

*a.* Stack testing shall be conducted according to U.S. EPA Method 29 or according to ASTM Method D6784-02 (Ontario Hydro Method) and shall quantify both vapor phase and particulate bound mercury. Each stack test shall consist of a minimum of three runs at the normal operating load while combusting coal, and the minimum time per run shall be two hours.

*b.* The owner or operator or the owner's authorized agent shall notify the department in writing not less than 30 days before each stack test. The notice shall include the time, the place, the name of the person who will conduct the test and other information as required by the department. Upon written request, the department may allow a notification period of less than 30 days. At the department's request, a pretest meeting shall be held no later than 15 days before the scheduled test date. A testing protocol shall

be submitted to the department no later than 15 days before the scheduled test date. A representative of the department shall be permitted to witness the tests. Within six weeks of the completion of the testing, the results of the tests shall be submitted in writing to the department in the form of a comprehensive test report.

**25.3(2)** *Low mass emitter (LME).* In lieu of complying with the requirements of 25.3(1), the owner or operator of an affected source may submit a written request to the department to be classified as a low mass emitter (LME) for mercury. To be eligible for LME classification by the department, the owner or operator shall meet the following conditions:

*a.* The owner or operator shall complete at least one stack test prior to July 1, 2010, according to U.S. EPA Method 29 or according to ASTM Method D6784-02 (Ontario Hydro Method) and shall quantify both vapor phase and particulate bound mercury. Each stack test shall consist of a minimum of three runs at the normal operating load while combusting coal, and the minimum time per run shall be two hours.

*b.* The owner or operator or the owner's authorized agent shall notify the department in writing not less than 30 days before each stack test. The notice shall include the time, the place, the name of the person who will conduct the test and other information as required by the department. Upon written request, the department may allow a notification period of less than 30 days. At the department's request, a pretest meeting shall be held no later than 15 days before the scheduled test date. A testing protocol shall be submitted to the department no later than 15 days before the scheduled test date. A representative of the department shall be permitted to witness the tests. Within six weeks of the completion of the testing, the results of the tests shall be submitted in writing to the department in the form of a comprehensive test report.

*c.* Using the highest mercury concentration measured from any of the stack test runs, the owner or operator shall submit documentation to the department sufficient to demonstrate that the potential annual mercury emissions from the affected source are less than or equal to 29 pounds (464 ounces) per year.

*d.* Upon written notification of LME classification by the department, the owner or operator of an affected source shall be exempt from the requirements of 25.3(1).

*e.* If at any time the potential annual mercury emissions from the affected source exceed 29 pounds per year, it shall be the responsibility of the owner or operator of the affected source to notify the department in writing within 30 days.

**25.3(3)** *Continuous emission monitoring systems (CEMS).* In lieu of complying with the requirements of 25.3(1), the owner or operator of an affected source may submit a request to the department to record mercury emissions data using a continuous emission monitoring system (CEMS). To be eligible for department approval to use CEMS, the owner or operator shall meet the following conditions:

*a.* The owner or operator shall complete at least one stack test concurrently with operating and recording data from the CEMS prior to September 30, 2010, and thereafter on an annual basis, to demonstrate that the CEMS are providing accurate emissions data, as follows:

(1) The stack test conducted concurrently with the CEMS shall be conducted according to U.S. EPA Method 29 or according to ASTM Method D6784-02 (Ontario Hydro Method) and shall quantify both vapor phase and particulate bound mercury. Each stack test shall consist of a minimum of three runs at the normal operating load while combusting coal, and the minimum time per run shall be two hours.

(2) While conducting the concurrent stack test, the owner and operator shall perform a relative accuracy test audit (RATA) and other CEMS certification procedures according to an approved EPA performance protocol. If an approved EPA performance protocol is not available, the owner or operator may submit an alternative CEMS certification protocol in writing to the department for approval. Department approval must be received before the owner or operator conducts the CEMS certification.

*b.* The owner or operator or the owner's authorized agent shall notify the department in writing not less than 30 days before each stack test conducted concurrently with CEMS. The notice shall include the time, the place, the name of the person who will conduct the test and other information as required by the department. Upon written request, the department may allow a notification period of less than 30 days. At the department's request, a pretest meeting shall be held no later than 15 days before the scheduled

test date. Protocols for the stack testing and for the concurrent CEMS operation and data collection shall be submitted to the department no later than 15 days before the scheduled test date. A representative of the department shall be permitted to witness the tests. Results of the tests and CEMS certification shall be submitted in writing to the department in the form of a comprehensive test and CEMS certification report within six weeks of the completion of the testing.

*c.* The owner or operator of an affected source shall comply with the provisions of 25.3(1) until such time as the department approves use of CEMS.

*d.* Upon receiving department approval for CEMS use, the owner or operator of an affected source shall operate and record CEMS data, including calibrating each individual CEMS for zero and span on a daily basis, and shall provide all CEMS data to the department upon written request. CEMS certification shall be completed on an annual basis according to the procedures specified in paragraph 25.3(3)*"a."*

**25.3(4)** *EPA-required stack testing for mercury.* If the owner or operator of an affected source is required by EPA to complete stack testing for mercury, the owner or operator may submit a written request to the department that the EPA-required stack test be allowed to fulfill all or part of the testing requirements specified in 25.3(1). The department shall consider each such request on a case-by-case basis.

**25.3(5)** *Affected sources subject to Section 112(g).* The owner or operator of an affected source subject to the requirements of Clean Air Act Section 112(g) shall comply with the requirements contained in permits issued by the department under 567—Chapters 22 and 33.

ITEM 5. Rescind and reserve rules **567—34.300(455B)** to **567—34.308(455B)** and add the following note after each rescinded rule:

*As of November 11, 2009, the requirements for the Clean Air Mercury Rule (CAMR) are rescinded and the adoption by reference of federal regulations associated with CAMR is also rescinded. On March 14, 2008, the United States Court of Appeals for the District of Columbia Circuit issued its mandate to vacate the federal CAMR regulations in their entirety.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

## ARC 8214B

# ENVIRONMENTAL PROTECTION COMMISSION[567]

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, "Water Quality Standards," and Chapter 62, "Effluent and Pretreatment Standards: Other Effluent Limitations or Prohibitions," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7853B**. Seven public hearings were held with notice of the hearings sent to various individuals, organizations, associations and interest groups, and to statewide news network organizations. Comments were received from approximately 16 persons and organizations. No comments were received that resulted in any substantial changes to the proposed amendments. A responsiveness summary addressing the comments can be obtained from the Department of Natural Resources.

The adopted amendments change the Commission's Water Quality Standards (WQS) as summarized below. The changes:

- Establish numerical water quality criteria for chloride for the protection of aquatic life uses.
- Establish numerical water quality criteria for sulfate for the protection of aquatic life uses.
- Update the effective date of references to the "Supporting Document for Iowa Water Quality Management Plans" found in 567—Chapters 61 and 62 to reflect the removal of the total dissolved solids site-specific approach and the revision of the sulfate ion guideline value.

• Revise the default hardness level used for hardness-dependent chemical criteria from 100 mg/l (as $CaCO_3$) to 200 mg/l.

Additional information on Iowa's Water Quality Standards and the Department's rules can be found on the Department's Web site at http://www.iowadnr.com/water/standards/index.html.

These amendments may have an impact upon small businesses.

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

These amendments will become effective November 11, 2009.

The following amendments are adopted.

ITEM 1. Strike "June 16, 2004" wherever it appears in **567—Chapter 61** and **Chapter 62** and insert "November 11, 2009" in lieu thereof.

ITEM 2. Amend paragraph **61.3(2)"g"** as follows:

*g.* ~~Acceptable levels of total dissolved solids (TDS) and constituent cations and anions will be established on a site-specific basis. The implementation approach for establishing the site-specific levels~~ Cations and anions guideline values to protect livestock watering may be found in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on November 11, 2009.

ITEM 3. Amend subrule **61.3(3)**, TABLE 1. Criteria for Chemical Constituents, parameters for cadmium, chloride, copper, lead, nickel and zinc, as follows:

| | | Use Designations | | | | | | | |
|---|---|---|---|---|---|---|---|---|---|
| Parameter | | B(CW1) | B(CW2) | B(WW-1) | B(WW-2) | B(WW-3) | B(LW) | C | HH |
| Cadmium | Chronic | 1 | — | ~~.27~~(h)<br>.45(h) | ~~.27~~(h)<br>.45(h) | ~~.27~~(h)<br>.45(h) | 1 | — | — |
| | Acute | 4 | — | ~~2.13~~(h)<br>4.32(h) | ~~2.13~~(h)<br>4.32(h) | ~~2.13~~(h)<br>4.32(h) | 4 | — | — |
| | Human Health + — Fish | — | — | — | — | — | — | — | 168(e) |
| | MCL | — | — | — | — | — | — | 5 | — |
| Chloride | Chronic | 389(m)* | 389(m)* | 389(m)* | 389(m)* | 389(m)* | 389(m)* | — | — |
| | Acute | 629(m)* | 629(m)* | 629(m)* | 629(m)* | 629(m)* | 629(m)* | — | — |
| | MCL | — | — | — | — | — | — | 250* | — |
| Copper | Chronic | 20 | — | ~~9.3~~(i)<br>16.9(i) | ~~9.3~~(i)<br>16.9(i) | ~~9.3~~(i)<br>16.9(i) | 10 | — | — |
| | Acute | 30 | — | ~~14~~(i)<br>26.9(i) | ~~14~~(i)<br>26.9(i) | ~~14~~(i)<br>26.9(i) | 20 | — | — |
| | Human Health + — Fish | — | — | — | — | — | — | — | 1000(e) |
| | Human Health + — F & W | — | — | — | — | — | — | — | 1300(f) |
| Lead | Chronic | 3 | — | ~~3.2~~(j)<br>7.7(j) | ~~3.2~~(j)<br>7.7(j) | ~~3.2~~(j)<br>7.7(j) | 3 | — | — |
| | Acute | 80 | — | ~~81.7~~(j)<br>197(j) | ~~81.7~~(j)<br>197(j) | ~~81.7~~(j)<br>197(j) | 80 | — | — |
| | MCL | — | — | — | — | — | — | 50 | — |
| Nickel | Chronic | 350 | — | ~~52~~(k)<br>93(k) | ~~52~~(k)<br>93(k) | ~~52~~(k)<br>93(k) | 150 | — | — |
| | Acute | 3250 | — | ~~470~~(k)<br>843(k) | ~~470~~(k)<br>843(k) | ~~470~~(k)<br>843(k) | 1400 | — | — |
| | Human Health + — Fish | — | — | — | — | — | — | — | 4600(e) |
| | Human Health + — F & W | — | — | — | — | — | — | — | 610(f) |

| Parameter | | Use Designations B(CW1) | B(CW2) | B(WW-1) | B(WW-2) | B(WW-3) | B(LW) | C | HH |
|---|---|---|---|---|---|---|---|---|---|
| Zinc | Chronic | 200 | — | ~~120~~[l] 215[l] | ~~120~~[l] 215[l] | ~~120~~[l] 215[l] | 100 | — | — |
| | Acute | 220 | — | ~~120~~[l] 215[l] | ~~120~~[l] 215[l] | ~~120~~[l] 215[l] | 110 | — | — |
| | Human Health + — Fish | — | — | — | — | — | — | — | 26*[e] |
| | Human Health + — F & W | — | — | — | — | — | — | — | 7.4*[f] |

* units expressed as milligrams/liter

ITEM 4. Amend subrule **61.3(3)**, TABLE 1. Criteria for Chemical Constituents, footnotes (h) to (l), as follows:

(h) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of ~~100~~ 200 mg/l (as $CaCO_3$ (mg/l)). Numerical criteria (µg/l) for cadmium are a function of hardness (as $CaCO_3$ (mg/l)) using the equation for each use according to the following table:

| | B(WW-1) | B(WW-2) | B(WW-3) |
|---|---|---|---|
| Acute | $e^{[1.0166Ln(Hardness) - 3.924]}$ | $e^{[1.0166Ln(Hardness) - 3.924]}$ | $e^{[1.0166Ln(Hardness) - 3.924]}$ |
| Chronic | $e^{[0.7409Ln(Hardness) - 4.719]}$ | $e^{[0.7409Ln(Hardness) - 4.719]}$ | $e^{[0.7409Ln(Hardness) - 4.719]}$ |

(i) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of ~~100~~ 200 mg/l (as $CaCO_3$ (mg/l)). Numerical criteria (µg/l) for copper are a function of hardness ($CaCO_3$ (mg/l)) using the equation for each use according to the following table:

| | B(WW-1) | B(WW-2) | B(WW-3) |
|---|---|---|---|
| Acute | $e^{[0.9422Ln(Hardness) - 1.700]}$ | $e^{[0.9422Ln(Hardness) - 1.700]}$ | $e^{[0.9422Ln(Hardness) - 1.700]}$ |
| Chronic | $e^{[0.8545Ln(Hardness) - 1.702]}$ | $e^{[0.8545Ln(Hardness) - 1.702]}$ | $e^{[0.8545Ln(Hardness) - 1.702]}$ |

(j) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of ~~100~~ 200 mg/l (as $CaCO_3$ (mg/l)). Numerical criteria (µg/l) for lead are a function of hardness ($CaCO_3$ (mg/l)) using the equation for each use according to the following table:

| | B(WW-1) | B(WW-2) | B(WW-3) |
|---|---|---|---|
| Acute | $e^{[1.2731Ln(Hardness) - 1.46]}$ | $e^{[1.2731Ln(Hardness) - 1.46]}$ | $e^{[1.2731Ln(Hardness) - 1.46]}$ |
| Chronic | $e^{[1.2731Ln(Hardness) - 4.705]}$ | $e^{[1.2731Ln(Hardness) - 4.705]}$ | $e^{[1.2731Ln(Hardness) - 4.705]}$ |

(k) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of ~~100~~ 200 mg/l (as $CaCO_3$ (mg/l)). Numerical criteria (µg/l) for nickel are a function of hardness ($CaCO_3$ (mg/l)) using the equation for each use according to the following table:

| | B(WW-1) | B(WW-2) | B(WW-3) |
|---|---|---|---|
| Acute | $e^{[0.846Ln(Hardness) + 2.255]}$ | $e^{[0.846Ln(Hardness) + 2.255]}$ | $e^{[0.846Ln(Hardness) + 2.255]}$ |
| Chronic | $e^{[0.846Ln(Hardness) + 0.0584]}$ | $e^{[0.846Ln(Hardness) + 0.0584]}$ | $e^{[0.846Ln(Hardness) + 0.0584]}$ |

(l) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of ~~100~~ 200 mg/l (as $CaCO_3$ (mg/l)). Numerical criteria (µg/l) for zinc are a function of hardness ($CaCO_3$ (mg/l)) using the equation for each use according to the following table:

| | B(WW-1) | B(WW-2) | B(WW-3) |
|---|---|---|---|
| Acute | $e^{[0.8473Ln(Hardness) + 0.884]}$ | $e^{[0.8473Ln(Hardness) + 0.884]}$ | $e^{[0.8473Ln(Hardness) + 0.884]}$ |
| Chronic | $e^{[0.8473Ln(Hardness) + 0.884]}$ | $e^{[0.8473Ln(Hardness) + 0.884]}$ | $e^{[0.8473Ln(Hardness) + 0.884]}$ |

ITEM 5. Amend subrule **61.3(3)**, TABLE 1. Criteria for Chemical Constituents, by adopting **new** footnote (m) as follows:

(m) Acute and chronic criteria listed in main table are based on a hardness of 200 mg/l (as $CaCO_3$ (mg/l)) and a sulfate concentration of 63 mg/l. Numerical criteria (µg/l) for chloride are a function of hardness ($CaCO_3$ (mg/l)) and sulfate (mg/l) using the equation for each use according to the following table:

| | B(CW1), B(CW2), B(WW-1), B(WW-2), B(WW-3), B(LW) |
|---|---|
| Acute | $287.8(\text{Hardness})^{0.205797}(\text{Sulfate})^{-0.07452}$ |
| Chronic | $177.87(\text{Hardness})^{0.205797}(\text{Sulfate})^{-0.07452}$ |

ITEM 6. Adopt the following **new** table 4 in subrule **61.3(3)**:

**TABLE 4. Aquatic Life Criteria for Sulfate for Class B Waters**

*(all values expressed in milligrams per liter)*

| | Chloride | | |
|---|---|---|---|
| Hardness mg/l as $CaCO_3$ | $Cl^-$ < 5 mg/l | 5 < = $Cl^-$ < 25 | 25 < = $C1^-$ < = 500 |
| H < 100 mg/l | 500 | 500 | 500 |
| 100 < = H < = 500 | 500 | [–57.478 + 5.79 (hardness) + 54.163 (chloride)] × 0.65 | [1276.7 + 5.508 (hardness) –1.457 (chloride)] × 0.65 |
| H > 500 | 500 | 2,000 | 2,000 |

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

# ARC 8226B

# ENVIRONMENTAL PROTECTION COMMISSION[567]

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, "Water Quality Standards," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 11, 2009, as **ARC 7624B**. Six public hearings were held with notice of the hearings sent to various individuals, organizations, associations and interest groups, and to statewide news network organizations. Comments were received from approximately 252 persons and organizations. A responsiveness summary addressing the comments can be obtained from the Department of Natural Resources.

At the July 21, 2009, Environmental Protection Commission meeting, the Commission tabled action on 32 stream segments proposed for Class A2 and approved the remainder of the streams listed in the Notice of Intended Action (see **ARC 8039B**, IAB 8/12/09). At the September 15, 2009, Environmental Protection Commission meeting, the Commission reconsidered the 32 stream segments and adopted the following stream classifications with some amendments:

**Class A2 Stream Segments**

1. Ballard Creek (Story Co.) – adopted as proposed in the NOIA
2. Black Hawk Creek (Black Hawk/Grundy Co.) – adopted as proposed in the NOIA
3. Blue Creek (Benton/Linn Co.) – changed from Class A2 to Class A1 for the pool downstream of site 160-2

4. Brewers Creek (Hamilton Co.) – adopted as proposed in the NOIA
5. Deep Creek (Plymouth Co.) – adopted as proposed in the NOIA
6. Fourmile Creek (Union Co.) – adopted as proposed in the NOIA
7. Hawkeye Creek (Des Moines Co.) – changed from Class A2 to Class A1 from mouth to site 652-2
8. Honey Creek (Delaware Co.) – changed from Class A2 to Class A1 from the mouth to the confluence with the unnamed creek upstream of site 385-2a
9. Indian Creek (Audobon/Shelby/Cass Co.) – adopted as proposed in the NOIA
10. Indian Creek (Sac Co.) – adopted as proposed in the NOIA
11. Indian Creek (Sioux Co.) – adopted as proposed in the NOIA
12. Little Cedar River (Mitchell Co.) – changed from Class A2 to Class A1 for the entire assessed reach
13. Little Maquoketa River (Dubuque Co.) – adopted as proposed in the NOIA
14. Little Walnut Creek (Appanoose Co.) – changed from Class A2 to Class A1 for the pooled area just downstream of site 700-1
15. Mitchell Creek (Jefferson Co.) – changed from Class A2 to Class A1 for the small pool at site 821-2
16. Mosquito Creek (Pottawattamie/Harrison/Shelby Co.) – changed from Class A2 to Class A1 for the deep pooled conditions behind the silt dams at sites 228-2, 138-1, 138-2, and 138-3
17. Mud Creek (Polk Co.) – adopted as proposed in the NOIA
18. Platte River – adopted as proposed in the NOIA
19. Plum Creek (Delaware Co.) – changed from Class A2 to Class A1 from the mouth through Brayton Memorial Forest
20. Plum Creek (Delaware Co.) – the upstream Class A2 segment adopted as proposed in the NOIA
21. Thompson River – adopted as proposed in the NOIA
22. Twelvemile Creek (Union Co.) – adopted as proposed in the NOIA
23. Unnamed Creek (#2) (City of Cincinnati) – changed from Class A2 to Class A1 for the small pool at site 208-2
24. Unnamed Creek (#2) (City of Hedrick) – changed from Class A2 to Class A1 for the small pool at site 466-2a
25. Unnamed Creek (#2) (Oak Hills Subdivision) – changed from Class A2 to Class A1 for the small pool at site 188-2
26. Unnamed Creek (City of Huxley) – adopted as proposed in the NOIA
27. Unnamed Creek (IAAP) – adopted as proposed in the NOIA
28. Unnamed Creek (John Deere Engineering Center) – changed from Class A2 to Class A1 for the small pool at site 383-1
29. Unnamed Creek (Stacyville Coop Creamery) – adopted as proposed in the NOIA
30. Waterman Creek (O'Brien Co.) – changed from Class A2 to Class A1 for the entire assessed reach
31. West Branch Floyd River – changed from Class A2 to Class A3 near the towns of Maurice and Sioux Center and from CR C16 to the town of Struble
32. Willow Creek (Cerro Gordo Co.) – changed from Class A2 to Class A1 at site 34-2

The stream descriptions provided in this preamble are designed to provide clear notice to the public and may be subject to nonsubstantive corrections to conform to the format used in the stream classification document. The stream classification document adopted by reference herein also contains nonsubstantive revisions to previously adopted stream designations to correct typographical or descriptive errors. All designations conform to the previously approved use designations, as amended by the Commission.

Additional information on Iowa's Water Quality Standards and the Department's rules can be found on the Department's Web site at http://www.iowadnr.com/water/standards/index.html.

This amendment may have an impact upon small businesses.

This amendment is intended to implement Iowa Code chapter 455B, division III, part 1.

This amendment will become effective November 11, 2009.

The following amendment is adopted.

Amend subrule 61.3(5) as follows:

**61.3(5)** *Surface water classification.* The department hereby incorporates by reference "Surface Water Classification," effective ~~September 16, 2009~~ November 11, 2009. This document may be obtained on the department's Web site at http://www.iowadnr.com/water/standards/index.html.

[Filed 9/18/09, effective 11/11/09]
[Published 10/7/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

## ARC 8204B

# HUMAN SERVICES DEPARTMENT[441]

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 239B.4(6), the Department of Human Services amends Chapter 45, "Payment," Iowa Administrative Code.

This amendment allows the Department to issue assistance under the Family Investment Program (FIP) either by electronic access card, or by direct deposit to the client's own bank account, or by warrant. Assistance payments will be issued by electronic access card unless the client requests direct deposit or the Department determines that it is not practicable to issue payment by electronic access card. The Department will use the same electronic access card to issue FIP and Refugee Cash Assistance benefits as the Iowa Workforce Development Department uses to issue unemployment insurance benefits.

Issuing assistance by electronic access card will reduce overhead costs in distributing benefits and will also have advantages for clients, including:

- Providing assistance in a safer, timelier manner.
- Avoiding mail delays, losses, or theft of warrants.
- Greater convenience in accessing and handling funds.
- Avoiding check-cashing fees.
- Improved financial literacy skills as clients become more familiar with using financial institutions.

This amendment provides for waivers for clients who do not wish to use the electronic access card by offering the option of direct deposit to the client's own bank account.

This amendment was also Adopted and Filed Without Notice and was published in the Iowa Administrative Bulletin on July 29, 2009, as **ARC 8005B**. Notice of Intended Action to solicit public comment on the amendment was published on the same date as **ARC 8006B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that Adopted and Filed Without Notice and published under Notice of Intended Action.

The Council on Human Services adopted this amendment on September 16, 2009.

This amendment is intended to implement Iowa Code chapter 239B.

This amendment shall become effective on November 11, 2009, at which time the amendment that was Adopted and Filed Without Notice is rescinded.

The following amendment is adopted.

Rescind rule 441—45.21(239B) and adopt the following **new** rule in lieu thereof:

**441—45.21(239B) Issuing payment.** The department may issue assistance payments under the family investment program (FIP):

1. By electronic access card,
2. By direct deposit to the recipient's own account in a financial institution, or
3. By warrant.

**45.21(1)** *Electronic access card.* The department shall make payments available through an electronic access card issued to the payee except when:

*a.* The recipient requests direct deposit; or

*b.* The department determines it is not practicable to issue the payment by electronic access card.

**45.21(2)** *Direct deposit.* The department shall issue payments by direct deposit to the recipient's own account in a financial institution if the recipient completes Form 470-0261, Agreement for Automatic Deposit, to request direct deposit.

**45.21(3)** *Warrant.* The department shall issue payments by warrant when the recipient has not requested direct deposit and the department determines it is not practicable to issue payment by electronic access card. These circumstances include but are not limited to the following:

*a.* A one-time payment is issued.

*b.* The payee is a representative payee, conservator, or guardian who is not part of the FIP assistance unit.

*c.* The payee is unable to provide a social security number or an individual taxpayer identification number.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

## ARC 8205B

# HUMAN SERVICES DEPARTMENT[441]

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments affect Medicaid coverage limits and fees for services provided by an ambulatory surgical center. Under current rules, Iowa Medicaid covers the same procedures that are covered by Medicare and reimburses these services based on a fee schedule that depends on the complexity of the procedure.

Medicare used the same reimbursement methodology until January 1, 2008. At that time, Medicare began phasing in a reimbursement methodology based on the hospital Outpatient Prospective Payment System (OPPS). Medicare's change in methodology is being phased in using a blended payment methodology over three years, with full implementation by 2011. Unlike Medicare, Iowa's Medicaid Management Information System (MMIS) cannot process claims using a combination of these methodologies, making a phased-in approach at the state level impossible.

Additionally, Medicare has begun to cover more than 800 procedures that previously were not covered for ambulatory surgical centers, many of which do not have a comparable payment category under Iowa's existing methodology. If Iowa Medicaid were to cover these same procedures using the existing payment methodology, the result would be inflated payments for nearly 500 procedures. For example, Medicaid payment for removal of sutures in a physician's office is $59.55, while the payment at the lowest ambulatory surgical center category would be $332.89.

The Department will monitor Medicare implementation of the OPPS methodology and determine if Iowa should adopt that methodology beginning in January 2011. In the interim, these amendments provide for the Department to determine the scope of covered ambulatory surgical center services independently from Medicare and set the fee for newly covered procedures. All services covered under the previous Medicare policy will continue to be covered. The list of covered services will be made available through a fee schedule published on the Iowa Medicaid Enterprise Web site.

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

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on June 3, 2009, as **ARC 7827B**. The Department received one comment in support of paying the same

total fee for ambulatory procedures as if the procedures were performed in a physician's office. These amendments are identical to those published under Notice of Intended Action.

The Council on Human Services adopted these amendments on September 16, 2009.

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

These amendments shall become effective on November 11, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [78.26, 79.1] is being omitted. These amendments are identical to those published under Notice as **ARC 7827B**, IAB 6/3/09.

[Filed 9/17/09, effective 11/11/09]
[Published 10/7/09]
[For replacement pages for IAC, see IAC Supplement 10/7/09.]

## ARC 8206B

# HUMAN SERVICES DEPARTMENT[441]

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment sets Medicaid reimbursement policy for translation or interpretation services provided in connection with the use of Medicaid services by members whose primary language is not English. Provision of translation or interpretation services for persons with limited English proficiency is required by Title VI of the Civil Rights Act of 1964 for federally funded programs. The Children's Health Insurance Program Reauthorization Act of 2009 raises the level of federal reimbursement for these services in the Medicaid program.

Under this amendment, the Department sets a fee for translation and interpretation services, and providers whose reimbursement is determined by a fee for service may bill this service in addition to the Medicaid service provided. Providers whose reimbursement is cost-based are already able to include these expenses in their cost reports.

This amendment does not provide for waivers in specified situations because the changes benefit the providers affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

This amendment was also Adopted and Filed Emergency and was published in the Iowa Administrative Bulletin on July 1, 2009, as **ARC 7937B**. Notice of Intended Action to solicit comment on the amendment was published on the same date as **ARC 7938B**. The Department received two comments on the Notice of Intended Action, one for and one against the concept of paying for translation and interpretation.

The Department has made one change to the amendment as previously adopted, to clarify the conditions for payment of these services. The following sentence has been added to paragraph 79.1(19)"b": "In order for translation or interpretation to be covered, it must be provided by separate employees or contractors solely performing translation or interpretation activities."

This amendment is intended to implement Iowa Code section 249A.4 and 2009 Iowa Acts, Senate File 389, section 38(5).

This amendment shall become effective on November 11, 2009, at which time the amendment that was Adopted and Filed Emergency is rescinded.

The following amendment is adopted.

Adopt the following **new** subrule 79.1(19):

**79.1(19)** *Reimbursement for translation and interpretation services.* Reimbursement for translation and interpretation services shall be made to providers based on the reimbursement methodology for the provider category as defined in subrule 79.1(2).

*a.* For those providers whose basis of reimbursement is cost-related, translation and interpretation services shall be considered an allowable cost.

*b.* For those providers whose basis of reimbursement is a fee schedule, a fee shall be established for translation and interpretation services, which shall be treated as a reimbursable service. In order for translation or interpretation to be covered, it must be provided by separate employees or contractors solely performing translation or interpretation activities.

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## ARC 8207B

# HUMAN SERVICES DEPARTMENT[441]

**Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 249A.4 and 2009 Iowa Acts, House File 811, section 32(13), the Department of Human Services amends Chapter 82, "Intermediate Care Facilities for the Mentally Retarded," Iowa Administrative Code.

These amendments:

• Reflect the change to a 3 percent inflation factor for reimbursement of intermediate care facilities for the mentally retarded in state fiscal year 2010 that was mandated by 2009 Iowa Acts, House File 811, section 32(10); and

• Make technical changes to update the chapter to current Iowa Medicaid organization and terminology.

Current administrative rules state that the inflation factor shall be the percent change from December to December of the Consumer Price Index for all urban consumers, U.S. city average (CPI-U). For state fiscal year 2010, the CPI-U factor is 0.1 percent. Computing reimbursement using this factor would essentially freeze ICF/MR reimbursement rates for state fiscal year 2010. With a 3 percent inflation rate, the estimated average per diem reimbursement rate increases from $386 per day to $397 per day, for a total statewide increase in reimbursement of $8.8 million for state fiscal year 2010. Costs to the state are estimated at $0.9 million, and costs to county governments are estimated at $1.6 million.

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

The Council on Human Services adopted these amendments September 16, 2009.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because these amendments implement changes mandated by 2009 Iowa Acts, House File 811, section 32, which authorizes the Department to adopt rules without notice and public participation.

These amendments are also published herein under Notice of Intended Action as **ARC 8208B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.4 and 2009 Iowa Acts, House File 811, section 32(10).

These amendments will become effective on December 1, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule 82.5(6) as follows:

**82.5(6)** *Census of ~~public assistance recipients~~ Medicaid members.* Census figures of ~~public assistance recipients~~ Medicaid members shall be obtained on the last day of the month ending the reporting period.

ITEM 2. Amend paragraph **82.5(9)"b"** as follows:

*b.* When a ~~recipient~~ member is on a reserve bed status and the department is paying on a per diem basis for the holding of a bed, or any day a bed is reserved for a public assistance or nonpublic assistance patient and a per diem rate for the bed is charged to any party, the reserved days shall be included in the total census figures for in-patient days.

ITEM 3. Amend subrule 82.5(14) as follows:

**82.5(14)** *Payment to new facility.* A facility receiving Medicaid ICF/MR certification on or after July 1, 1992, shall be subject to the provisions of this subrule.

*a.* No change.

*b.* Initial cost report. Following six months of operation as a Medicaid-certified ICF/MR, the facility shall submit a report of actual costs. The rate computed from this cost report shall be adjusted to 100 percent occupancy plus the annual percentage increase of the Consumer Price Index for all urban consumers, U.S. city average (hereafter referred to as the Consumer Price Index). For the period beginning July 1, 2009, and ending June 30, 2010, 3 percent shall be used to adjust costs for inflation, instead of the annual percentage increase of the Consumer Price Index. Business start-up and organization costs shall be accounted for in the manner prescribed by the Medicare and Medicaid standards. Any costs that are properly identifiable as start-up costs, organization costs or capitalizable as construction costs must be appropriately classified as such.

(1) and (2) No change.

*c.* No change.

*d.* Completion of 12 months of operation. Following the first 12 months of operation as a Medicaid-certified ICF/MR as described in subrule 82.5(14), the facility shall submit a cost report for the second six months of operation ~~and an~~. An on-site audit of facility costs shall be performed by the accounting firm under contract with the department. Based on the audited cost report, a rate shall be established for the facility. This rate shall be considered the base rate until rebasing of facility costs ~~shall occur~~ occurs.

(1) A new maximum allowable base cost will be calculated each year by increasing the prior year's maximum allowable base by the annual percentage increase of the Consumer Price Index ~~for all urban consumers, U.S. city average (hereafter referred to as the Consumer Price Index)~~. For the period beginning July 1, 2009, and ending June 30, 2010, the prior year's maximum allowable base cost shall be increased by 3 percent, instead of the annual percentage increase of the Consumer Price Index.

(2) Each year's maximum allowable base cost represents the maximum amount that ~~could~~ can be reimbursed.

*e.* No change.

*f.* Incentive factor. New facilities which complete the second annual period of operation that have an annual per unit cost percentage increase of less than the percentage increase of the Consumer Price Index, as described in 82.5(14)*"d,"* shall be given their actual percentage increase plus one-half the difference of their actual percentage increase compared to the allowable maximum percentage increase. This percentage difference ~~times~~ multiplied by the actual per diem cost for the annual period just completed is the incentive factor. For the period beginning July 1, 2009, and ending June 30, 2010, the incentive factor shall be calculated using 3 percent in place of the percentage increase of the Consumer Price Index.

(1) The incentive factor will be added to the new reimbursement base rate to be used as the per diem rate for the next annual period of operation.

(2) Facilities whose annual per unit cost decreased from the prior year shall be given their actual per unit cost plus one and one-half the percentage increase in the Consumer Price Index as an incentive for cost containment.

*g.* Reimbursement for first annual period. The reimbursement for the first annual period will be determined by ~~taking~~ multiplying the per diem rate calculated for the base period ~~and then multiplying it~~ by the Consumer Price Index ~~Urban Consumers U.S. City Average and adding it to the base rate~~ plus one.

(1) The projected reimbursement for each period thereafter (until rebasing) will be calculated by ~~taking~~ multiplying the lower of the prior year's actual or the projected reimbursement per diem ~~times~~ by the Consumer Price Index ~~and adding it to the lower of the two~~ plus one. For the period beginning July 1, 2009, and ending June 30, 2010, the projected reimbursement will be determined using a multiplier of 3 percent instead of the Consumer Price Index.

(2) If a facility experiences an increase in actual costs that exceeds both the actual reimbursement and the maximum allowable base cost as determined for that annual period, ~~it~~ the facility shall receive as reimbursement in the following period the maximum allowable base as calculated ~~as reimbursement~~.

(3) All calculated per diem rates shall be subject to the prevailing maximum rate.

ITEM 4. Amend subrule 82.5(16) as follows:

**82.5(16)** *Payment to existing facilities.* The following reimbursement limits shall apply to all non-state-owned ICFs/MR:

*a.* to *c.* No change.

*d.* Facilities which have an annual per unit cost percentage increase of less than the percentage increase of the Consumer Price Index, or of less than 3 percent for rates effective July 1, 2009, through June 30, 2010, shall be given their actual percentage increase plus one-half the difference of their actual percentage increase compared to the allowable maximum percentage increase. This percentage difference ~~times~~ multiplied by the actual per diem costs for the annual period just completed is the incentive factor.

(1) The incentive factor will be added to the new reimbursement base rate to be used as the per diem rate for the following annual period.

(2) Facilities whose annual per unit cost decreased from the prior year shall receive their actual per unit cost plus one and one-half the percentage increase in the Consumer Price Index ~~plus,~~ as an incentive for cost containment~~, one-half the percentage increase in the Consumer Price Index~~. For the period beginning July 1, 2009, and ending June 30, 2010, 3 percent shall be used in lieu of the percentage increase in the Consumer Price Index.

*e.* and *f.* No change.

*g.* Total patient days for purposes of the computation shall be inpatient days as determined in subrule 82.5(7) or 80 percent of the licensed capacity of the facility, whichever is greater. The reimbursement rate shall be determined by dividing total reported patient expenses by total patient days during the reporting period. This cost per day will be limited by an inflation increase which shall not exceed the percentage change in the Consumer Price Index ~~for all urban consumers, U.S. City Average~~. For the period beginning July 1, 2009, and ending June 30, 2010, the inflation increase shall be 3 percent, notwithstanding the percentage change in the Consumer Price Index.

*h.* State-owned ICFs/MR shall submit semiannual cost reports and shall receive semiannual rate adjustments based on actual costs of operation inflated by the percentage change in the Consumer Price Index~~, All Urban Consumers, U.S. City Average~~. For the period beginning July 1, 2009, and ending June 30, 2010, costs of operation shall be inflated by 3 percent instead of the percentage change in the Consumer Price Index.

*i.* The projected reimbursement for the first annual period will be determined by ~~taking~~ multiplying the per diem rate calculated for the base period ~~and then multiplying it~~ by the Consumer Price Index ~~and adding it to the base rate~~ plus one.

(1) The projected reimbursement for each period thereafter (until rebasing) will be calculated by ~~taking~~ multiplying the lower of the prior year's actual or the projected reimbursement per diem ~~times~~ by the Consumer Price Index ~~and adding it to the lower of the two~~ plus one. For the period beginning July 1, 2009, and ending June 30, 2010, the projected reimbursement will be determined using a multiplier of 3 percent instead of the Consumer Price Index.

(2) If a facility experiences an increase in actual costs that exceeds both the actual reimbursement and the maximum allowable base cost as determined for that annual period, ~~it~~ the facility shall receive as reimbursement in the following period the maximum allowable base as calculated ~~as reimbursement~~.

ITEM 5. Amend subrule 82.7(3) as follows:

**82.7(3)** *Approval ~~by Iowa Foundation for Medical Care~~ of level of care.* Medicaid payment shall be made for intermediate care facility for the mentally retarded care upon certification of need for this level of care by a licensed physician of medicine or osteopathy and approval by the Iowa ~~Foundation for Medical Care which is designated as the professional standards review organization for the state~~ Medicaid enterprise (IME) medical services unit. The ~~Iowa Foundation for Medical Care~~ IME medical services unit shall review ICF/MR admissions and transfers only when documentation is provided which verifies a referral from targeted case management ~~which~~ that includes an approval by the central point of coordination.

ITEM 6. Amend subrule 82.7(4) as follows:

**82.7(4)** *Appeal rights.* Notice of adverse action and right to appeal shall be given in accordance with 441—Chapter 7. ~~The applicant or consumer is entitled to have a review of the level of care determination by the Iowa Foundation for Medical Care by sending a letter requesting a review to the foundation. If dissatisfied with that decision, the applicant or consumer may file an appeal with the department.~~ The applicant or consumer for whom the county has legal payment responsibility shall be entitled to a review of adverse decisions by the county by appealing to the county pursuant to 441—paragraph 25.13(2)*"j."* If dissatisfied with the county's decision, the applicant or consumer may file an appeal with the department according to the procedures in 441—Chapter 7.

ITEM 7. Amend rule 441—82.8(249A) as follows:

**441—82.8(249A) Determination of need for continued stay.** Certification of need for continued stay shall be made according to procedures established by the Iowa ~~Foundation for Medical Care~~ Medicaid enterprise (IME) medical services unit.

This rule is intended to implement Iowa Code section 249A.12.

ITEM 8. Amend paragraph **82.9(3)"f"** as follows:

*f.* Upon a ~~patient's~~ member's death, a receipt shall be obtained from the next of kin or the ~~resident's~~ member's guardian before releasing the balance of the personal needs funds. When the ~~recipient~~ member has been receiving a grant from the department for all or part of the personal needs, any funds shall revert to the department. The department shall turn the funds over to the ~~resident's~~ member's estate.

ITEM 9. Amend subrules 82.10(1) and 82.10(2) as follows:

**82.10(1)** *Notice.* When a ~~public assistance recipient~~ Medicaid member requests transfer or discharge to a community setting, or another person requests this for the ~~recipient~~ member, the administrator shall promptly notify ~~the county office of the department~~ a targeted case management provider. Names of local providers are available from the department's local office. This shall be done in sufficient time to permit a ~~social service worker~~ case manager to assist in the decision and planning for the transfer or discharge.

**82.10(2)** *Case activity report.* A Case Activity Report, Form 470-0042, shall be submitted to the department whenever a Medicaid applicant or ~~recipient~~ member enters the facility, changes level of care, or is discharged from the facility.

ITEM 10. Amend rule 441—82.11(249A) as follows:

**441—82.11(249A) Continued stay review.** The ~~Iowa Foundation for Medical Care~~ Iowa Medicaid enterprise (IME) medical services unit shall be responsible for reviews of each resident's need for continuing care in intermediate care facilities for the mentally retarded.

This rule is intended to implement Iowa Code section 249A.12.

ITEM 11. Amend rule 441—82.12(249A) as follows:

**441—82.12(249A) Quality of care review.** The ~~Iowa Foundation for Medical Care~~ Iowa Medicaid enterprise (IME) medical services unit shall carry out the quality of care studies in intermediate care facilities for the mentally retarded.

This rule is intended to implement Iowa Code section 249A.12.

[Filed Without Notice 9/17/09, effective 12/1/09]
[Published 10/7/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

## ARC 8189B

# INSPECTIONS AND APPEALS DEPARTMENT[481]

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby amends Chapter 60, "Minimum Physical Standards for Residential Care Facilities," and Chapter 61, "Minimum Physical Standards for Nursing Facilities," Iowa Administrative Code.

Items 1 and 3 of the amendments correct the name of the division within the Iowa Department of Workforce Development that is responsible for oversight of boilers in residential care facilities and nursing facilities and correct the chapters of the administrative rules governing boilers. The amendments are technical in nature and clarify the rules under which boilers are inspected and regulated.

Items 2 and 4 remove a prohibition pertaining to plastic piping for hot or cold water systems in residential care facilities and nursing facilities. The Department has frequently received requests to waive this prohibition and believes it is no longer necessary.

These amendments were published under Notice of Intended Action in the July 29, 2009, Iowa Administrative Bulletin as **ARC 7989B**. No comments were received, and no changes have been made.

The proposed amendments were presented to the State Board of Health at its July 8, 2009, meeting, at which time they were initially reviewed. The State Board of Health adopted the amendments at its September 9, 2009, meeting.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135C.14.

These amendments will become effective November 11, 2009.

The following amendments are adopted.

ITEM 1. Amend paragraph **60.11(1)"a"** as follows:

*a.* Boilers shall be installed to comply with the division of labor services rules promulgated ~~in~~ under Iowa Code chapter 89 and 875—Chapters ~~200~~ 90 to ~~209~~ 96, Iowa Administrative Code, and shall be inspected annually. (III)

ITEM 2. Rescind and reserve paragraph **60.11(4)"d."**

ITEM 3. Amend paragraph **61.11(1)"a"** as follows:

*a.* Boilers shall be installed to comply with the ~~bureau~~ division of labor ~~regulations~~ services rules promulgated under Iowa Code chapter 89 and ~~347—Chapters 41 to 49~~ 875—Chapters 90 to 96, Iowa Administrative Code. (III)

ITEM 4. Rescind and reserve subparagraph **61.11(4)"c"(9)**.

[Filed 9/10/09, effective 11/11/09]
[Published 10/7/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

## ARC 8185B

# LABOR SERVICES DIVISION[875]

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 91A.9, the Labor Commissioner amends Chapter 34, "Civil Penalties," Iowa Administrative Code.

The principal reason for adoption of this amendment is to implement Iowa Code chapter 91A and 2009 Iowa Acts, House File 618, by increasing the civil penalty for violations of Iowa Code chapter 91A.

No variance provision is included in these rules as 875—Chapter 1 sets forth applicable variance procedures.

Notice of Intended Action was published in the July 15, 2009, Iowa Administrative Bulletin as **ARC 7952B**. No public comment was received on this amendment. This amendment is identical to that published under Notice of Intended Action.

This amendment shall become effective on November 11, 2009.

This amendment is intended to implement 2009 Iowa Acts, House File 618, and Iowa Code chapter 91A.

The following amendment is adopted.

Amend subrule 34.3(2), introductory paragraph, as follows:

**34.3(2)** The gross penalty for each distinguishable violation shall be ~~$100~~ $500. The following are examples of distinguishable violations:

[Filed 9/9/09, effective 11/11/09]
[Published 10/7/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

## ARC 8197B

# NATURAL RESOURCE COMMISSION[571]

**Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 21, "Agricultural Lease Program," Iowa Administrative Code.

The adopted amendment increases the threshold for which negotiation, as opposed to competitive bidding, of a lease may be considered by the Department of Natural Resources. The Department derived this threshold using other competitive contracting laws and their $5,000 thresholds as justification.

Adopting this amendment without notice is appropriate under Iowa Code section 17A.5(2)"b"(2) because the amendment will confer a benefit on the potential leaseholders by not requiring timely and potentially costly competitive bidding for smaller leases. The Department did propose this amendment under Notice of Intended Action, which was published in the Iowa Administrative Bulletin as **ARC 7533B** on January 28, 2009, but that Notice has expired. The final adopted amendment is unchanged from that published in the expired Notice of Intended Action. No comments regarding that amendment were received.

This amendment is intended to implement Iowa Code sections 461A.25, 456A.24(2), and 456A.24(5).

This amendment shall become effective November 11, 2009.

The following amendment is adopted.

Amend subrule 21.4(7) as follows:

**21.4(7)** *Negotiated leases.* The land manager may negotiate a lease with any prospective operator, subject to approval of the director, in any of the following instances:

*a.* No bids are received.

*b.* Gross annual rent is ~~$2500~~ $5000 or less.

*c.* Where land acquired by the department is subject to an existing tenancy.

*d.* To synchronize the lease period of newly leased areas with other leases in the same management unit.

*e.* Where a proposed lease includes only land not accessible to equipment necessary to perform the required farming operations, except over privately owned land, provided the prospective operator possesses legal access to the leased land over said privately owned land.

*f.* Where the director authorizes a lease as a condition of a land purchase or trade.

[Filed Without Notice 9/15/09, effective 11/11/09]
[Published 10/7/09]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

## ARC 8195B

## NATURAL RESOURCE COMMISSION[571]

**Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 81, "Fishing Regulations," Iowa Administrative Code.

The amendments limit anglers to a maximum 5/0 treble hook size when snagging paddlefish, reduce the length of the fishing season, and establish a maximum size limit on paddlefish.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 29, 2009, as **ARC 8019B**. A public hearing was held August 26, 2009. No one attended the meeting and no comments were received by mail, E-mail or telephone. There are no changes from the Notice of Intended Action.

These amendments are intended to implement Iowa Code section 456A.25.

These amendments will become effective November 11, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [81.1, 81.2(4)] is being omitted. These amendments are identical to those published under Notice as **ARC 8019B**, IAB 7/29/09.

[Filed 9/15/09, effective 11/11/09]
[Published 10/7/09]
[For replacement pages for IAC, see IAC Supplement 10/7/09.]

## ARC 8194B

## NATURAL RESOURCE COMMISSION[571]

**Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 88, "Fishing Tournaments," Iowa Administrative Code.

The amendment requires electronic submission of applications and adjusts the time period during which applications may be accepted.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 29, 2009, as **ARC 8020B**. A public hearing was held August 20, 2009. The time period for submitting applications was modified from the Notice of Intended Action in response to tournament organizers' concerns about insufficient time for organizers to advertise tournament dates and for tournament participants to request vacation from employers.

This amendment is intended to implement Iowa Code sections 462A.16 and 481A.38.

This amendment will become effective November 11, 2009.

The following amendment is adopted.

Amend rule 571—88.3(462A,481A) as follows:

**571—88.3(462A,481A) Application procedures.** The following procedures shall be used to administer fishing tournaments:

1. Application shall be made on ~~a standard~~ an electronic form provided by the department and shall include the name, address and telephone number of the sponsoring organization or individual, the location and date of the tournament, total value of the prizes, and expected number of participants.

2. The application shall be received electronically by the department area fisheries management biologist ~~at least 30 days prior to the proposed event~~ via the centralized special events application system.

3. Applications ~~will~~ shall be accepted beginning January 1 of a given year for requested tournament dates extending to March 1 of the following year and shall not be accepted ~~prior to July 1 of the year preceding the calendar year in which the tournament is scheduled~~ later than 30 days prior to the requested date for the tournament.

4. The number of tournaments at any one access area during a given day may be restricted if deemed necessary to avoid congestion with the public or competing tournaments. The capacity of facilities such as boat ramps, docks and parking lots shall be considered when assigning tournament sites.

5. Permits are not transferable.

[Filed 9/15/09, effective 11/11/09]
[Published 10/7/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

## ARC 8222B

# NURSING BOARD[655]

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby amends Chapter 3, "Licensure to Practice—Registered Nurse/Licensed Practical Nurse," Iowa Administrative Code.

These amendments require applicants for licensure with a criminal conviction history to submit court documents to the Board of Nursing for review. The amendments also remove the Board's renewal notification process by mail and provide for online license renewal.

These amendments were published in the Iowa Administrative Bulletin on July 1, 2009, as **ARC 7889B**. These amendments are identical to those published under Notice.

These amendments will become effective November 11, 2009.

These amendments are intended to implement Iowa Code chapter 147.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 3] is being omitted. These amendments are identical to those published under Notice as **ARC 7889B**, IAB 7/1/09.

[Filed 9/18/09, effective 11/11/09]
[Published 10/7/09]

[For replacement pages for IAC, see IAC Supplement 10/7/09.]

# ARC 8231B

# PUBLIC HEALTH DEPARTMENT[641]

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby rescinds Chapter 1, "Notification and Surveillance of Reportable Communicable and Infectious Diseases," and adopts new Chapter 1, "Reportable Diseases, Poisonings and Conditions, and Quarantine and Isolation," Iowa Administrative Code.

These rules identify diseases, poisonings and conditions, and incidents that are to be reported to the Department in accordance with Iowa Code chapters 135, 136A, 139A, 141A, and 144. These rules clarify what information to report, how and when to report, and who is to report. This chapter also provides for disease control through quarantine and isolation.

The new chapter groups information about similar topics such as reportable communicable and infectious diseases, reportable poisonings and conditions that are noncommunicable, investigation, isolation and quarantine, specific noncommunicable conditions, and confidentiality to make the content easier to access; whereas, the existing rules scatter information about each topic throughout the chapter. The changes also reduce the number of reportable poisonings and conditions by six and clarify the reporting process to make compliance easier for the end user.

Notice of Intended Action was published in the July 15, 2009, Iowa Administrative Bulletin as **ARC 7966B**. No comments were received on these rules.

The following technical and corrective changes have been made for clarity and consistency:

1. In rule 641—1.8(139A), the Web page link has been corrected.
2. In subrule 1.12(2), "novel influenza" has been added to the definition of "Quarantinable disease" to conform with the same definition in rule 641—1.1(139A).
3. In numbered paragraph 1.12(6)"d"(1)"7," the word "requested" has been changed to "imposed" to conform with the same language in numbered paragraph 1.13(4)"c"(1)"5." The text reads "The legal authority under which the order is imposed."
4. In paragraph 1.13(5)"a," third sentence, the phrase "the Local Board of Health or" has been added so that the sentence reads "The appeal shall be addressed to the Local Board of Health or to the Department of Public Health, Division of Acute Disease Prevention and Emergency Response, Lucas State Office Building, Des Moines, Iowa 50319-0075."
5. In paragraph 1.13(5)"e," first sentence, the phrase "or local board" has been added so that the sentence reads "The department or local board acknowledges that in certain circumstances the subject or subjects of a department order may desire immediate judicial review of a department order in lieu of proceeding with the contested case process."
6. In paragraph 1.13(6)"e," the phrase "the owner or" has been added so that the text reads "The right to cross-examine witnesses who testify against the owner or individual."

These rules were adopted by the State Board of Health on September 9, 2009.

These rules will become effective on November 11, 2009.

These rules are intended to implement Iowa Code chapters 135, 136A, 139A, 141A, and 144.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 1] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 7966B**, IAB 7/15/09.

[Filed 9/18/09, effective 11/11/09]

[Published 10/7/09]

[For replacement pages for IAC, see IAC Supplement 10/7/09.]

## ARC 8232B

# PUBLIC HEALTH DEPARTMENT[641]

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 135.11 and 135.131, the Department of Public Health hereby amends Chapter 3, "Early Hearing Detection and Intervention," Iowa Administrative Code.

This chapter contains rules for the universal hearing screening of all newborns and infants in Iowa and the transfer of data to the Department to enhance the capacity of agencies and practitioners to provide services to children and their families. The goal of universal hearing screening of all newborns and infants in Iowa is early detection of hearing loss to allow children and their families the opportunity to obtain early intervention services. This chapter also includes rules to establish procedures for distribution of funds to support the purchase of hearing aids and audiologic services for children.

These amendments eliminate unnecessary dates, clarify language regarding reporting the child's primary care provider to the Department, and clarify the roles and responsibilities of the hospital and audiologist or health care provider for reporting hearing screening or diagnostic assessment results for children under the age of three to the Department. The changes facilitate timely follow-up and avoid unnecessary contact with parents and providers, as well as help the Iowa Early Hearing Detection and Intervention (EHDI) program to monitor the quality of EHDI services and provide recommendations for improving care. These changes are supported by the Early Detection and Intervention Advisory Committee.

Notice of Intended Action was published in the July 15, 2009, Iowa Administrative Bulletin as **ARC 7967B**. No comments were received on these amendments. These amendments are identical to those published under Notice.

These amendments were adopted by the State Board of Health on September 9, 2009.

These amendments will become effective on November 11, 2009.

These amendments are intended to implement Iowa Code section 135.131 as amended by 2009 Iowa Acts, House File 314, division II, and 2009 Iowa Acts, House File 811, division IV, section 60(2)"c."

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 3] is being omitted. These amendments are identical to those published under Notice as **ARC 7967B**, IAB 7/15/09.

[Filed 9/18/09, effective 11/11/09]
[Published 10/7/09]
[For replacement pages for IAC, see IAC Supplement 10/7/09.]

## ARC 8229B

# PUBLIC HEALTH DEPARTMENT[641]

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby amends Chapter 124, "Interagency Coordinating Council for the State Medical Examiner," and Chapter 125, "Advisory Council for the State Medical Examiner," Iowa Administrative Code.

These amendments change the rules governing the number of required meetings that are held in a year for the participants of the Interagency Coordinating Council for the State Medical Examiner and the Advisory Council for the State Medical Examiner

Notice of Intended Action was published in the July 15, 2009, Iowa Administrative Bulletin as **ARC 7968B**. No comments were received on these amendments. The adopted amendments are identical to the ones published under Notice.

These amendments were adopted by the State Board of Health on September 9, 2009.

These amendments will become effective on November 11, 2009.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

These amendments are intended to implement Iowa Code section 691.6B and Iowa Code section 691.6C as amended by 2009 Iowa Acts, House File 380, section 11.

The following amendments are adopted.

ITEM 1. Amend subrule 124.3(1) as follows:

**124.3(1)** The interagency coordinating council shall schedule ~~quarterly meetings~~ two meetings per year to be held at the office of the director of public health.

ITEM 2. Amend rule 641—125.3(691), introductory paragraph, as follows:

**641—125.3(691) Meetings.** The advisory council will hold a meeting at the Iowa laboratory facility in Ankeny at least ~~quarterly~~ two times per year or on a more frequent basis as deemed necessary by the chief state medical examiner with approval of a majority of members of the council.

[Filed 9/18/09, effective 11/11/09]
[Published 10/7/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

## ARC 8230B

# PUBLIC HEALTH DEPARTMENT[641]

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby amends Chapter 131, "Emergency Medical Services Provider Education/Training/Certification," and Chapter 132, "Emergency Medical Services—Service Program Authorization," Iowa Administrative Code.

The rules in Chapter 131 describe the standards for emergency medical providers and training programs. The rules in Chapter 132 describe the standards for the authorization of EMS services. These amendments update the reference to the Iowa EMS Scope of Practice document to the most recent edition, April 2009.

Notice of Intended Action was published in the July 15, 2009, Iowa Administrative Bulletin as **ARC 7969B**. No comments were received on these amendments. The adopted amendments are identical to the ones published under Notice.

These amendments were adopted by the State Board of Health on September 9, 2009.

These amendments will become effective on November 11, 2009.

These amendments are intended to implement Iowa Code chapter 147A.

The following amendments are adopted.

ITEM 1. Amend paragraph **131.3(3)"b"** as follows:

*b.* Scope of Practice for Iowa EMS Providers (~~April 2005~~ April 2009) is incorporated and adopted by reference for EMS providers. For any differences that may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

ITEM 2. Amend paragraph **132.2(4)"b"** as follows:

*b.* Scope of Practice for Iowa EMS Providers (~~April 2005~~ April 2009) is incorporated and adopted by reference for EMS providers. For any differences that may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

[Filed 9/18/09, effective 11/11/09]
[Published 10/7/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

## ARC 8225B

# REVENUE DEPARTMENT[701]

**Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 17A and sections 452A.59 and 452A.76, the Department of Revenue hereby adopts amendments to Chapter 10, "Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments," Chapter 67, "Administration," and Chapter 68, "Motor Fuel and Undyed Special Fuel," Iowa Administrative Code.

Item 1 amends rule 701—10.71(452A) to correct an Iowa Code reference.

Item 2 amends subrule 10.71(1) to reflect the increase in the penalties for the illegal use of dyed fuel.

Item 3 amends subrule 10.71(2), paragraphs "a" through "e," to reflect the increase in the penalties for the illegal importation of untaxed fuel.

Item 4 amends subrule 10.71(5) to reflect the increase in the penalty for a person interfering with the inspection of fuel or shipping papers by authorized Department of Revenue or Department of Transportation personnel.

Item 5 amends the implementation clause for rule 701—10.71(452A).

Item 6 amends rule 701—67.12(452A) and the implementation clause to require that an invoice for the transportation of ethanol blended gasoline or biodiesel blended fuel state its designation.

Item 7 amends subrule 68.2(1) to show that the tax rates for gasoline (21¢) and ethanol blended gasoline (19¢) are the same for fiscal year 2010 as they were for fiscal year 2009.

Item 8 amends subrule 68.2(2) to exclude aviation gasoline from the formula for determining the tax rate for gasoline and ethanol blended fuel beginning calendar year 2009 for tax rates effective July 1, 2010, and after.

Item 9 amends the implementation clause for rule 701—68.2(452A).

Item 10 amends rule 701—68.18(452A) and the implementation clause to require a bill of lading to identify the percentage of renewable fuel in the product being transported and state whether any diesel fuel being transported is dyed or undyed.

Notice of Intended Action was published in IAB Vol. XXXII, No. 4, p. 429, on August 12, 2009, as **ARC 8043B**.

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

These amendments will become effective November 11, 2009, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code section 452A.3 as amended by 2009 Iowa Acts, Senate File 419, section 44; section 452A.10; section 452A.12 as amended by 2009 Iowa Acts, Senate File 478, section 140; section 452A.60; section 452A.74A as amended by 2009 Iowa Acts, Senate File 478, section 141; and section 452A.76.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [10.71, 67.12, 68.2, 68.18] is being omitted. These amendments are identical to those published under Notice as **ARC 8043B**, IAB 8/12/09.

[Filed 9/18/09, effective 11/11/09]

[Published 10/7/09]

[For replacement pages for IAC, see IAC Supplement 10/7/09.]

# ARC 8203B

# TRANSPORTATION DEPARTMENT[761]

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on September 16, 2009, adopted an amendment to Chapter 620, "OWI and Implied Consent," Iowa Administrative Code.

Notice of Intended Action for this amendment was published in the August 12, 2009, Iowa Administrative Bulletin as **ARC 8025B**. This amendment was also Adopted and Filed Emergency, effective July 14, 2009, and was published in the August 12, 2009, Iowa Administrative Bulletin as **ARC 8024B**.

Iowa Code section 321J.4(2) was amended by 2009 Iowa Acts, Senate File 419, section 13, to reduce the minimum period of ineligibility from one year to 45 days for a temporary restricted license (TRL) for a person convicted of operating while intoxicated (OWI) who has had a previous conviction or revocation under Iowa Code chapter 321J. The legislation became effective July 1, 2009.

This amendment was undertaken in response to an amendment to 23 U.S.C. § 164, "Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence," effected by the SAFETEA-LU Technical Corrections Act of 2008, Public Law No. 110-244, § 115, 122 Stat. 1572 (June 6, 2008), which previously required states to impose a one-year hard revocation of driving privileges on a repeat offender but which now allows states to impose either a one-year hard revocation or a 45-day hard revocation followed by a period of restricted driving to and from work, school, or an alcohol treatment program. (A "hard" revocation means no restricted driving is allowed during the period of revocation.) Because the amendment to Iowa Code section 321J.4(2) appears clearly calculated to remain within the requirements of 23 U.S.C. § 164, and because said intent demands an interpretation of the proper scope during the first year of revocation of a TRL issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) that is not addressed in current rule, a new subrule is needed to address the proper scope of such a TRL. Further, the National Highway Traffic Safety Administration (NHTSA), which enforces compliance with the requirements of 23 U.S.C. § 164, has reviewed the amendment to Iowa Code section 321J.4(2) and communicated to the Department that it renders Iowa out of compliance with the requirements of 23 U.S.C. § 164, absent a corresponding administrative rule that makes clear that the Department is interpreting and enforcing Iowa Code section 321J.4(2) in compliance with the requirements of 23 U.S.C. § 164. The new subrule will clarify Iowa's compliance with these federal requirements and prevent reallocation of necessary federal highway funds.

A new subrule is added to rule 761—620.3(321J) to provide that, any other provision of 761—Chapter 620 of the Department's rules notwithstanding, any TRL issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) shall be limited during the first year of the two-year revocation period to driving to and from work when necessary to maintain the person's present employment and shall not be allowed for any other purpose, including but not limited to transporting dependent children to and from a location for child care. After the first year of the two-year revocation period, a TRL issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) may permit the person to drive to and from work as well as for any other work purpose when necessary to maintain the person's present employment, and may include permission for the person to transport dependent children to and from a location for child care when that activity is essential to continuation of the person's employment. The new subrule also provides that all pleadings and orders submitted by the Department under Iowa Code section 321J.4(9) in regard to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) will be in accord with the requirements of the new subrule, and the Department shall enforce any order authorizing the Department to issue a TRL to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) according to the requirements of the new subrule. The new subrule applies to revocations arising from convictions entered on or after July 1, 2009.

The Department shall not grant any waivers under the provisions of this new subrule because any waiver would nullify the purpose of this rule making and result in a diversion of highway construction funds.

This amendment is identical to the one published under Notice of Intended Action and Adopted and Filed Emergency.

This amendment is intended to implement Iowa Code section 321J.4(2) as amended by 2009 Iowa Acts, Senate File 419, section 13.

This amendment will become effective November 11, 2009, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Adopt the following **new** subrule 620.3(6):

**620.3(6)** *Issuance of temporary restricted license to repeat offender whose driving privilege is revoked under Iowa Code section 321J.4(2).*

*a.* It is the opinion of the department that the amendment to Iowa Code section 321J.4(2) by 2009 Iowa Acts, Senate File 419, section 13, was undertaken in response to changes to 23 U.S.C. § 164, "Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence," effected by the SAFETEA-LU Technical Corrections Act of 2008, Public Law No. 110-244, § 115, 122 Stat. 1572 (June 6, 2008), and that Iowa Code section 321J.4(2) as amended by 2009 Iowa Acts, Senate File 419, section 13, is intended to remain and be interpreted in conformance with the requirements of 23 U.S.C. § 164, including the requirements for restricted driving privileges after 45 days.

*b.* Accordingly, any provision in subrules 620.3(1) to 620.3(5) notwithstanding, any temporary restricted license issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) shall be limited during the first year of the two-year revocation period to driving to and from work when necessary to maintain the person's present employment, and shall not be allowed for any other purpose, including but not limited to transporting dependent children to and from a location for child care. After the first year of the two-year revocation period, a temporary restricted license issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) may permit the person to drive to and from work as well as for any other work purpose when necessary to maintain the person's present employment and may permit the person to transport dependent children to and from a location for child care when that activity is essential to continuation of the person's employment.

*c.* All pleadings and orders submitted by the department under Iowa Code section 321J.4(9) in regard to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) will be in accord with the requirements of this subrule, and the department shall enforce any order authorizing the department to issue a temporary restricted license to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) according to the requirements of this subrule.

*d.* The department interprets 2009 Iowa Acts, Senate File 419, section 13, as applying to convictions entered on or after July 1, 2009, and accordingly this subrule shall apply to revocations arising from convictions entered on or after July 1, 2009.

[Filed 9/17/09, effective 11/11/09]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/7/09.

## ARC 8202B

# TRANSPORTATION DEPARTMENT[761]

### Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 327F.13, the Department of Transportation, on September 15, 2009, adopted Chapter 813, "Close-Clearance Warning Signs Along Railroad Tracks," Iowa Administrative Code.

TRANSPORTATION DEPARTMENT[761](cont'd)

Notice of Intended Action for these rules was published in the July 1, 2009, Iowa Administrative Bulletin as **ARC 7885B**.

Iowa Code section 327F.13 requires the Department to adopt rules concerning close-clearance warning signs along railroad tracks where the clearance between the tracks and an obstruction along the tracks physically impedes a person who is lawfully riding on the side of a train from clearing the obstruction. New Chapter 813 implements this rule-making requirement.

This chapter does not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

The Department received two written comments and held a public hearing on July 23, 2009. The Department received public comments concerning the definition of "obstruction." As a result, the definition of "obstruction" was modified from the Notice of Intended Action. This definition now reads as follows:

" *'Obstruction'* means a building, machinery (other than equipment designed for operation on a railroad track when actually located on a railroad track), tree, brush or other object."

These rules are intended to implement Iowa Code section 327F.13.

These rules will become effective November 11, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 813] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 7885B**, IAB 7/1/09.

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