



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

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### CITATION of Administrative Rules

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

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

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

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

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

## Schedule for Rule Making 2015

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
23	Friday, April 24, 2015	May 13, 2015
24	Friday, May 8, 2015	May 27, 2015
25	Wednesday, May 20, 2015	June 10, 2015

**PLEASE NOTE:**

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

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

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

**ADMINISTRATIVE SERVICES DEPARTMENT[11]**

<p>Central procurement and fleet services enterprise; procurement of goods and services; emergency procurements; service contracts; waivers; limitation of vendor liability, amendments to chs 1, 117, 118, 120 IAB 4/15/15 <b>ARC 1969C</b></p>	<p>Room 8, A Level Hoover State Office Bldg. Des Moines, Iowa</p>	<p>May 5, 2015 9 to 10 a.m.</p>
<p>Human resources—promotional lists, grievances, appeal of disciplinary actions, educational leave, sick leave insurance program, application of Hatch Act, 54.2(4), 61.1, 61.2(6), 63.10(4), 64.16(3), 65.3 IAB 4/1/15 <b>ARC 1936C</b></p>	<p>Room 8, A Level Hoover State Office Bldg. Des Moines, Iowa</p>	<p>April 21, 2015 9 to 10 a.m.</p>

**DENTAL BOARD[650]**

<p>General supervision of dental assistants, 1.1 IAB 4/1/15 <b>ARC 1941C</b></p>	<p>Board Office, Suite D 400 S.W. 8th St. Des Moines, Iowa</p>	<p>April 21, 2015 2 p.m.</p>
<p>Dental assistants—expanded function procedures, general and public health supervision, 20.2 to 20.16 IAB 4/1/15 <b>ARC 1940C</b></p>	<p>Board Office, Suite D 400 S.W. 8th St. Des Moines, Iowa</p>	<p>April 21, 2015 2 p.m.</p>

**INSURANCE DIVISION[191]**

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**NATURAL RESOURCE COMMISSION[571]**

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<p>Central registry for brain and spinal cord injuries, 21.1 to 21.6 IAB 4/1/15 <b>ARC 1950C (ICN Network)</b></p>	<p>Room 517, Fifth Floor Lucas State Office Bldg. Des Moines, Iowa Teleconference access: 1-866-685-1580 Conference code: 0009990482</p>	<p>April 22, 2015 1 to 2 p.m.</p>
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Motor Vehicle Division Offices  
6310 SE Convenience Blvd.  
Ankeny, Iowa

April 23, 2015  
10 a.m.  
(If requested)

**UTILITIES DIVISION[199]**

Telephone service regulations,  
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IAB 4/15/15 **ARC 1957C**

Room 69, Board Hearing Room  
1375 E. Court Ave.  
Des Moines, Iowa

June 2, 2015  
9 a.m.

The following list will be updated as changes occur.

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

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

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

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## ARC 1969C

## ADMINISTRATIVE SERVICES DEPARTMENT[11]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services (DAS) proposes to amend Chapter 1, “Department Organization,” Chapter 117, “Procurement of Goods and Services of General Use,” Chapter 118, “Purchasing Standards for Service Contracts,” and Chapter 120, “Contractual Limitation of Vendor Liability Provisions,” Iowa Administrative Code.

The Department of Administrative Services is continuing its effort to review its administrative rules by amending certain central procurement rules to eliminate conflict with statute and making other actions that reflect and clarify departmental practice.

The Department of Administrative Services does not intend to grant waivers under the provisions of these rules, except as explicitly stated in the rules.

Interested persons may make written comments on the proposed amendments until 4:30 p.m. on May 5, 2015. Comments should be directed to Caleb Hunter, Department of Administrative Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-6140 or by e-mail to [Caleb.Hunter@iowa.gov](mailto:Caleb.Hunter@iowa.gov).

A public hearing will be held on May 5, 2015, from 9 to 10 a.m. in Room 8, A Level, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact and advise the Department of Administrative Services of specific needs by calling (515)281-3351.

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

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

The following amendments are proposed.

ITEM 1. Rescind paragraph **1.4(1)“c.”**

ITEM 2. Reletter paragraphs **1.4(1)“d”** to **“f”** as **1.4(1)“c”** to **“e.”**

ITEM 3. Amend subrule 1.4(7) as follows:

**1.4(7) *Central procurement and fleet services enterprise.*** The chief operating officer of the enterprise is appointed by the director and directs the work of the enterprise.

*a.* The central procurement enterprise bureau is charged with procuring goods and services for agencies by pursuant to Iowa Code chapter 8A. ~~The chief operating officer of the enterprise is appointed by the director and directs the work of the enterprise.~~ These rules and applicable Iowa Code sections apply to the purchase of goods and services of general use by any unit of the state executive branch, except any agencies or instrumentalities of the state exempted by law.

*b.* The central procurement enterprise bureau shall manage statewide purchasing and electronic procurement, including managing procurement of commodities, equipment and services for all state agencies not exempted by law.

*c.* The fleet services bureau is responsible for the management of vehicular risk and travel requirements for state agencies not exempted by law.

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

ITEM 4. Amend rule 11—117.1(8A) as follows:

**11—117.1(8A) General provisions.**

**117.1(1) Applicability.**

a. *Goods and services of general use.* Under the provisions of Iowa Code Supplement chapter 8A, these rules apply to the purchase of goods and services of general use by any unit of the state executive branch including a commission, board, institution, bureau, office, agency or department, except items used by the state department of transportation, institutions under the control of the board of regents, the department for the blind, and any other agencies or instrumentalities of the state exempted by law.

b. *Services.* Procurement of services shall also meet the provisions of Iowa Administrative Code, 11—Chapters 118 and 119.

c. *Information technology.* Pursuant to Iowa Code Supplement chapter 8A, procurement of information technology devices and services by participating agencies shall also meet the requirements of rule ~~11—117.10(8A)~~ 11—117.11(8A). Rule ~~11—117.10(8A)~~ 11—117.11(8A) shall apply to:

(1) The process by which the department shall ensure effective and efficient compliance with standards prescribed by the department with respect to the procurement of information technology devices and services by participating agencies, and

(2) The acquisition of information technology devices and services by the department for the department, or by the department for a participating agency that has requested that the department procure information technology devices or services on the agency's behalf.

**117.1(2) and 117.1(3)** No change.

ITEM 5. Amend the following definitions in rule **11—117.2(8A)**:

*“Master agreement”* means a contract ~~arrived at~~ competitively bid and entered into by the department which establishes prices, terms, and conditions for the purchase of goods and services ~~in common~~ of general use. These contracts may involve the needs of one or more state agencies. Agencies may purchase from a master agreement without further competition. ~~These contracts may involve the needs of one or more state agencies.~~ Master agreements (also referred to as “master contracts”) for a particular item or class of items may be awarded to a single vendor or multiple vendors. The department is the sole agency authorized to enter into master agreements for goods and services of general use.

*“Negotiated contract”* means a master agreement for a procurement that meets the requirements of Iowa Code Supplement section 8A.207(4) “b.”

*“Operational standards”* means information technology standards established by the department according to Iowa Code Supplement sections 8A.202 to 8A.207 that include but are not limited to specifications, requirements, processes, or initiatives that foster compatibility, interoperability, connectivity, and use of information technology devices and services among agencies.

*“Responsible bidder”* means a vendor that has the capability in all material respects to perform the contract requirements. In determining whether a vendor is a responsible bidder, the department may consider various factors including, but not limited to, the vendor's competence and qualification for the type of services good or service required, the vendor's integrity and reliability, the past performance of the vendor relative to the quality of the good or service, the past experience of the department in relation to the good or service vendor's performance, the relative quality of the good or service, the proposed terms of delivery, and the best interest of the state.

ITEM 6. Rescind the definition of “Services of general use” in rule **11—117.2(8A)**.

ITEM 7. Adopt the following **new** definition of “Goods and services of general use” in rule **11—117.2(8A)**:

*“Goods and services of general use”* means goods and services that are not unique to an agency's program or that are needed by more than one agency. This chapter applies to the purchase of goods and services of general use.

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

ITEM 8. Renumber rules **11—117.4(8A)** to **11—117.12(8A)** as **11—117.5(8A)** to **11—117.13(8A)**.

ITEM 9. Adopt the following **new** rule 11—117.4(8A):

**11—117.4(8A) Master agreements.**

**117.4(1) Use of master agreements.** The department shall enter into master agreements to procure goods and services of general use for all state agencies with the exception of those purchases made by the state department of transportation, institutions under the control of the board of regents, the department for the blind, and any other agencies exempted by law. If the department has entered into a master agreement for a good or service of general use, a state agency that is not otherwise exempt shall purchase the good or service through the master agreement, unless a comparable good or service is available from a different vendor and the quantity required or an emergency or immediate need makes it cost-effective to purchase from that vendor. If an agency or agencies routinely or on a recurring basis purchase a specific good or service not available through a master agreement, the department may establish a master agreement for that good or service in cooperation with the affected agencies.

**117.4(2) Term of master agreements.** The initial term of a master agreement shall be no more than three years. Following the initial term, a master agreement may be renewed by the department for periods of one to three years; provided, however, that a master agreement, including all optional renewals, shall not exceed a term of six years unless a waiver of this provision is granted pursuant to rule 11—117.21(8A) (goods) or rule 11—118.16(8A) (services).

**117.4(3) Master agreements available to governmental subdivisions.** Master agreements entered into by the department may be extended to and made available for the use of other governmental entities as defined in Iowa Code section 8A.101. The department shall provide a list of current master agreements to a governmental subdivision upon request. The list may be provided in an electronic format. A governmental subdivision may request a copy of a specific master agreement. The department may provide the master agreement in an electronic format and assess a copying charge when a printed copy is requested.

ITEM 10. Amend renumbered paragraph **117.6(1)“b”** as follows:

*b.* The department and state agencies shall make every effort to support Iowa products when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the Iowa products. Tied bids between Iowa products shall be decided in accordance with ~~117.12(4)~~ subrule 117.13(4).

ITEM 11. Amend renumbered subrules 117.6(2) to 117.6(4) as follows:

**117.6(2) Preference to Iowa-based businesses.** The department and state agencies shall make every effort to support Iowa-based businesses when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the Iowa-based business. Tied bids between Iowa-based businesses shall be decided in accordance with ~~117.12(4)~~ 117.13(4).

**117.6(3) American-made products.** The department and agencies shall make every effort to support American-made products when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the American-made product. Tied bids between American-made products shall be decided in accordance with ~~117.12(4)~~ 117.13(4).

**117.6(4) American-based businesses.** The department and agencies shall make every effort to support American-based businesses when making a purchase. Tied responses to solicitations, regardless of the type of solicitation, shall be decided in favor of the American-based business. Tied bids between American-based businesses shall be decided in accordance with ~~117.12(4)~~ 117.13(4).

ITEM 12. Amend renumbered paragraphs **117.9(7)“b”** and **“i”** as follows:

*b. Notification of ITQ solicitation.* Following institution of a prequalification process, the department may select, in a competitive manner, a prequalified vendor without public notice and without further negotiation of general terms and conditions. A solicitation may be restricted only to prequalified vendors, in addition to the TSB notification required by ~~117.7(2)~~ 117.8(2).

*i. Information technology purchases from a prequalified vendor.* Before a participating agency may acquire an information technology device or service from a prequalified vendor, the agency

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

must obtain all of the required approvals from the department pursuant to rule ~~11—117.10(8A)~~ 11—117.11(8A).

ITEM 13. Adopt the following **new** subrule 117.9(9):

**117.9(9) Request for information (RFI).** A request for information (RFI) is a nonbinding method an agency may use to obtain market information from interested parties for a possible upcoming solicitation. Information may include, but is not limited to, best practices, industry standards, technology issues, and qualifications and capabilities of potential suppliers. Agencies considering the use of an RFI shall contact the department for information and guidance in using this process.

ITEM 14. Amend renumbered paragraph **117.11(2)“f”** as follows:

*f.* When a procurement is not approved, the agency contact will be notified of available options, which include modification and resubmission of the request, cancellation of the request, or requesting a waiver from the director on the recommendation of the technology governance board pursuant to subrule ~~117.10(3)~~ 117.11(3).

ITEM 15. Amend renumbered paragraph **117.12(2)“b”** as follows:

*b.* Bio-based hydraulic fluids, greases, and other industrial lubricants manufactured from soybeans in accordance with Iowa Code Supplement section 8A.316.

ITEM 16. Amend renumbered paragraph **117.12(6)“d”** as follows:

*d.* The average fuel efficiency for new passenger vehicles and light trucks, as defined in paragraph ~~117.11(6)“a,”~~ 117.12(6)“a,” that are purchased in a year shall equal or exceed the average fuel economy standard for the vehicles' model years as published by the United States Secretary of Transportation.

ITEM 17. Rescind existing rule ~~11—117.13(8A)~~.

ITEM 18. Amend renumbered subrule 117.13(4) as follows:

**117.13(4) Tied bids and preferences.** If an award is based on the highest score and there is a tied score, or if the award is based on the lowest cost and there is a tied cost, the award shall be determined by a drawing. Whenever it is practical to do so, the drawing will be held in the presence of the vendors with the tied bids. Otherwise, the drawing will be held in front of at least three noninterested parties. All drawings shall be documented.

*a.* ~~Whenever~~ Notwithstanding the foregoing, whenever a tie involves an Iowa vendor and a vendor outside the state of Iowa, first preference will be given to the Iowa vendor will receive preference. Whenever a tie involves one or more Iowa vendors and one or more vendors outside the state of Iowa, the drawing will be held among the Iowa vendors only. Tied bids involving Iowa-produced or Iowa-manufactured products and items produced or manufactured outside the state of Iowa will be resolved in favor of the Iowa product. If a tied bid does not include an Iowa vendor or Iowa-produced or Iowa-manufactured product, preference will be given to a vendor based in the United States or products produced or manufactured in the United States over a vendor based or products produced or manufactured outside the United States.

*b.* In the event of a tied bid between Iowa vendors, the department shall contact the Iowa Employer Support of the Guard and Reserve (ESGR) committee for confirmation and verification as to whether the vendors have complied with ESGR standards. Preference, in the case of a tied bid, shall be given to Iowa vendors complying with ESGR standards.

*c.* ~~An award shall be determined by a drawing when responses are received that are equal in all respects and tied in price. Whenever it is practical to do so, the drawing will be held in the presence of the vendors who are tied in price. Otherwise the drawing will be made in front of at least three noninterested parties. All drawings shall be documented.~~

ITEM 19. Amend subrule 117.14(4) as follows:

**117.14(4) Procurements requiring additional authorization.** Except where exempted by statute, the following purchases require additional approval.

*a.* Information technology devices, software and services, as required in Iowa Code Supplement sections 8A.202 and 8A.206 and rule ~~11—117.10(8A)~~ 11—117.11(8A).

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

- b. Vehicles, as prescribed in Iowa Code Supplement sections 8A.361 and 8A.362.
- c. Architectural and engineering services, except for agencies with independent authority, as prescribed in Iowa Code Supplement sections 8A.302, 8A.311, 8A.321, 218.58, and 904.315.
- d. and e. No change.

ITEM 20. Amend rule 11—117.15(8A) as follows:

**11—117.15(8A) Thresholds for delegating procurement authority.**

**117.15(1) Agency direct purchasing—basic level.** An agency may procure non-master agreement goods costing up to \$1,500 without competition. An agency shall procure non-master agreement goods or services costing between \$1,501 and \$5,000 per transaction in a competitive manner, using either informal or formal competition. If an informal process is chosen, the agency shall follow the process described in the definition of “informal competition” in rule 11—117.2(8A). ~~Three or more informal quotes shall be obtained, unless quotes are not reasonably available or unless the item is purchased from a targeted small business.~~ The agency shall document the quotes, or circumstances resulting in fewer than three quotes, in an electronic file attached to the order or in another format.

**117.15(2) Agency direct purchasing—advanced level.** An agency may procure non-master agreement goods up to \$50,000 per transaction in a competitive manner ~~only in the event~~ provided the agency personnel engaged in the purchase of goods have completed enhanced procurement training established by the director or designee.

**117.15(3) Preference to targeted small businesses.** Agencies shall search the TSB directory on the Web and purchase directly from the TSB source if it is reasonable and cost-effective to do so. Agencies shall comply with the TSB notification requirements in subrule ~~117.7(2)~~ 117.8(2).

**117.15(4) Alternative to master agreement.** ~~An agency may purchase a comparable good or service of general use available on a master agreement from a different vendor if the quantity required or an emergency or immediate need makes it cost-effective to purchase from a non-master agreement vendor. In instances where an agency or agencies routinely or on a recurring basis purchase a specific good or service not on contract, the department shall establish a master agreement for that good or service in cooperation with the affected agencies.~~

**117.15(5) 117.15(4) Misuse of agency authority.**

a. Purchasing authority delegated to agencies shall not be used to avoid the use of master agreements. ~~Because it is cost-effective to purchase a good or service of general use from a master agreement, the agency shall do so.~~ The agency shall not break purchasing into smaller increments for the purpose of avoiding threshold requirements in subrules 117.15(1) and 117.15(2).

b. As a remedy, the department may recover administrative fees appropriate to the improper execution of procurement.

c. This rule is not intended to prohibit agencies from aggressively seeking competitive prices. Agencies may purchase outside of master agreements under subrule ~~117.15(4)~~ 117.4(1).

d. The department may rescind delegated authority of an agency that misuses its authority or uses the authority to procure goods or services already available on a master agreement.

ITEM 21. Amend subrule 117.16(1) as follows:

**117.16(1) Competitive selection for printing.** The department and state agencies shall procure printing by competitive selection according to the rules of this chapter except when the printing is produced by state printing, pursuant to 11—102.4(8A) or the procurement is otherwise exempt from competitive selection pursuant to ~~11—117.4(8A)~~ 11—117.5(8A). When an agency elects to purchase printing by competitive selection rather than using the services of state printing or a TSB, state printing and TSBs shall be part of the bidding process.

ITEM 22. Amend subrule 117.19(6) as follows:

**117.19(6) Security.** The department may require bid or proposal security in accordance with subrule ~~117.11(5)~~ 117.12(5). When required, security shall not be waived.

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

ITEM 23. Adopt the following new rule 11—117.21(8A):

**11—117.21(8A) Waiver procedure.**

**117.21(1) Definition.** For the purpose of this chapter, a “waiver or variance” means an action by the director that suspends, in whole or in part, the requirements or provisions of a rule in this chapter as applied to a state agency when the state agency establishes good cause for a waiver or variance of the rule. For simplicity, the term “waiver” shall include both a “waiver” and a “variance.”

**117.21(2) Requests for waivers.** A state agency seeking a waiver shall submit a written request for a waiver to the director. The written request shall identify the rule for which the state agency seeks a waiver or the contract or class of contracts for which the state agency seeks a waiver and the reasons that the state agency believes justify the granting of the waiver.

**117.21(3) Criteria for waiver.** In response to a request for a waiver submitted by a state agency, the director may issue an order waiving in whole or in part the requirements of a rule in this chapter if the director finds that the state agency has established good cause for the waiving of the requirements of the rule. “Good cause” includes, but is not limited to, the following: (1) the desired good or service is available from one source only, (2) the time frame required is such that an expedient purchase is in the best interest of the agency, or (3) a showing that a requirement or provision of a rule should be waived because the requirement or provision would likely result in an unintended, undesirable, or adverse consequence or outcome. An example of good cause for a waiver is when a contract duration period of longer than six years is more economically or operationally feasible than a six-year contract in light of the service being purchased by the state agency.

ITEM 24. Amend **11—Chapter 117**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 8A.201 to 8A.203, 8A.206, 8A.207, 8A.301, 8A.302, 8A.311 ~~as amended by 2005 Iowa Acts, House File 814~~, 8A.341 to 8A.344, 73.1 and 73.2.

ITEM 25. Amend subrule 118.2(1) as follows:

**118.2(1)** When a state agency that is also a “participating agency” as defined by rule 11—117.2(8A) intends to procure “information technology services” as defined by rule 11—117.2(8A), the provisions of rule ~~11—117.10(8A)~~ 11—117.11(8A) shall also apply to procurement of the services.

ITEM 26. Amend rule **11—118.3(8A)**, definition of “Agency,” as follows:

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

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

ITEM 27. Adopt the following new definition of “Director” in rule **11—118.3(8A)**:

“Director” means the director of the department of administrative services or the director’s designee.

ITEM 28. Amend subrule 118.8(2) as follows:

**118.8(2) Special procedures required for emergency procurements.**

a. The head of a state agency shall sign all emergency contracts and amendments regardless of value or length of term. If the head of a state agency is not available, a designee may sign an emergency contract or amendment. Use of an emergency procurement does not relieve a state agency from negotiating a fair and reasonable price and documenting the procurement action.

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

b. When the value of the service contract exceeds \$5,000, a state agency shall be required to complete an emergency justification form. The ~~director~~ head of the state agency or ~~the director's~~ designee shall sign the emergency justification form.

c. If an emergency procurement results in the extension of an existing contract that contains performance criteria, the contract extension shall comply with rule 11—119.4(8,8A), uniform terms and conditions for service contracts, or rule 11—119.5(8,8A), special terms and conditions.

ITEM 29. Amend subrule 118.11(3) as follows:

**118.11(3)** A service contract should be competitively selected on a regular basis so that a state agency obtains the best value for the funds spent, avoids inefficiencies, waste or duplication and may take advantage of new innovations, ideas and technology. A service contract, including all optional renewals, shall not exceed a term of six years; however, service contracts entered into by the office of chief information officer may have a term length not to exceed ten years. Service contracts shall not exceed the term lengths set forth herein unless the state agency obtains a waiver of this provision pursuant to rule 11—118.16(8A).

ITEM 30. Amend subrule 118.16(3) as follows:

**118.16(3)** Criteria for waiver. In response to a request for a waiver submitted by a state agency, the director may issue an order waiving in whole or in part the requirements of a rule in this chapter if the director finds that the state agency has established good cause for waiving the requirements of the rule. “Good cause” includes, but is not limited to, a showing that a requirement or provision of a rule should be waived because the requirement or provision would likely result in an unintended, undesirable, or adverse consequence or outcome. An example of good cause for a waiver is when a contract duration period of longer than six years is more economically or operationally feasible than a six-year contract in light of the service being purchased by the state agency.

ITEM 31. Amend **11—Chapter 118**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ sections 8A.101, 8A.104, 8A.301, 8A.302, and 8A.311.

ITEM 32. Amend subrule 120.5(2) as follows:

**120.5(2)** For information technology procurements, the director authorizes the competitive selection documents and the resulting contract to include a contractual limitation of vendor liability clause that limits the vendor’s liability for consequential, incidental, indirect, special, or punitive damages to the extent the vendor’s liability for such damages arises does not arise out of the items identified in paragraphs 120.5(1) “a” to “d.”

**ARC 1965C****AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 203.2 and 203C.5(2), the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 90, “State Licensed Warehouses and Warehouse Operators,” Iowa Administrative Code.

The amendment removes a grain elevator operator requirement for taking a consistent operational shrink. The amendment would allow the Department to require an operator to take a shrink not to exceed 0.5 percent. The amendment also updates and removes outdated language.

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

Any interested persons may make written suggestions or comments on the proposed amendment on or before May 5, 2015. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or by e-mail to [Margaret.Thomson@IowaAgriculture.gov](mailto:Margaret.Thomson@IowaAgriculture.gov).

The proposed amendment is subject to the Department's general waiver provisions.

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

This amendment is intended to implement Iowa Code section 203C.2.

The following amendment is proposed.

Amend rule 21—90.18(203C) as follows:

**21—90.18(203C) Adjustment of records.**

**90.18(1)** *Adjustment of ~~records~~ inventory for operational shrink.* ~~A consistent~~ The department may require a licensee to take an operational shrink shall be taken not to exceed one-half of one percent on grain handled and documented received on a monthly basis in the warehouse records. An operational shrink is not required to be taken when there has been no movement of a particular kind of grain.

**90.18(2)** *Other ~~record~~ inventory adjustments.* Any reduction of record obligation shall be justified. Any increase in adjustments of record obligation shall be made only upon department approval or request. An upward adjustment may be made to the records at any time that a total weigh-up for a particular kind of grain is made and all records of the weigh-up have been maintained for verification. The licensee may make upward adjustments for rail and barge shipments based upon actual unloaded weights when the origin weights were estimated. Outbound truck shipments must be weighed on the licensee's scale if one is available. ~~If the outbound shipment cannot be weighed in a single draft, the licensee may adjust the record to reflect the unloaded weights.~~ A warehouse operator may voluntarily adjust the records at the time of examination when the measured inventory exceeds the record obligation in an amount in excess of 1½ percent. All adjustments shall be readily identifiable in the daily position record. Unless the delivered weight is adjusted for and reflects dry bushels, all adjustments for moisture shall be shown in the ~~adjustment column~~ records. A computer-generated scale ticket listing that shows gross weights and net weights will satisfy the requirements of this rule.

This rule is intended to implement Iowa Code ~~sections~~ section 203C.2 ~~and 203C.35~~.

**ARC 1960C**

**PHARMACY BOARD[657]**

**Notice of Termination**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on December 10, 2014, as **ARC 1791C**, proposing to amend Chapter 3, "Pharmacy Technicians," Chapter 6, "General Pharmacy Practice," and Chapter 7, "Hospital Pharmacy Practice"; to rescind Chapter 13, "Sterile Compounding Practices"; and to rescind Chapter 20, "Pharmacy Compounding Practices," and adopt a new Chapter 20, "Compounding Practices," Iowa Administrative Code.

The Notice proposed to combine the requirements currently in Chapters 13 and 20 for the compounding of drug products into a single chapter, Chapter 20, which would fully adopt national minimum practice standards for compounding found in General Chapters 795 and 797 of the United States Pharmacopeia (USP). The amendments would have also incorporated new federal regulations as established in the Drug Quality and Security Act of 2013, also known as the Compounding Quality Act, with respect to compounding and outsourcing facilities. Current Chapter 13 would have been rescinded and reserved.

The Board is terminating the rule making commenced in **ARC 1791C** based on comments and objections received from members of the public, health care professional organizations, and the pharmaceutical industry. The majority of the comments received objected to including the addition

PHARMACY BOARD[657](cont'd)

of flavoring to a drug product as a function constituting compounding. As a result of the comments received, the Board will incorporate changes and clarifications into the originally proposed amendments and publish a new Notice of Intended Action at a later time.

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

**ARC 1957C****UTILITIES DIVISION[199]****Notice of Intended Action**

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

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

Pursuant to Iowa Code sections 17A.4 and 476.2, the Utilities Board (Board) gives notice that on March 20, 2015, the Board issued an order in Docket No. RMU-2014-0003, In re: Amendments to Telephone Service Regulations [199 IAC 22], “Order Commencing Rule Making,” proposing to update the Board’s rules in Chapters 22 and 26 regarding the provision of telecommunications services. On April 25, 2014, Governor Branstad signed into law 2014 Iowa Acts, Senate File 2195 (SF 2195), which amends various sections of Iowa Code chapters 476 and 477 in response to an increasingly competitive telecommunications industry in Iowa. One of the amendments resulting from the enactment of SF 2195 is the elimination of retail tariff requirements for local exchange carriers (LECs). This new law, which is codified in Iowa Code section 476.4(2), became effective on July 1, 2014, and no longer requires telephone utilities to file retail tariffs after January 1, 2015. The Board’s rules governing the provision of telecommunications services are found at 199 IAC 22 and contain multiple references to retail tariffs and retail tariff requirements. The proposed amendments are necessary to eliminate outdated provisions and to implement the new provisions of Iowa Code section 476.4(2).

To develop the proposed amendments, the Board sought early input from stakeholders. On May 30, 2014, the Board issued an “Information Order and Order Requesting Responses” in this docket to initiate the process of amending its administrative rules to address the requirements of SF 2195. The Information Order provided initial instructions to LECs for the withdrawal of retail tariffs prior to January 1, 2015. The Information Order also explained the Board’s intent to update its rules in Chapter 22 that contain references to retail tariffs, require changes due to the enactment of SF 2195, or are no longer relevant. The Board requested responses from all interested stakeholders. The Board received three responses to the Information Order. Generally, the responses agreed that the rules need to be revised and offered preliminary suggestions as to how the rules could be amended.

The order approving this Notice of Intended Action and commencing this rule making can be found on the Board’s Electronic Filing System (EFS) Web site, <http://efs.iowa.gov>, in Docket No. RMU-2014-0003.

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 May 5, 2015. The statement should be filed electronically through the Board’s EFS Web site. Instructions for making an electronic filing can be found on the EFS Web site at <http://efs.iowa.gov>. Any person who does not have access to the Internet may file comments on paper pursuant to 199 IAC 14.4(5). An original and ten copies of paper comments must be filed. Both electronic and written filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author’s name and address and make specific reference to Docket No. RMU-2014-0003. All paper communications should be directed to the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069.

A public hearing at which interested persons may present oral comments on the proposed amendments will be held at 9 a.m. on Tuesday, June 2, 2015, in the Board’s hearing room at the address listed above.

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

Persons with disabilities who require assistive services or devices to observe or participate should contact the Board at (515)725-7334 at least five days in advance of the scheduled date to request that appropriate arrangements be made.

After analysis and review of this rule making, the Board tentatively concludes that the proposed amendments, if adopted, will not have a detrimental effect on jobs in Iowa.

These amendments are intended to implement Iowa Code sections 17A.4 and 476.2.

The following amendments are proposed.

ITEM 1. Amend **199—Chapter 22**, title, as follows:

~~RATES CHARGED AND SERVICE SUPPLIED BY TELEPHONE UTILITIES~~

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

**22.1(1)** *Application and purpose of rules.* The rules shall apply to any telephone utility operating within the state of Iowa subject to Iowa Code chapter 476, and shall supersede all conflicting rules of any telephone utility which were in force and effect prior to the adoption of their superseding rules. Unless otherwise indicated, “telephone utility” or “utility” shall mean ~~both~~ local exchange utility, and interexchange utility, or alternative operator services company. These rules shall be construed in a manner consistent with their intent:

ITEM 3. Amend subrule **22.1(3)**, definitions of “Customer provision,” “Local exchange utility” and “Tariff,” as follows:

“*Customer provision*” means customer purchase or lease of terminal equipment or inside station wiring from the telephone ~~company~~ utility or from any other supplier.

“*Local exchange utility*” means a telephone utility that provides local exchange service under ~~tariff filed with the board~~ an authorized certificate of public convenience and necessity. The utility may also provide other services and facilities such as access services.

“*Tariff*” means the entire body of rates, classifications, rules, procedures, policies, etc., adopted and filed with the board by a ~~telephone~~ local exchange utility for wholesale services, including or by an alternative operator services company for retail services, in fulfilling its role of furnishing communications services.

ITEM 4. Rescind the definitions of “Base rate area,” “Message rate service,” “Rate zone,” “Rural service,” “Special rate area” and “Toll rate” in subrule **22.1(3)**.

ITEM 5. Adopt the following new definitions in subrule **22.1(3)**:

“*Bill-and-keep*” means the end point of transitional intrastate access services reductions. Under bill-and-keep arrangements, carriers exchanging telecommunications traffic shall not charge each other for specific transport or termination functions or services.

“*Retail services*” means those communications services furnished by a telephone utility directly to end-user customers. For an alternative operator services company, the terms and conditions of its retail services are addressed in an approved intrastate tariff. For a local exchange utility, the terms and conditions of its retail services are typically addressed in a retail catalog or other format, which is not subject to board approval.

“*Transitional intrastate access service*” means annual reductions that affect terminating end office access service subject to intrastate access rates as of December 31, 2011; terminating tandem-switched transport access service subject to intrastate access rates as of December 31, 2011; and originating and terminating dedicated transport access service subject to intrastate access rates as of December 31, 2011.

“*Wholesale services*” means those communications services furnished by one telephone utility to another provider of communications services. The terms and conditions of wholesale services are addressed in a telephone utility’s approved intrastate access tariff or local interconnection tariff.

ITEM 6. Amend subrule 22.1(5) as follows:

**22.1(5)** *Basic utility obligations.* Each telephone utility shall provide telephone service to the public in its service area in accordance with its rules and tariffs on file with the board. Such service shall normally meet or exceed the standards set forth in ~~these rules governing “Rates Charged and Service Supplied By Telephone Utilities.”~~ this chapter.

UTILITIES DIVISION[199](cont'd)

ITEM 7. Amend subrule 22.1(6) as follows:

**22.1(6) Deregulation actions.**

a. and b. No change.

c. Deregulation resulting from the passage of 2014 Iowa Acts, Senate File 2195. Effective July 1, 2014, Iowa Code section 476.4 no longer requires telephone utilities to file retail tariffs. The retail tariffs filed with the board prior to July 1, 2014, have been withdrawn pursuant to board orders in Docket No. RMU-2014-0003.

ITEM 8. Amend subrule 22.2(3) as follows:

**22.2(3) Tariffs to be filed with the board.** The utility, including an alternative operator services company, shall file its tariff with the board; and shall maintain such tariff filing in a current status. A copy of the same tariff shall also be on file in all business offices of the telephone utility and shall be available for inspection by the public be available upon request.

The tariff shall be classified, designated, arranged, and submitted so as to conform to the requirements of this chapter or board order. Provisions of the schedules shall be definite and so stated as to minimize ambiguity or the possibility of misinterpretation. The form, identification, and content of tariffs shall be in accordance with these rules unless otherwise provided.

~~Utilities which are not subject to the rate regulation provided for by Iowa Code chapter 476 shall not file schedules of rates unless required by another rule or by board order. Nothing contained in these rules shall be deemed to relieve any utility of the requirement of furnishing any of these same schedules or contracts which are needed by the board in the performance of the board's duties upon request to do so by the board. Every telephone utility shall make the schedule of its rates readily available to customers on the utility's Web site, if the utility has one, or by mail, upon request.~~

ITEM 9. Amend subrule 22.2(4) as follows:

**22.2(4) Form and identification.** All tariffs shall conform to the following rules.

a. The tariff shall be printed, ~~typewritten or otherwise reproduced on 8½ × 11-inch sheets of white paper equal in durability to 20-pound bond paper with 25 percent cotton or rag content~~ so as to result in a clear and permanent record. The sheets of the tariff should be ruled or spaced to set off a border on the left side ~~suitable for binding~~. In the case of utilities subject to regulation by any federal agency, the format of sheets of tariff as filed with the board may be the same format as is required by the federal agency, provided that the rules of the board as to title page; identity of superseding, replacing or revising sheets; identity of amending sheets; identity of the filing utility, issuing official, date of issue and effective date; and the words "Filed with the board" shall be applied to modify the federal agency format for the purposes of filing with this board.

b. and c. No change.

d. All sheets except the title page shall have, in addition to the above-stated requirements, the following further information:

(1) and (2) No change.

(3) Effective date ~~(to be left blank by rate-regulated utilities).~~

EXHIBIT A

..... Telephone Tariff

(Name of Company)

Filed with board.

Part No. ....

Sheet No. ....

Canceling (or revising) ..... Sheet No. ....

Amending ..... Sheet No. ....

EXAMPLE

Issued ..... Effective .....

(Date)

(Date)

By .....

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

ITEM 10. Amend subrule 22.2(5) as follows:

**22.2(5) Content of tariffs.**

- ~~a.~~ No change.
- ~~b.~~ Local exchange utilities shall file a map which shall clearly define the base rate boundary and any rural or special zones that are set forth in the tariff. The boundary line location on such maps shall be delineated from fixed reference points.
- ~~e.~~ b. The period during which the billed amount may be paid before the account becomes delinquent shall be specified. Where net and gross amounts are billed, the difference between net and gross is a late payment charge and the amount shall be specified.
- ~~d.~~ c. Forms of standard contracts required of customers for the various types of service available other than those which are defined elsewhere in the tariff.
- ~~e.~~ A designation, by exchange, of the EAS to other exchanges.
- ~~f.~~ The list of exchange areas served.
- ~~g.~~ Definitions of classes of customers.
- ~~h.~~ Extension rules, under which extensions of service will be made, indicating what portion of the extension or cost thereof will be furnished by the utility; and if the rule is based on cost, the items of cost included as required in 22.3(6).
- ~~i.~~ The type of construction which the utility requires the customer to provide if in excess of the Iowa electrical safety code or the requirements of the municipality having jurisdiction, whichever may be the most stringent in any particular.
- ~~j.~~ Statement of the type of special construction commonly requested by customers which the utility allows to be connected, and the terms upon which such construction will be permitted, with due provision for the avoidance of unjust discrimination as between customers who request special construction and those who do not. This applies, for example, to a case where a customer desires underground service in overhead territory.
- ~~k.~~ d. Rules with which prospective customers must comply as a condition of receiving service.
- ~~l.~~ e. Notice by customer required for having service discontinued.
- ~~m.~~ Rules covering temporary service.
- ~~n.~~ Rules covering the type of equipment which may or may not be connected.
- ~~o.~~ f. Rules on billing periods, bill issuance, notice of delinquency, refusal of service, service disconnection and reconnection and customer account termination for nonpayment of bill.
- ~~p.~~ Rescinded IAB 12/21/05, effective 1/25/06.
- ~~q.~~ g. Customer deposit rules which cover when deposits are required, how the amounts of required deposits are calculated, requests for additional deposits, interest on deposits, records maintained, issuance of receipts to customers, replacement of lost receipts, refunds and unclaimed deposit disposition.
- ~~r.~~ h. A separate glossary of all acronyms and trade names used.
- ~~s.~~ i. A general explanation of each regulated service offering available from the utility.
- ~~t.~~ Rescinded IAB 12/21/05, effective 1/25/06.
- ~~u.~~ Rescinded IAB 12/21/05, effective 1/25/06.
- ~~v.~~ Rescinded IAB 12/21/05, effective 1/25/06.

ITEM 11. Amend subrule 22.3(1) as follows:

**22.3(1) Directories.** All directories published after the effective date of these rules shall conform to the following:

- ~~a.~~ to ~~c.~~ No change.
- ~~d.~~ The directory shall contain such instructions concerning placing local and long distance calls, calls to repair and information services, and location of telephone ~~company~~ utility business offices as may be appropriate to the area served by the directory. A statement shall be included that the ~~company~~ utility will verify the condition of a line if requested by a customer and whether any charge will apply. The directory must indicate how to order 900 and 976 blocking and indicate that the first block is without charge. The directory shall contain descriptions of all current N11 services.

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

e. No change.

f. In the event of an error or omission, in the name or number listing of a customer, that customer's correct name and telephone number shall be furnished to the calling party either upon request to or interception by the telephone ~~company~~ utility.

g. to i. No change.

ITEM 12. Amend subrule 22.3(5) as follows:

**22.3(5) Pay telephone services and facilities.** All telephone utilities shall make available to customers provisions for the interconnection of pay telephone equipment ~~on the same basis as business service~~. A separate access line shall not be required for pay telephone equipment. ~~Nonrate-regulated telephone utilities shall provide service consistent with this subrule, but the subrule shall not apply to the pricing by nonrate-regulated telephone utilities of access lines to pay telephones.~~

ITEM 13. Amend subrule 22.3(12) as follows:

**22.3(12) Ordering and transferring of service.** ~~The~~ All local exchange utilities shall establish terms and conditions for ordering and transferring local exchange service shall be contained in the telephone utility's tariff.

ITEM 14. Amend subrule 22.3(14) as follows:

**22.3(14) Adjacent exchange service.** All local exchange utilities shall ~~file tariffs which include provisions which~~ allow customers to establish adjacent exchange service.

a. ~~The tariffs shall require the customer to~~ shall pay the full cost of establishing and maintaining the adjacent exchange service.

b. In addition, the ~~tariffs~~ local exchange utility may include all or part of the following service provisions:

(1) ~~The subscriber customer~~ shall subscribe to local exchange service in the primary exchange in addition to the adjacent exchange service.

(2) to (4) No change.

(5) Failure of the ~~subscriber customer~~ to comply with the ~~tariff utility's~~ tariff utility's provisions related to adjacent exchange service shall ~~make the subscriber~~ the customer subject to discontinuance of service after appropriate notice.

c. No change.

ITEM 15. Amend subrule 22.4(1) as follows:

**22.4(1) Customer information.**

a. Each local exchange utility shall:

(1) to (4) No change.

(5) Make the schedule of its retail rates available on the utility's Web site, if the utility has one, or readily available upon request.

(6) Develop a catalog or service guide that lists the utility's procedures for addressing residential customer service provisions consistent with this rule. The catalog or service guide shall be readily available upon request.

b. Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer.

Unless a customer agrees to an alternative form of notice, local exchange utilities shall notify their customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, the service may be subject to state regulation. You may request assistance from the Iowa Utilities Board by writing 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069, by calling (515)725-7321 or toll-free 1-877-565-4450, or E-mail to customer@iub.iowa.gov."

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

The bill insert or notice on the bill will be provided no less than annually and shall disclose the availability of the local exchange utility's schedule of retail rates, catalog, or service guide addressing residential customer service provisions. A telephone utility which provides local exchange service and issues an annual directory shall publish the information set forth above in its directory in addition to a mailing.

ITEM 16. Amend subrule 22.4(3) as follows:

**22.4(3)** *Customer billing, timely payment, late payment charges, payment and collection efforts.* Each utility's ~~tariff rules~~ utility shall comply with these minimum standards.

a. and b. No change.

c. Paper bills shall be issued and delivered via U.S. mail unless the customer agrees to electronic or other billing ~~pursuant to terms specified by tariff or customer agreement.~~ Except as otherwise noted, the requirements of this subrule apply to both paper and electronic bills. The bill form or a bill insert shall provide the following information:

(1) to (6) No change.

d. to g. No change.

h. Maximum payment required for installation and activation of local exchange service shall comply with the total derived in accord with these rules ~~and the filed tariff.~~

(1) An applicant for local exchange service, who ~~under the tariff credit rules~~ is required to make a deposit to guarantee payment of bills, may be required to pay the service charges and deposit prior to obtaining service.

(2) No change.

i. Maximum payments required by an active account or inactive account, for restoration of service of the same class and location as existed prior to disconnection, shall be the total of charges derived for reconnection and must comply with 22.4(2), 22.4(5) and 22.4(7). ~~Only charges specified in the filed tariff shall be applied.~~

j. to l. No change.

ITEM 17. Amend subrule 22.4(4) as follows:

**22.4(4)** *Customer complaints.*

a. No change.

b. Each utility shall ~~provide in its filed tariff~~ develop a concise, fully informative procedure for the resolution of all customer complaints.

c. The utility shall take reasonable steps to ensure that customers ~~unable to travel~~ shall not be denied the right to be heard.

d. The final step in the resolution of a complaint ~~hearing and review procedure~~ shall be a filing for board resolution of the complaint issues pursuant to 199—Chapter 6.

ITEM 18. Amend subrule 22.4(5) as follows:

**22.4(5)** *Refusal or disconnection of service.* Notice of a pending disconnection shall be rendered and local exchange service shall be refused or disconnected as set forth in ~~the tariff~~ these rules. The notice of pending disconnection required by these rules shall be a written notice setting forth the reason for the notice, and the final date by which the account is to be settled or specific action taken.

The notice shall be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the notice shall be considered rendered when delivered to the last-known address of the person responsible for payment for the service. The final date shall be not less than five days after the notice is rendered.

One written notice, including all reasons for the notice, shall be given where more than one cause exists for refusal or disconnection of service. This notice shall include a toll-free or collect number where a utility representative qualified to provide additional information about the disconnection can be reached. The notice shall also state the final date by which the account is to be settled or other specific action taken. In determining the final date, the days of notice for the causes shall be concurrent.

Service may be refused or disconnected for any of the reasons listed below. Unless otherwise stated, the customer shall be provided notice of the pending disconnection and the rule violation which

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

necessitates disconnection. Furthermore, unless otherwise stated, the customer shall be allowed a reasonable time in which to comply with the rule before service is disconnected. Except as provided in 22.4(5) "a," "b," "c," "d," and "e," no service shall be disconnected on the day preceding or the day on which the utility's local business office or local authorized agent is closed. Service may be refused or disconnected:

a. to d. No change.

e. For violation of or noncompliance with the utility's board's rules ~~on file with the board~~, the requirements of municipal ordinances or law pertaining to the service.

f. For failure of the customer or prospective customer to furnish service equipment, permits, certificates or rights-of-way specified ~~to be furnished in the utility's rules filed with the board by the utility~~ as conditions for obtaining service, or for the withdrawal of that same equipment or the termination of those permissions or rights, or for the failure of the customer or prospective customer to fulfill the contractual obligations imposed ~~upon the customer as conditions of obtaining service by a contract filed with and subject to the regulatory authority of the board.~~

g. No change.

h. For nonpayment of bill or deposit, except as restricted by 22.4(7), provided that the utility has made a reasonable attempt to effect collection and:

(1) and (2) No change.

(3) In the event of a dispute concerning the bill, the ~~telephone company~~ utility may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill. Following payment of the undisputed amount, efforts to resolve the complaint, ~~using complaint procedures in the company's tariff~~, shall continue and for not less than 45 days after the rendering of the disputed bill, the service shall not be disconnected for nonpayment of the disputed amount. The 45 days may be extended by up to 60 days if requested of the utility by the board in the event the customer files a written complaint with the board.

ITEM 19. Amend subrule 22.5(14) as follows:

**22.5(14) Information service access blocking.** Each local exchange utility shall ~~include in its tariff on file with the board a provision giving~~ provide its subscribers customers the option of blocking access to all 900 and 976 prefix numbers, without charge for the first block.

ITEM 20. Amend subrule 22.6(6) as follows:

**22.6(6) Business offices.**

a. Each local exchange utility shall have one or more business offices or customer service centers staffed to provide customer access ~~in person or by telephone~~ to qualified personnel, including supervisory personnel where warranted, to provide information relating to services and rates, accept and process applications for service, explain charges on customers' bills, adjust charges made in error, and, generally, to act as representatives of the local exchange utility. If one business office serves several exchanges, toll-free calling from those exchanges to that office shall be provided.

b. No change.

ITEM 21. Amend rule 199—22.10(476), introductory paragraph, as follows:

**199—22.10(476) Unfair practices.** All unfair or deceptive practices related to customer provision of equipment are prohibited. Any failure to provide information to customers or to deal with customers who provide their own terminal equipment or inside station wiring or an alteration of the charges for or availability of equipment or services on that ground, unless specifically authorized by board order or rule ~~and by the utility's tariff~~, shall constitute unfair or deceptive practices. In cases of equipment in compliance with Federal Communications Commission registration requirements, telephone utility personnel are prohibited from making any statement, express or implied, to, or which will reach, a customer or prospective customer that terminal equipment in compliance with Federal Communications Commission registration requirements cannot properly be attached to the telephone network. This does not apply to good-faith efforts to amend the Federal Communications Commission requirements.

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

ITEM 22. Amend subrule 22.11(1) as follows:

**22.11(1) Construction by user limitation.** A user shall not be allowed to construct inside station wiring from a demarcation point or between two or more buildings on the same premises to obtain service from an exchange other than that by which the user would normally be served, excluding users being provided adjacent exchange service or foreign exchange service ~~as provided in a company's tariff~~. Existing inside wiring obtaining local exchange service within another exchange boundary shall be disconnected by the user within ten days after receipt of written notification from the local exchange company.

ITEM 23. Amend rule 199—22.12(476) as follows:

**199—22.12(476) Contents Content of wholesale tariff filings proposing rates rate changes.**

**22.12(1) Construction of rule.** This rule shall be construed in a manner consistent with its purpose to expedite informed consideration of wholesale tariff filings proposing rates that propose rate changes by ensuring the availability of relevant information on a standardized basis. Unless a waiver is granted prior to the filing of a wholesale tariff, this rule shall apply to all wholesale tariff filings by rate-regulated telephone utilities proposing rates rate changes, except the retail tariff filings of AOS utilities that propose rates at or below the corresponding rates for similar services of utilities whose rates have been approved by the board in a rate case or set in a market determined by the board to be competitive.

**22.12(2) to 22.12(4)** No change.

ITEM 24. Amend subparagraph **22.14(1)“b”(3)** as follows:

(3) This rule shall be inapplicable to:

- 1.—~~Communications made by a person using facilities or services of telephone utilities to which an intrastate carrier common line charge applies pursuant to 22.14(3)“a.”~~
- 2.—~~Administrative~~ administrative communications made by or to a telephone utility.

ITEM 25. Amend subrule 22.14(2) as follows:

**22.14(2) Filing of intrastate access service tariffs.**

a. Tariffs providing for intrastate access services and transitional intrastate access services shall be filed with the board by a telephone local exchange utility which provides such services. ~~Iowa intrastate access service tariffs of rate-regulated utilities shall be based only on Iowa intrastate costs. A local exchange utility shall file with the board revised transitional intrastate access services rates to become effective on or about July 1 of each year until such rates are reduced to bill-and-keep.~~ Unless otherwise provided, the filings are subject to the applicable rules of the board.

b. A ~~non-rate-regulated~~ local exchange utility ~~in its general tariff~~ may concur in the intrastate access tariff filed by another ~~non-rate-regulated~~ local exchange utility serving the same exchange area.

(1) Alternatively, a ~~non-rate-regulated~~ local exchange utility may voluntarily elect to join another ~~nonrate-regulated~~ local exchange utility or utilities in forming an association of local exchange utilities. The association may file intrastate access service tariffs. ~~A utility in its general tariff can concur in the association tariffs.~~

(2) No change.

c. No change.

d. All intrastate access service tariffs shall incorporate the following:

(1) Carrier common line charge. The rate for the intrastate carrier common line charge shall be three cents per access minute or fraction thereof for ~~both originating and terminating~~ segments of the communication, unless a ~~different~~ lower rate is required by the transitional intrastate access service reductions or if numbered paragraphs “1” and “2.” “2” are applicable. The carrier common line charge shall be assessed to exchange access made by any interexchange telephone utility, including resale carriers. In lieu of this charge, interconnected private systems shall pay for access as provided in 22.14(1)“b.”

1. Incumbent local exchange carrier intrastate access service tariffs shall include the carrier common line charges approved by the board.

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

2. A competitive local exchange carrier ~~that concurs with the Iowa Telephone Association (ITA) Access Service Tariff No. 1 and that offers service in exchanges where the incumbent local exchange carrier's intrastate access rate is lower than the ITA access rate~~ shall deduct the carrier common line charge from its intrastate access service tariff.

(2) to (8) No change.

e. No change.

ITEM 26. Adopt the following **new** subrule 22.14(7):

**22.14(7) Access billing disputes and discontinuation of service.** The provisions of subparagraph 22.4(5) "h"(3) also apply to intrastate access billing disputes. The provisions of rule 199—22.16(476) shall be followed before a utility discontinues providing intrastate access service to another utility.

ITEM 27. Rescind and reserve subrule **22.15(3)**.

ITEM 28. Amend rule 199—22.16(476) as follows:

**199—22.16(476) Discontinuance of service.** ~~No~~ Except in the case of emergency, no local exchange utility or interexchange utility may discontinue providing intrastate service to any local exchange or part of a local exchange except in the case of emergency, without providing notice to the board and the consumer advocate.

In cases of nonpayment of account, or violation of rules and regulations; except as provided below, or violation of board orders, no utility shall discontinue service without providing at least two business days' notice to the board and the consumer advocate.

~~22.16(1) Prior to discontinuing service~~ In all other cases, the utility shall file with the board and the consumer advocate a notice of intent to discontinue service at least 90 days prior to the proposed date of discontinuance. However, if the utility shows it has no customers for the service it proposes to discontinue, the utility need only file such notice 30 days prior to discontinuance.

~~22.16(2) 22.16(1)~~ The notice of discontinuance of service shall include the following:

1. to 6. No change.

~~22.16(3) 22.16(2)~~ If after 30 days of the filing of such notice, no action is taken by the board, the discontinuance may take place as proposed.

~~22.16(4) 22.16(3)~~ The board, on its own motion or at the request of the consumer advocate or affected customer, may hold a hearing on such discontinuance.

ITEM 29. Amend subrule 22.19(3) as follows:

**22.19(3) Blocking.** AOS companies shall not block the completion of calls which would allow the caller to reach a long distance telephone ~~company~~ utility different from the AOS company. All AOS company contracts with contracting entities must prohibit call blocking by the contracting entity. The contracting entity shall not violate that contract provision.

ITEM 30. Amend paragraph **22.20(3)"a,"** introductory paragraph, as follows:

a. ~~Each utility's maps~~ If a utility files a paper boundary map, the map shall be on a scale of one inch to the mile. If a utility files a boundary map in an electronic format, the relevant scale shall be noted in the filing. ~~They~~ Boundary maps shall include information equivalent to the county maps which are available from the Iowa department of transportation, showing all roads, railroads, waterways, plus township and range lines outside the municipalities. A larger scale shall be used where necessary to clarify areas. All map details shall be clean-cut and readable.

ITEM 31. Rescind subrule 22.20(4) and adopt the following **new** subrule in lieu thereof:

**22.20(4) Certificate modifications.** Two local exchange utilities may transfer the service territory boundaries and customers from one utility to another after affected customers have been notified of the transfer and are given the opportunity for a hearing before the board. A certificate modification shall be approved if the board finds that the transfer will result in adequate service to affected customers, the transfer is in the public interest, and the provisions of paragraph 22.23(2) "e" have been followed. If the certificate modification involves an ILEC, the ILEC shall file revised boundary maps.

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

After July 1, 2014, a local exchange utility may expand its service territory by filing a notice of the expansion with the board and by providing that notice to affected utilities. The notice shall list the exchanges where the utility currently provides ILEC and CLEC service and shall provide the names of the exchanges where the utility proposes to expand its competitive service area.

*a. Filing instructions.* The notice of the expansion shall be filed using the board's electronic filing system in accordance with rule 199—14.9(17A,476). The filing shall be titled "Proposed Expansion of Competitive Service Area," with a reference to the year for which the notice is filed. The board's records and information center will assign each filing an ES docket number, signifying "Expansion of Service Areas." Unless docketed by the board for further investigation, a letter approving the notice and modifying the utility's certificate will be issued within 30 days of the filing. ES dockets are not subject to protection from public disclosure.

*b. Conservation of numbering resources.* A utility proposing to expand its competitive service area shall not apply for numbering resources in those exchanges until its provision of local exchange service to customers becomes imminent.

ITEM 32. Amend paragraph **26.5(1)“b”** as follows:

*b. Notification of customers.* All public utilities, except those exempted from rate regulation by Iowa Code section 476.1, which propose to increase rates or charges, shall mail or deliver a written notice pursuant to paragraph 26.5(1)“c” or “d” to all customers in all affected rate classifications. The written notice shall be mailed or delivered before the application for increase is filed, but not more than 62 days prior to the filing. Any public utility exempt from rate regulation by Iowa Code section 476.1, which proposes to increase rates or charges, shall mail or deliver, not less than 30 days prior to the proposed effective date, a written notice pursuant to paragraph 26.5(1)“c” or “d” of the rate or charge increase to all customers in all affected rate classifications.

~~Provided, however, that if a telephone utility is proposing to increase rates for only interexchange services, excluding EAS and intrastate access services, the utility shall cause the notice of proposed increase to be published, in at least one newspaper of general circulation in each county where such increased rates are proposed to be effective. The notice shall be published at least twice in such newspaper no more than 62 days prior to the time the application for the increase is filed with the board.~~

The notice requirements above are not applicable to the rate changes of a telephone utility exempt from filing tariffs pursuant to Iowa Code section 476.4. Exempt telephone utilities shall file with the board copies of rate change notices at the same time that such notices are delivered to customers.

**ARC 1958C**

**COLLEGE STUDENT AID COMMISSION[283]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 261.87, the Iowa College Student Aid Commission hereby adopts amendments to Chapter 8, "All Iowa Opportunity Scholarship Program," Iowa Administrative Code.

The amendments to Chapter 8 provide clarification for the prioritization of grant funding when funding is not sufficient to award all eligible applicants and for the college expenses that can be covered by awards under the program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 24, 2014, as **ARC 1799C**. These amendments are identical to those published under Notice of Intended Action.

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

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

These amendments are intended to implement Iowa Code chapter 261.

These amendments will become effective May 20, 2015.

The following amendments are adopted.

ITEM 1. Amend rule 283—8.1(261) as follows:

**283—8.1(261) Basis of aid.** ~~Tuition assistance~~ Assistance available under the all Iowa opportunity scholarship program is based on the financial need of Iowa residents enrolled at eligible Iowa colleges and universities.

ITEM 2. Amend subrule 8.4(2) as follows:

**8.4(2) Priority for grants.** Only applicants with expected family contributions (EFCs) at or below the average tuition and fees for regent university students for the academic year for which awards are being made will be considered for awards.

*a.* All eligible renewal applicants will be funded prior to new applicants. ~~In the event that all renewal applicants cannot be funded, applicants will be awarded based on EFC and application date.~~ Awards to renewal applicants will be made based on EFC levels within the parameters defined by the commission, with students in the lowest EFC levels awarded first and at increasing EFC levels until the maximum EFC level is reached.

*b.* Priority ~~If funding remains after all eligible renewal students have been awarded, priority will be given to students who participated in federal TRIO programs, participated in federal GEAR UP programs, or participated in alternative programs in high school, and to students who or graduated from alternative high schools.~~ Awards will be made to students in this category based on EFC levels within the parameters defined by the commission, with students in the lowest EFC levels awarded first and at increasing EFC levels until the maximum EFC level is reached.

*c.* ~~If sufficient funding is not available to make awards to all remaining eligible applicants, awards will be made only to those students whose EFCs combined with federal Pell grants, Iowa vocational-technical tuition grants, and Iowa tuition grants total less than the designated EFC level. Students will be awarded by EFC level beginning with the lowest EFC levels until all funds have been expended.~~ If funding is available, awards to remaining eligible applicants will be made based on EFC levels within the parameters defined by the commission, with students in the lowest EFC levels awarded first and at increasing EFC levels until the maximum EFC level is reached.

ITEM 3. Amend subrule 8.4(4) as follows:

**8.4(4) Awarding process.**

*a.* College and university officials will provide information about eligible students to the commission in a format specified by the commission.

*b.* The commission will designate recipients until all funding has been expended.

## COLLEGE STUDENT AID COMMISSION[283](cont'd)

*c.* The commission will notify recipients and college and university officials of the awards, clearly indicating the award amount and the state program from which funding is being provided and stating that funding is contingent on the availability of state funds.

*d.* The college or university will apply awards directly to student accounts to cover tuition and fees, room and board, and other bona fide education expenses, such as books, equipment, and transportation.

*e.* The college or university is responsible for completing necessary verification and for coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. The college or university will report changes in student eligibility to the commission.

ITEM 4. Amend **283—Chapter 8**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement section 261.87~~ chapter 261.

[Filed 3/23/15, effective 5/20/15]

[Published 4/15/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/15/15.

**ARC 1966C****EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 256.7(5) and 256.7(22), the State Board of Education hereby rescinds Chapter 80, "Standards for Paraeducator Preparation Programs," Iowa Administrative Code, and adopts a new Chapter 80 with the same title.

Chapter 80 outlines the standards and program requirements that all paraeducator preparation programs must meet in order to be approved to prepare paraeducators in Iowa. Compliance with these standards is required and is evaluated during each paraeducator preparation program's initial and periodic reviews.

The current standards are updated to reflect research in student achievement, accountability, and continuous program improvement. The standards in new Chapter 80 more closely align with rules from the Iowa Board of Educational Examiners on the issuance of paraeducator certificates. (See Iowa Administrative Code 282—Chapter 24.)

A team of 12 Iowa educators, paraeducators, Department of Education staff, and Board of Educational Examiners staff developed these rules. The rules were subsequently vetted by educators and policy experts in Iowa.

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

Notice of Intended Action was published in the February 18, 2015, Iowa Administrative Bulletin as **ARC 1880C**. Public comments were allowed until 4:30 p.m. on March 10, 2015. A public hearing was held on that date. No one attended the public hearing.

Two written comments were received regarding these rules. Both commenters suggested a change to the definition of "authorized official" in rule 281—80.2(272) to allow institutions of higher education greater administrative flexibility. The commenters' point is well taken, and the definition has been revised.

One of the commenters also requested that teachers of certification courses be licensed K-12 teachers. The Department does not concur with this suggestion and made no change. The faculty standard in rule 281—80.11(272) provides sufficient assurances of faculty competence and quality.

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

These rules are intended to implement Iowa Code section 256.7.

These rules will become effective May 20, 2015.

The following amendment is adopted.

EDUCATION DEPARTMENT[281](cont'd)

Rescind 281—Chapter 80 and adopt the following **new** chapter in lieu thereof:

CHAPTER 80  
STANDARDS FOR PARAEDUCATOR PREPARATION PROGRAMS

**281—80.1(272) General statement.** Programs of preparation leading to certification of paraeducators in Iowa are subject to approval by the state board of education.

**281—80.2(272) Definitions.** The following definitions are used throughout this chapter:

*“Authorized official”* means an individual with the authority within the institution and the unit to monitor and ensure compliance with this chapter.

1. If the unit is within a community college, an institution of higher education under the state board of regents, or an accredited private institution of higher education, the official must maintain, oversee and be responsible for the program within the unit.

2. If the unit is within an Iowa public school district or area education agency, the official must have one or more of the following credentials issued by the board of educational examiners: a teacher license (with the exception of a substitute teaching license), an administrator license, a professional services license, an elementary professional school counselor endorsement, a secondary professional school counselor endorsement, a school nurse endorsement, a special education support personnel authorization, or a statement of professional recognition. Other authorizations or certificates issued by the board of educational examiners shall not satisfy the requirements of this paragraph.

*“Department”* means the department of education.

*“Director”* means director of the department of education.

*“Diverse groups”* means one or more groups of individuals possessing certain traits or characteristics, including but not limited to age, color, creed, national origin, race, religion, marital status, sex, sexual orientation, gender identity, physical attributes, physical or mental ability or disability, ancestry, political party preference, political belief, socioeconomic status, or familial status.

*“Institution”* means an Iowa public school district, area education agency, community college, institution of higher education under the state board of regents or an accredited private institution as defined in Iowa Code section 261.9(1) offering a paraeducator preparation program(s).

*“Paraeducator candidate”* means an individual who is enrolled in a paraeducator preparation program leading to certification as a generalist, generalist with area(s) of concentration, or advanced paraeducator.

*“Paraeducator preparation program”* means the program of paraeducator preparation leading to certification of paraeducators.

*“State board”* means Iowa state board of education.

*“Unit”* means the organizational entity within an institution with the responsibility of administering the paraeducator preparation program(s).

**281—80.3(272) Institutions affected.** All institutions engaged in preparation of paraeducators and seeking state board approval of the institutions’ paraeducator preparation program(s) shall meet the standards contained in this chapter.

**281—80.4(272) Criteria for Iowa paraeducator preparation programs.** Each institution seeking approval of its paraeducator preparation program(s) shall submit to the board evidence of the extent to which the program meets the standards contained in this chapter. After the state board has approved an institution’s paraeducator preparation program(s), students who complete the program(s) may be recommended by the authorized official of that institution for issuance of the appropriate certificate.

**281—80.5(272) Application; approval of programs.** Approval of paraeducator preparation programs by the state board shall be based on the recommendation of the director after study of the factual and evaluative evidence of record about each program in terms of the standards contained in this chapter.

## EDUCATION DEPARTMENT[281](cont'd)

Approval, if granted, shall be for a term of five years; however, approval for a shorter term may be granted by the state board if it determines conditions so warrant. If approval is not granted, the applicant institution will be advised concerning the areas in which improvement or changes appear to be essential for approval. In this case, the institution shall be given the opportunity to present factual information concerning its programs at the next regularly scheduled meeting of the state board. The institution may also reapply at its discretion to provide evidence of the actions taken toward suggested improvement. Any application submitted under this rule shall be submitted by the authorized official.

**281—80.6(272) Periodic reports.** In addition to reports required by this chapter, the department may ask institutions placed on the approved programs list to make periodic reports necessary to keep records of each paraeducator preparation program up to date, to provide information necessary to carry out research studies relating to paraeducator preparation, and for any other purpose the department deems advisable. Any reports submitted under this rule shall be submitted by the authorized official.

**281—80.7(272) Reevaluation of paraeducator preparation programs.** Each paraeducator preparation program shall be reviewed and reevaluated at least once every five years, at a shorter interval specified pursuant to rule 281—80.5(272), or at any time deemed necessary by the director. Recommendations as to whether to grant continued approval shall be governed by rule 281—80.5(272).

**281—80.8(272) Approval of program changes.** Upon application by an institution, the director is authorized to approve minor additions to, or changes within, the institution's approved paraeducator preparation program. When an institution proposes revisions that exceed the primary scope of its program, the revisions shall become operative only after approval by the state board.

**281—80.9(272) Organizational and resource standards.** Organization and resources shall adequately support the preparation of paraeducator candidates to enable them to meet state standards in accordance with the provisions of this rule.

**80.9(1)** The unit provides resources and support necessary for the delivery of a quality certification program, including:

- a.* A commitment to a work culture, policies, and faculty/staff assignments that promote and support best practices in education;
- b.* Resources to support a quality hands-on (clinical) experience;
- c.* Resources to support professional development opportunities for certified paraeducators and unit faculty;
- d.* Resources to support technological and instructional needs to enhance candidate learning; and
- e.* A commitment of sufficient administrative, clerical, and technical staff to ensure implementation of a quality program.

**80.9(2)** The unit provides evidence of collaboration with members of the professional community, including the unit's advisory committee comprised of school administrators, classroom teachers, currently employed paraprofessionals and others, to design, deliver, and evaluate programs to prepare paraeducators.

**80.9(3)** When a unit is a part of a college or university, the unit maintains ongoing collaboration with the appropriate departments of the institution, especially regarding content knowledge.

**80.9(4)** The unit has primary responsibility for all paraeducator preparation programs offered through any delivery model.

**80.9(5)** The unit has a clearly articulated appeals process for decisions affecting candidates. This process is communicated to all candidates and staff. The unit may use an institutionwide appeals process to meet the requirements of this subrule.

**80.9(6)** The unit's use of staff in teaching roles is purposeful and managed to ensure integrity, quality, and continuity of the program(s).

**80.9(7)** The unit ensures that resources are equitable for all program components, regardless of delivery or location.

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**281—80.10(272) Diversity standards.** The unit shall ensure that the paraeducator preparation program meets the following diversity standards.

**80.10(1)** The unit provides an environment and experiences to paraeducator candidates to support candidate growth in knowledge, skills and dispositions to help diverse groups of PK-12 students learn.

**80.10(2)** The unit establishes and maintains a climate that promotes and supports diversity.

**80.10(3)** The unit's plans, policies, and practices document its efforts in establishing and maintaining a diverse staff and paraeducator candidate pool that strives to represent the diverse makeup of the community at large.

**80.10(4)** In addition to the requirements of rule 281—80.12(272), the unit shall gather data about its implementation of this rule, use those data to make program improvements, and share those data and improvements with the schools and communities it serves.

**281—80.11(272) Faculty standards.** Unit staff qualifications and performance shall facilitate the unit's role in the preparation of a professional paraeducator in accordance with the provisions of this rule.

**80.11(1)** The unit documents the alignment of teaching duties for each faculty member with that member's preparation, knowledge, experiences and skills appropriate for training paraeducators to serve in a school setting.

**80.11(2)** The institution shall hold unit staff accountable for teaching the critical concepts and principles of the discipline.

**80.11(3)** For the purpose of implementing each of the requirements of this chapter, unit faculty shall maintain ongoing, actual involvement in settings where paraeducators are employed.

**281—80.12(272) Program assessment and evaluation standards.** The unit's assessment system shall appropriately monitor individual candidate performance and use that data in concert with other program information to improve the unit and its programs in accordance with the provisions of this rule.

**80.12(1)** Each paraeducator candidate's knowledge and skills shall be measured against state certification standards adopted by the board of educational examiners under Iowa Code section 272.12 and the unit's learning outcomes for any certificate for which the unit may recommend the candidate.

**80.12(2)** Programs shall submit curriculum exhibits for approval by the department.

**80.12(3)** The unit shall establish a standard of satisfactory performance of paraeducator candidates, which shall comply with the following requirements.

*a.* The unit uses measures for candidate assessment that are fair, reliable and valid.

*b.* The unit assesses candidates on their demonstration and attainment of unit standards.

*c.* The unit uses a variety of assessment measures for assessment of candidates on each unit standard.

*d.* The unit provides candidates with formative feedback on their progress toward attainment of unit standards.

*e.* The unit assesses content knowledge and its application as candidates work with students, teachers, parents, and other professional colleagues in school settings.

*f.* The unit assesses candidates at the same level of performance across programs, regardless of the place or manner in which the program is delivered.

**80.12(4)** The unit shall conduct a survey of graduates and their employers to ensure that its graduates are well prepared for their assigned roles.

**80.12(5)** The unit shall have a clearly defined, cohesive assessment system and regularly review, analyze and revise its assessment practices.

**80.12(6)** The unit shall collect and analyze aggregated candidate and program data, use those data to make program improvements, and share those data and improvements with stakeholders on a regular basis.

**80.12(7)** An annual report including a composite of evaluative data collected by the unit shall be submitted to the department by September 30 of each year.

**80.12(8)** When it publicly reports data, the unit shall comply with all applicable privacy laws, including the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g.

EDUCATION DEPARTMENT[281](cont'd)

**281—80.13(272) Clinical practice standards.** The unit and its school partners shall provide clinical experience opportunities that assist candidates in becoming successful paraeducators in accordance with the provisions of this rule.

**80.13(1)** Paraeducator clinical experiences support learning in the context in which paraeducators will practice.

**80.13(2)** Paraeducator clinical experiences include the following:

*a.* A minimum of ten hours of experience in a state-approved school or educational facility under the supervision of a licensed educator.

*b.* Opportunities for paraeducator candidates to observe and be observed by others in the application of skills and knowledge.

These rules are intended to implement Iowa Code section 256.7(22).

[Filed 3/27/15, effective 5/20/15]

[Published 4/15/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/15/15.

**ARC 1967C**

## **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 98, "Financial Management of Categorical Funding," Iowa Administrative Code.

Chapter 98 outlines the financial management of categorical funding. The amendments to Chapter 98 reflect legislative changes impacting the following: definitions; home school assistance program; statewide voluntary four-year-old preschool program; operational function sharing supplementary weighting; limited English proficiency (LEP) weighting; gifted and talented (TAG) program; returning dropout and dropout prevention program; Iowa early intervention block grant, also known as the early intervention supplement; teacher salary supplement; teacher leadership supplement, educator quality basic salary; educator quality professional development, also known as the professional development supplement; educational excellence, phase I; levies and funds; general fund; management fund; physical plant and equipment levy (PPEL) fund; capital projects fund; special education instruction fund; and juvenile home program instruction fund. The amendments also add new rules that are based upon relatively recent legislation and pertain to early literacy and an entrepreneurial education fund.

A more detailed explanation of these amendments follows:

Item 1: House File 215 (2013) amended existing Iowa Code language to change references to "allowable growth" to read "supplemental state aid" or "supplemental amount." This language adjustment occurs in multiple subsections of Iowa Code chapter 257 and is made herein in this item and Items 6, 8, 9, and 16.

Item 2: House File 645 (2011) amended Iowa Code section 298.3 to allow for bundling of instructional technology to meet the \$500 threshold in PPEL. This amendment adds a definition of "Technology" to align with the changes in Iowa Code section 298.3.

Item 3: Senate File 2376 (2010) amended Iowa Code section 299A.12 to expand the permissive uses of home school assistance program (HSAP) funds. The addition of "teaching" in paragraph 98.12(1)"b" simply clarifies that HSAP resources are for parents providing home schooling to their children (i.e., teaching parents). The addition of paragraph 98.12(1)"i" clarifies that HSAP funds may be used for transportation costs associated with the delivery of HSAP programming. The clarifications in subrule 98.12(2) simply reflect that these program (categorical) funds cannot be used for infrastructure, which is the same restriction that is placed on all other categorical funds. Rent is a possible appropriate use, but rent can never be paid from program funds. It must be paid from PPEL or capital projects funding and then transferred in through an interfund transfer from HSAP funding.

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Item 4: House File 877 (2007) created the statewide voluntary four-year-old preschool program. Iowa Code section 256C.4(1)“e” specifically states that building construction is a nonpermissive use of these program funds. This amendment is consistent with that Iowa Code provision.

Item 5: House File 2271 (2014) made changes to operational sharing in Iowa Code section 257.11(7)“a.” This amendment is consistent with that Iowa Code update.

Item 6: Senate File 452 (2013) changed the number of years of supplemental weighting from four to five in both Iowa Code section 257.31(5) and Iowa Code section 280.4(3). This amendment is consistent with that change in the Iowa Code.

Item 7: This amendment, which modifies a confusing sentence, is a clarification that has been needed for several years. The sentence as amended simply states that all uses of funds, other than those listed in subrule 98.18(1) as permissive, are not permissive. This change is not a change to current practice.

Item 8: These amendments clarify in rule what the Department of Education has been allowing in practice, namely, that equipment costs and transportation costs related to TAG programming are allowable. These amendments also make the rule consistent with other existing categorical funding rules. The amendments also clarify that using TAG funds for purposes not related to TAG programming is not allowable.

Item 9: The amendment to subrule 98.21(1) replaces “public or nonpublic school” with “school district” since the funding is district-exclusive. Subrule 98.21(2) is amended to clarify that funds are to be used for this programming exclusively and not for general purposes. These amendments are consistent with changes made by Senate File 451 (2012) to Iowa Code section 257.41.

Items 10 and 11: These amendments remove outdated language related to “grants in aid.” This funding is now included in the state school aid formula.

Item 12: A new rule that relates to the new teacher leadership supplement funding established by House File 215 (2013) is added. The rule’s construction mirrors that of the other rules, and the rule is established in accordance with Iowa Code section 284.15.

Item 13: This amendment mirrors those in Items 10 and 11, as this funding is now included in state aid, but the amendment also clarifies that the funding can be used for the new teacher leadership and compensation (TLC) programming in Iowa Code section 284.15 as well as for prior uses. (House File 215, 2013)

Item 14: A new rule that relates to the early literacy programming included in Senate File 2282 (2012) is added. Provisions related to this programming are included in Iowa Code sections 256.7(31), 256.9(53), 279.60 and 279.68. The rule language mirrors Iowa Code language as well as the provisions of other categorical funding rules discussing permissive and nonpermissive uses.

Item 15: This amendment provides additional detail clarifying certain parameters around categorical funding that have been operational for many years.

Item 16: The amendments to subrule 98.61(2) clarify that asbestos abatement and start-up costs for new buildings are permissive uses of general funds. Both items can be brought to the School Budget Review Committee (SBRC) for additional supplemental aid but must first be paid from general funds and then taxed back after the SBRC approval is received.

Item 17: Senate File 220 (2014) adjusted the statutory provision from “55 to 65” to “55 years of age or older” in Iowa Code section 279.46. This amendment mirrors the current statute.

Item 18: These amendments are due to the change in instructional technology bundling addressed in Item 2.

Item 19: This amendment clarifies that the provision added is a permissive use of capital projects funds, as has been the interpretation for years.

Item 20: Existing rules are renumbered to make room for the new rule in Item 21.

Item 21: House File 553 (2013) created the entrepreneurial education fund. The new rule in this item simply mirrors the Iowa Code provisions related to the fund and further explains permissive and nonpermissive uses of that funding established in Iowa Code section 298A.15.

Item 22: The amendments update the rule to reflect current terminology. There is no change in practice.

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Item 23: The amendments update the rule to reflect current terminology and add language which states the expectation that area education agencies will include cost containment as a principle to consider when they are developing these programs. The amendments also mirror the guidance issued by the Department of Education to the field and are consistent with other provisions related to permissive and nonpermissive uses of categorical funds.

Item 24: Due to the renumbering of rules in Item 20, two cross references are updated in this item.

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

Notice of Intended Action was published in the February 18, 2015, Iowa Administrative Bulletin as **ARC 1881C**. Public comments were allowed until 4:30 p.m. on March 10, 2015. A public hearing was held on that date. No one attended the public hearing. No written comments were received regarding these amendments. These amendments are identical to those published under Notice.

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

These amendments are intended to implement Iowa Code chapter 257 and sections 256.7(31), 256.9(53), 256C.4(1)“e,” 279.46, 279.60, 279.68, 280.4(3), 284.15, 298.3, 298A.15 and 299A.12.

These amendments will become effective on May 20, 2015.

The following amendments are adopted.

ITEM 1. Amend rule **281—98.1(256,257)**, definition of “Budgetary allocation,” as follows:

“*Budgetary allocation*” means the portion of the funding that is specifically earmarked for a particular purpose or designated program and ~~which~~ that, in the case of the general fund, has been rolled into, or added to, the school district cost per pupil or school district regular program cost. Budgetary allocations may include both state aid and property tax. Budgetary allocations increase budget authority on the first day of the fiscal year for which the allocation has been certified or on the date that the school budget review committee approves the modified allowable growth supplemental amount for a specific purpose or program; the budget authority remains even if the full amount of revenue is not received or if the local board does not levy a cash reserve. There is no assumption that a school district or area education agency will receive the same amount of revenue as it has received in budget authority due to delinquent property taxes, cuts in state aid, or legislative decisions to fund other instructional programs off the top of state aid. The school district or area education agency must expend the full amount of budget authority for the specific purposes for which it was earmarked. When the school district or state cost per pupil is transferred from one school district to another school district in the form of tuition as required by the Iowa Code, any budgetary allocation that is included in the school district or state cost per pupil shall be considered transferred to the receiving school district and shall be expended for the specific purpose for which it was earmarked.

ITEM 2. Adopt the following new definition of “Technology” in rule **281—98.1(256,257)**:

“*Technology*” means hardware, noninstructional software and software required to provide functionality to the hardware, wireless presenters, networking and connectivity systems, computing storage, Web site development services, hardware carrying equipment, licensing, and technical assistance for installation of hardware, software, or software updates. Technology does not include such items as instructional software or textbook substitutes as defined in Iowa Code chapter 301, professional development, staff providing support to teachers or students, general supplies, district personnel or individuals/companies hired or contracted in lieu of district personnel, printing costs or media services not listed in this definition, insurance, most purchased services, or similar district functions. Maintenance contracts do not meet the definition of “technology” unless they are actually a license renewal fee; Internet subscriptions, licenses, or fees; cable or satellite services; or very similar services.

ITEM 3. Amend subrules 98.12(1) and 98.12(2) as follows:

**98.12(1)** *Appropriate uses of categorical funding*. Appropriate uses of the home school assistance program funding include, but are not limited to, the following:

- a. No change.
- b. Services to support students enrolled in a home school assistance program, to support the teaching parents of the students, and to support home school assistance program staff.
- c. to f. No change.

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g. Resources, materials, computer software, supplies, equipment, and purchased services (1) that are necessary to provide the services of home school assistance and (2) that will remain with the school district for its home school assistance program.

h. No change.

i. Student transportation exclusively for home school assistance program-approved field trips or other educational activities.

**98.12(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of the home school assistance program funding include, but are not limited to, indirect costs or use charges; operational or maintenance costs other than those necessary to operate and maintain the program; capital expenditures other than equipment or ~~facility acquisition, including~~ the lease or rental of space to supplement existing schoolhouse facilities for the program; student transportation except in cases of home school assistance program-approved field trips or other educational activities; administrative costs other than the costs necessary to administer the program; concurrent and dual enrollment costs, including postsecondary enrollment options program costs; or any other expenditures not directly related to providing the home school assistance program. A home school assistance program shall not provide moneys or resources paid for with this program funding to parents or students utilizing the program. For capital expenditures for lease or rental of classrooms or facilities for this program, the cost will be expended from a capital projects fund. A reimbursement for that cost related to the program will be an interfund transfer to the capital project fund from the program funding.

ITEM 4. Amend subrule 98.13(3) as follows:

**98.13(3) *Inappropriate uses of categorical funding.*** Inappropriate uses of the statewide voluntary four-year-old preschool program funding include, but are not limited to, indirect costs or use charges, capital expenditures other than equipment, facility acquisition, construction, debt service, operational or maintenance costs or administrative costs that supplant or that exceed 5 percent, or any other expenditures not directly related to providing the statewide voluntary four-year-old preschool program or that supplant existing public funding for preschool programming.

ITEM 5. Amend rule 281—98.15(257) as follows:

**281—98.15(257) *Operational function sharing supplementary weighting.*** Operational function sharing supplementary weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of incenting sharing of management-level staff. It is assumed that operational function sharing supplementary weighting covers only a portion of the costs of sharing management-level staff, a curriculum director, or a school counselor and shall be fully expended within the five-year period of sharing. Therefore, school districts are not required to account for the operational function sharing supplementary weighting funding separate from the general purpose revenues.

ITEM 6. Amend rule 281—98.16(257,280), introductory paragraph, as follows:

**281—98.16(257,280) *Limited English proficiency (LEP) weighting.*** Limited English proficiency weighting provides funding in addition to the student count that generates general purpose revenues and is for the purpose of providing funding for the excess costs of instruction of limited English proficiency students above the costs of instruction of pupils in a regular curriculum. In addition, the school budget review committee may grant a modified allowable-growth supplemental amount to continue funding of the excess costs beyond the ~~four~~ five years of weighting. Funding for the limited English proficiency weighting and the modified ~~allowable-growth~~ supplemental amount for limited English proficiency programs are both categorical funding and may have different restrictions than the federal limited English proficiency funding.

ITEM 7. Amend subrules 98.18(1) and 98.18(2) as follows:

**98.18(1) *Appropriate uses of categorical funding.*** Appropriate uses of at-risk formula supplementary weighting funding include costs to develop or maintain at-risk pupils' programs, which may include alternative school programs, and include, but are not limited to:

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a. and b. No change.

c. Research-based resources, materials, software, supplies, equipment, and purchased services that meet all of the following criteria:

(1) to (4) No change.

**98.18(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of the at-risk formula supplementary weighting funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than as allowed in subrule 98.18(1), administrative costs ~~other than those related to a separate school located off-site and where the administrator is assigned exclusively to this program~~ as allowed in subrule 98.18(1), or any other expenditures not directly related to providing the at-risk or alternative school program beyond the scope of the regular classroom program.

ITEM 8. Amend rule 281—98.20(257) as follows:

**281—98.20(257) Gifted and talented program.** Gifted and talented program funding is included in the school district cost per pupil calculated for each school district under the school foundation formula. The per-pupil amount increases each year by the ~~allowable growth~~ supplemental state aid percentage. This amount must account for not more than 75 percent of the school district's total gifted and talented program budget. The school district must also provide a local match from the school district's regular program district cost and the local match portion must be a minimum of 25 percent of the total gifted and talented program budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the gifted and talented program. The 75 percent portion, the local match, and all donations and grants shall be accounted for as categorical funding.

The purpose of the gifted and talented funding described in Iowa Code section 257.46 is to provide for identified gifted students' needs beyond those provided by the regular school program pursuant to each gifted student's individualized plan. The funding shall be used only for expenditures that are directly related to providing the gifted and talented program.

**98.20(1) *Appropriate uses of categorical funding.*** Appropriate uses of the gifted and talented program funding include, but are not limited to:

a. and b. No change.

c. Resources, materials, software, supplies, equipment, and purchased services that meet all of the following criteria:

(1) to (4) No change.

d. Student transportation exclusively for approved gifted and talented program field trips or other educational activities.

**98.20(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of the gifted and talented program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than field trips exclusive to this program, administrative costs, or any other expenditures not directly related to providing the gifted and talented program beyond the scope of the regular classroom.

ITEM 9. Amend rule 281—98.21(257) as follows:

**281—98.21(257) Returning dropout and dropout prevention program.** Returning dropout and dropout prevention programs are funded through a school district-initiated request to the school budget review committee for a modified ~~allowable growth~~ supplemental amount pursuant to Iowa Code sections 257.38 to 257.41. This amount must account for not more than 75 percent of the school district's total dropout prevention budget. The school district must also provide a local match from the school district's regular program district cost, and the local match portion must be a minimum of 25 percent of the total dropout prevention budget. In addition, school districts may receive donations and grants, and the school district may contribute more local school district resources toward the program. The 75 percent portion, the local match, and all donations and grants shall be accounted for as categorical funding.

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**98.21(1) Purpose of categorical funding.** The purpose of the dropout prevention funding is to provide funding to meet the needs of identified students at risk of dropping out of school beyond the instructional program and services provided by the regular school program. The funding shall be used only for expenditures that are directly related to the returning dropout and dropout prevention program.

*a.* Returning dropouts are resident pupils who have been enrolled in a ~~public or nonpublic~~ school district in any of grades 7 through 12 who withdrew from school for a reason other than transfer to another school or school district and who subsequently reenrolled in a public school in the school district.

*b.* Potential dropouts are resident pupils who are enrolled in a ~~public or nonpublic~~ school district who demonstrate poor school adjustment as indicated by two or more of the following:

(1) to (5) No change.

**98.21(2) Appropriate uses of categorical funding.** Appropriate uses of the returning dropout and dropout prevention program funding include, but are not limited to:

*a.* Salary and benefits for instructional staff, instructional support staff, and school-based youth services staff who are working with students who are participating in dropout prevention programs, alternative programs, and alternative schools, in a traditional or alternative setting, if the staff person's time is dedicated to working with returning dropouts or students who are deemed, at any time during the school year, to be at risk of dropping out, in order to provide services beyond those which are provided by the school district to students who are not identified as at risk of becoming dropouts. However, if the staff person works part-time with students who are participating in returning dropout and dropout prevention programs, alternative programs, and alternative schools and has another unrelated staff assignment, only the portion of the staff person's time that is related to the returning dropout and dropout prevention program, alternative program, or alternative school may be charged to the program.

For purposes of this paragraph, if an alternative setting is may be necessary to provide for a program which is offered at a location off school grounds and which is intended to serve student needs by improving relationships and connections to school, decreasing truancy and tardiness, providing opportunities for course credit recovery, or helping students identified as at risk of dropping out to accelerate through multiple grade levels of achievement within a shortened time frame, ~~the tuition costs for a student identified as at risk of dropping out shall be considered an appropriate use of the returning dropout and dropout prevention program funding.~~

*b.* No change.

*c.* Research-based resources, materials, software, supplies, equipment, and purchased services that meet all of the following criteria:

(1) to (4) No change.

*d.* Transportation provided by the school district exclusively to transport identified students to an alternative school or alternative program located in and provided by another Iowa school district.

*e.* The portion of the maximum tuition allowed by Iowa Code section 282.24 that corresponds to the portion exclusively providing direct additional instruction and services to an identified group of students above the costs of instruction of pupils in a regular curriculum.

*f.* School-level administrator assigned exclusively to an off-site alternative school program within the district. If the principal is administering the program part-time, then the portion of time that is exclusively and directly related to the program may be charged to the program, but the portion of time that is related to other purposes shall not.

*g.* Up to 5 percent of the total budgeted amount received pursuant to 2012 Iowa Acts, Senate File 451, section 1(1), may be used for purposes of providing districtwide or buildingwide returning dropout and dropout prevention programming targeted to students who are not deemed at risk of dropping out.

**98.21(3) Inappropriate uses of categorical funding.** Inappropriate uses of the returning dropout and dropout prevention program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than as allowed in subrule 98.21(2), administrative costs other than those ~~related to a separate school located off-site and where the administrator is assigned exclusively to this program~~ allowed in subrule 98.21(2), expenses related to the routine duties of a school nurse, general support for a school guidance counselor including any activities performed with qualified students that are also provided

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to all students, or any other expenditures not directly related to providing the returning dropout and dropout prevention program beyond the scope of the regular classroom.

ITEM 10. Amend rule 281—98.23(256D,257), introductory paragraph, as follows:

**281—98.23(256D,257) Iowa early intervention block grant, also known as early intervention supplement.** ~~Beginning with the fiscal year 2009-2010, the Iowa early intervention block grant program is converted from a grants-in-aid categorical funding to a budgetary allocation categorical funding.~~ The program's goals for kindergarten through grade 3 are to provide the resources needed to reduce class sizes in basic skills instruction to the state goal of 17 students for every one teacher; provide direction and resources for early intervention efforts by school districts to achieve a higher level of student success in the basic skills, especially reading skills; and increase communication and accountability regarding student performance.

ITEM 11. Amend rule 281—98.24(257,284), introductory paragraph, as follows:

**281—98.24(257,284) Teacher salary supplement.** Beginning with the fiscal year 2009-2010, the educational excellence Phase II program and the educator quality basic salary program were combined ~~and converted from grants-in-aid categorical funding to a budgetary allocation categorical funding.~~ Remaining balances in the educational excellence Phase II program and the educator quality basic salary program shall be expended for the same purposes as the teacher salary supplement. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors of a school district and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position.

ITEM 12. Adopt the following new rule 281—98.25(257,284):

**281—98.25(257,284) Teacher leadership supplement.** The purpose of the teacher leadership supplement is to improve instruction and elevate the quality of teaching and student learning.

**98.25(1) *Appropriate uses of categorical funding.*** Appropriate uses of teacher leadership supplement funding shall be used only to increase the payment for a teacher assigned to a leadership role pursuant to a framework or comparable system approved pursuant to Iowa Code section 284.15; to increase the percentages of teachers assigned to leadership roles; to increase the minimum teacher starting salary to \$33,500; to cover the costs for the time mentor and lead teachers are not providing instruction to students in a classroom; for coverage of a classroom when an initial or career teacher is observing or co-teaching with a teacher assigned to a leadership role; for professional development time to learn best practices associated with the career pathways leadership process; and for other costs associated with a framework or comparable system approved by the department of education under Iowa Code section 284.15 with the goals of improving instruction and elevating the quality of teaching and student learning. "Payment for a teacher" as used in this rule means additional salary for teachers and the amount required to pay the employer's share of the federal social security and Iowa public employees' retirement system, or a pension and annuity retirement system established under Iowa Code chapter 294. Appropriate uses also include payments to another school district or districts as negotiated in a whole grade sharing agreement pursuant to Iowa Code section 282.10(4) and payment to another school district receiving an open enrolled student pursuant to Iowa Code section 282.18.

**98.25(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of teacher leadership supplement funding shall include any expenditures other than the appropriate uses described in subrule 98.25(1).

ITEM 13. Amend rule 281—98.26(257,284), introductory paragraph, as follows:

**281—98.26(257,284) Educator quality professional development, also known as professional development supplement.** ~~Beginning with the fiscal year 2009-2010, the educator quality professional development program, including core curriculum professional development, is converted from a grants-in-aid categorical funding to a budgetary allocation categorical funding.~~ The purpose of the

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funding is to implement the professional development provisions of the teacher career paths and leadership roles specified in Iowa Code section 284.7 or 284.15.

ITEM 14. Adopt the following new rule 281—98.45(279):

**281—98.45(279) Early literacy.** School districts shall provide intensive supplemental reading instruction to any student who has been identified as exhibiting a substantial deficiency in reading, based upon an assessment or through teacher observations. The student's reading proficiency shall be reassessed by locally determined or statewide assessments. The student shall continue to be provided with intensive reading instruction until the reading deficiency is remedied. The district shall promote effective evidence-based programming, instruction and assessment practices across schools to support all students in becoming proficient readers by the end of the third grade. Programs and services may extend beyond third grade.

**98.45(1) *Appropriate uses of categorical funding.*** Appropriate uses of early literacy program funding include, but are not limited to:

*a.* Intensive supplemental instructional programs, instructional support, and assessment for identified students;

*b.* Professional development for staff regarding early literacy program requirements, instructional materials, and assessments;

*c.* Purchase of supplemental or specialized curriculum or instructional materials and assessments that are scientific, research-based and meet the standards of Iowa Code section 279.68 for identified students;

*d.* If not already being provided with other sources of funding or general program funding, tutoring, mentoring, and extended school day, week, or year programs for identified students;

*e.* Intensive summer literacy programs at the K-3 level for identified students;

*f.* Transportation services for identified students participating in intensive summer literacy programs.

**98.45(2) *Inappropriate uses of categorical funding.*** Inappropriate uses of early literacy program funding include, but are not limited to, indirect costs or use charges, operational or maintenance costs, capital expenditures other than equipment, student transportation other than as allowed in subrule 98.45(1), or administrative costs.

ITEM 15. Amend rule 281—98.60(24,29C,76,143,256,257,274,275,276,279,280,282,283A,285,291,296,298,298A,300,301,423E,423F,565,670) as follows:

**281—98.60(24,29C,76,143,256,257,274,275,276,279,280,282,283A,285,291,296,298,298A,300,301,423E,423F,565,670) Levies and funds.** Tax levies or funds that are required by law to be expended only for the specific items listed in statute shall be accounted for in a similar way to categorical funding. Each fund is mutually exclusive and completely independent of any other fund. No fund shall be used as a clearing account for another fund, no fund may retire the debt of another fund unless specifically authorized in statute, and transfers between funds shall be accomplished only as authorized in statute or as approved by the school budget review committee. Public funds shall not be used for private purposes.

ITEM 16. Amend rule 281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670) as follows:

**281—98.61(24,143,257,275,279,280,285,297,298,298A,301,473,670) General fund.** All moneys received by a school corporation from taxes and other sources shall be accounted for in the general fund, except moneys required by law to be accounted for in another fund. If another fund specifically lists an expenditure to that other fund, it is assumed not to be appropriate to the general fund unless statute expressly states that it is an appropriate general fund expenditure. Each school district and each area education agency shall have only one general fund.

**98.61(1) *Sources of revenue in the general fund.*** Sources of revenue in the general fund include all moneys not required by law to be accounted for in another fund and interest on the investment of those

## EDUCATION DEPARTMENT[281](cont'd)

moneys. Proceeds from the sale or disposition of property other than real property, proceeds from the lease of real or other property, compensation or rent received for the use of school property, sales of school supplies, and sales or rentals of textbooks shall be accounted for in the general fund. Proceeds for loans for equipment pursuant to Iowa Code section 279.48, federal loans for asbestos projects pursuant to Iowa Code section 279.52, or loans for energy conservation projects pursuant to Iowa Code section 473.20 may be accounted for in the general fund. Any revenue or receipt described in law as “miscellaneous income” or related to the modified allowable growth supplemental amount is restricted to the general fund.

**98.61(2)** *Appropriate uses of the general fund.* Appropriate expenditures in the general fund include, but are not limited to, the following:

*a. to m.* No change.

*n.* Funding asbestos projects including the costs of inspection and reinspection, sampling, analysis, assessment, response actions, operations and maintenance, training, periodic surveillance, and developing of management plans and record-keeping requirements relating to the presence of asbestos in school buildings and its removal or encapsulation as authorized by the school budget review committee in the case of a school district.

*o. to q.* No change.

*r.* Start-up costs, other than land purchase, for the first year of a new student construction program.

*s.* Paying any other costs not required to be accounted for in another fund.

**98.61(3)** *Inappropriate uses of the general fund.* Inappropriate expenditures in the general fund include the following:

*a.* Purchasing land or improvements ~~other than land for student construction projects.~~

*b. to h.* No change.

**98.61(4)** No change.

ITEM 17. Amend rule 281—98.62(279,296,298,670) as follows:

**281—98.62(279,296,298,670) Management fund.** The purpose of this fund is to pay the costs of unemployment benefits; early retirement benefits; insurance agreements; liability insurance to protect the school districts from tort liability, loss of property, and environmental hazards; and judgments or settlements relating to such liability. The authority to establish a management fund is available to school districts but not to area education agencies.

**98.62(1)** No change.

**98.62(2)** *Appropriate uses of the management fund.* Appropriate expenditures in the management fund include the following:

*a. to d.* No change.

*e.* Costs of early retirement benefits to employees under Iowa Code section 279.46 to pay a monetary bonus, continuation of health or medical insurance coverage, or other incentives for encouraging employees to retire before the normal retirement date for employees ~~within the age range of 55 to 65~~ years of age or older who notify the board of directors prior to April 1 of the fiscal year that they intend to retire not later than the start of the next following school calendar.

*f. to h.* No change.

**98.62(3)** No change.

ITEM 18. Amend rule 281—98.64(279,283,297,298) as follows:

**281—98.64(279,283,297,298) Physical plant and equipment levy (PPEL) fund.** The physical plant and equipment levy (PPEL) consists of the regular PPEL not to exceed \$0.33 per \$1000 of assessed valuation and a voter-approved PPEL not to exceed \$1.34 per \$1000 of assessed valuation, for a total of \$1.67. The authority to establish a PPEL fund is available to school districts but not to area education agencies.

**98.64(1)** No change.

EDUCATION DEPARTMENT[281](cont'd)

**98.64(2)** *Appropriate uses of the PPEL fund.* Appropriate expenditures in the PPEL fund include the following:

- a. to q. No change.
- r. Purchase of land as part of start-up costs for a new student construction program or if the sale proceeds of the previous student construction were insufficient to purchase land, but not for materials and supplies for a facility intended to be sold.
- s. Construction materials and supplies for a student-constructed building or shed intended to be retained by and used by the district.
- t. Demolition of a district-owned building.
- u. Improving buildings or sites for the purpose of accessing digital telecommunications over multiple channels, often referred to as broadband.

**98.64(3)** *Inappropriate uses of the PPEL fund.* Inappropriate expenditures in the PPEL fund include the following:

- a. Student construction materials and supplies for a facility intended to be sold.
- b. to g. No change.

ITEM 19. Amend rule 281—98.69(76,273,298,298A,423E,423F) as follows:

**281—98.69(76,273,298,298A,423E,423F) Capital projects fund.** Capital projects funds are used to account for financial resources to acquire or construct major capital facilities and to account for revenues from the previous local option sales and services tax for school infrastructure and the current state sales and services tax for school infrastructure. Boards of directors of school districts are authorized to establish more than one capital projects fund as necessary.

**98.69(1)** No change.

**98.69(2)** *Appropriate uses of the capital projects fund.*

a. Appropriate expenditures in a capital projects fund, excluding state/local option sales and services tax for school infrastructure fund, include the following:

- (1) to (3) No change.
- (4) Improving buildings or sites for the purpose of accessing digital telecommunications over multiple channels, often referred to as broadband.

b. Appropriate expenditures in the state/local option sales and services tax for the school infrastructure capital projects fund shall be expended in accordance with a valid revenue purpose statement if a valid revenue purpose statement exists;<sub>2</sub> otherwise,<sub>2</sub> appropriate expenditures include the following in order:

- (1) to (6) No change.
- (7) Improving buildings or sites for the purpose of accessing digital telecommunications over multiple channels, often referred to as broadband.

**98.69(3)** *Inappropriate uses of the capital projects fund.* Inappropriate expenditures in a capital projects fund include ~~student construction~~ or any expenditure not expressly authorized in the Iowa Code. Additionally, expenditures from the state/local options sales and services tax supplemental school infrastructure amount for new construction or for payments for bonds issued for new construction in any district that has a certified enrollment of fewer than 250 pupils in the district or a certified enrollment of fewer than 100 pupils in the high school without a certificate of need issued by the department of education. This restriction does not apply to payment of outstanding general obligation bonded indebtedness issued pursuant to Iowa Code section 296.1 before April 1, 2003. This restriction also does not apply to costs to repair school buildings; purchase of equipment, technology or transportation equipment authorized under Iowa Code section 298.3; or for construction necessary to comply with the federal Americans With Disabilities Act. Expenditures from the state/local options sales and services tax revenues have the same restriction as expenditures from the supplemental school infrastructure amount, excluding the restriction on payments for bonds issued for new construction.

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ITEM 20. Renumber rules **281—98.71(256B,257,298A)** to **281—98.77(298A)** as **281—98.72(256B,257,298A)** to **281—98.78(298A)**.

ITEM 21. Adopt the following new rule 281—98.71(298A):

**281—98.71(298A) Entrepreneurial education fund.** The entrepreneurial education fund is used to enhance student learning by encouraging students to develop and practice entrepreneurial skills at an early age and to foster a business-ready workforce in this state. A school corporation may establish an entrepreneurial education fund at the request of a student organization or club and upon approval by the school board.

**98.71(1) Sources of revenue in the entrepreneurial education fund.** Sources of revenue in the entrepreneurial education fund shall consist only of moneys earned through entrepreneurial activities or returns on investments made for entrepreneurial purposes by the student organization or club, private donations and private contributions, and any interest earned on such moneys that are deposited in the fund. At the request of a student organization or club and upon approval by the school board, a school corporation shall transfer moneys in a student activity fund established under Iowa Code section 298A.8, for deposit by the student organization or club in an entrepreneurial education fund. However, a school corporation shall not transfer such moneys unless the moneys are attributable through appropriate documentation to the specific student organization or club and unless the student organization or club shows through appropriate documentation that the student organization or club earned the moneys through entrepreneurial activities of starting, maintaining, or expanding a business venture, including a seasonal business venture, or rendering other labor or services in return for compensation. Entrepreneurial activities do not include charitable contributions or other donations or gifts received by the student organization or club for which no labor or services are rendered.

**98.71(2) Appropriate uses of the entrepreneurial education fund.** Appropriate uses of the entrepreneurial education fund are limited to expending only for investments made, or activities undertaken, for board-approved entrepreneurial purposes which include investing in a start-up company, early-stage company, or existing company developing a new product or new technology if the investment is in keeping with the education program of the school corporation; if the student organization or club or its members will, as a stated condition of the investment, take an active role in the company which active role directly relates to and furthers the educational purposes for which the student organization or club is established; and if a reasonable return upon the investment is expected.

**98.71(3) Inappropriate uses of the entrepreneurial education fund.** A student organization or club shall not invest moneys from an entrepreneurial education fund for an entrepreneurial purpose in which a member of the student organization or club, an advisor or supervisor of the student organization or club, or an immediate family member of such persons, has a financial interest.

**98.71(4) Fund closure.** An entrepreneurial education fund may be closed at the request of the student organization or club for which the school corporation established the fund. All moneys in the fund on the date of closure and any subsequent return on an investment made with moneys from the fund shall be deposited in the school district's student activity fund.

ITEM 22. Amend renumbered rule 281—98.72(256B,257,298A) as follows:

**281—98.72(256B,257,298A) Special education instruction fund.** The special education instruction fund is used to account for the revenues and expenditures of the special education instructional program that an area education agency provides for its member districts under Iowa Code subsection 273.9(2). This does not include special education support services as provided by Iowa Code subsection 273.9(3) which are accounted for in the general fund.

**98.72(1) Sources of revenue in the special education instruction fund.** Sources of revenue in the special education instruction fund include ~~tuition charged~~ sales of instructional services to districts with students in the special education instruction program and interest on the investment of those moneys.

## EDUCATION DEPARTMENT[281](cont'd)

**98.72(2)** *Appropriate uses of the special education instruction fund.* Appropriate expenditures in the special education instruction fund include those authorized to a school district pursuant to Iowa Code chapter 256B and 281—Chapter 41 and included in the written agreement with the school districts.

**98.72(3)** *Inappropriate uses of the special education instruction fund.* Inappropriate expenditures in the special education instruction fund include expenditures not allowed to school districts pursuant to Iowa Code chapter 256B and 281—Chapter 41, expenditures for special education support services provided pursuant to Iowa Code subsection 273.9(3), or expenditures for costs not included in the written agreement with the school districts.

ITEM 23. Amend renumbered rule 281—98.73(282,298A) as follows:

**281—98.73(282,298A) Juvenile home program instruction fund.** The juvenile home program instruction fund is used to account for the revenues and expenditures for the educational program for students residing in juvenile homes as provided by Iowa Code section 282.30. The juvenile home program supplements, but does not supplant, expenditures required of an area education agency under Iowa Code chapter 273. Revenues and expenditures related to federal or state grants serving students in the juvenile homes that supplement, rather than supplant, the juvenile home program are included in the general fund, rather than the juvenile home fund. Educational program costs for students served pursuant to individualized education programs (IEPs) shall not be included in the claim described in Iowa Code section 282.31 in lieu of billing those costs to the resident district. Educational program costs for out-of-state resident students shall not be included in the claim described in Iowa Code section 282.31 in lieu of billing those costs to the resident state agency. The area education agency (AEA) is responsible for stewardship of public funds and ensuring that all costs are ordinary and necessary costs of instruction and that classrooms are not overstaffed for the number of students. The AEA shall compare its costs, services, and staffing to the costs, services, and staffing of a similar classroom in the school district in which the juvenile home is located to ensure that they are comparable.

**98.73(1)** *Sources of revenue in the juvenile home program instruction fund.* Sources of revenue in the juvenile home program instruction fund include an advance paid pursuant to Iowa Code section 282.31, tuition billed to Iowa resident districts or to out-of-state agencies, grants in aid and interest on the investment of those moneys.

**98.73(2)** *Appropriate uses of the juvenile home program instruction fund.* Appropriate expenditures in the juvenile home program instruction fund ~~include~~ are ordinary and necessary expenditures approved by the department to provide an instructional program to students residing in juvenile homes: and include:

a. Salary and benefits for classroom teachers and aides providing instruction to students placed in a juvenile home.

b. Professional development which is specific to strategies to meet the needs of students in placement for all classroom teachers and aides working with students placed in a juvenile home.

c. Research-based resources, materials, software, supplies, and equipment, and purchased services that are customarily considered instructional and that meet all of the following criteria:

(1) Meet the needs of school-age students placed in juvenile homes,

(2) Will remain with the AEA juvenile home program, and

(3) Do not duplicate support services responsibilities of the AEA or the responsibilities of the juvenile home in its agreement with the placement agencies.

d. Summer school when necessary for a valid, established educational reason such as being included in the student's IEP or required pursuant to Iowa Code section 279.68.

e. Student support and instructional support expenditures to the extent that they are exclusively devoted to the juvenile home instructional program and are not administrative or clerical. This would include guidance services, curriculum development and instructional technology.

f. Administrative support to the extent the administrator is exclusively assigned to the juvenile home locations and is exclusively providing school-level administrative services directly for the student placed in the juvenile home or the classroom teachers. If the administrator is assigned part-time to the juvenile home locations, then the portion of time that is exclusively and directly related to the juvenile

EDUCATION DEPARTMENT[281](cont'd)

home instructional programs may be charged to the program, but the portion of time that is related to other purposes shall not. The total administrative cost shall not exceed 10 percent of the total of all allowable costs for the juvenile home program.

g. When the students are not required by the placement agency to remain at the juvenile home facility and the juvenile home has no responsibility for treatment in its agreement with the placement agency beyond custodial care, then rent may be allowed. Rent must be approved by the department. The space must be classroom space occupied exclusively by the AEA's instructional program and not include restrooms or any other common spaces. Only if rent is approved may any costs for operation or maintenance of that classroom space be allowed. The total administrative cost in paragraph 98.73(2) "f" and the total of rent and associated operation and maintenance shall not exceed 20 percent of the total of all allowable costs for the juvenile home program.

h. Transportation provided by the AEA exclusively to transport students placed at the juvenile home to the students' resident school districts located in Iowa or to the school district in which the juvenile home is located.

**98.73(3)** *Inappropriate uses of the juvenile home program instruction fund.* Inappropriate expenditures in the juvenile home program instruction fund include the following:

*a. and b.* No change.

c. Costs related to the juvenile home facility, its responsibilities under the Iowa Code or its agreements with the placement agencies.

d. Costs that were or could have been filed with Medicaid for reimbursement.

~~e. e.~~ Debt service.

~~d. f.~~ Capital outlay related to facilities. This includes any costs for facility acquisition or construction services, including remodeling and facility repair.

g. Support services that are AEA responsibilities pursuant to the Iowa Code.

h. Rental when adequate space is available at the AEA or at the district of location or when the students require treatment provided by the juvenile home or are required to remain at the juvenile home pursuant to the agreement between the juvenile home and the placement agency.

i. Costs of an audit.

j. Indirect costs.

ITEM 24. Amend renumbered rule 281—98.78(298A) as follows:

**281—98.78(298A) Other enterprise funds.** Enterprise funds are used to account for any activity for which a fee is charged to external users for goods and services. Enterprise funds are required to be used to account for any activity whose principal revenue sources are fees and charges to recover the costs of providing goods or services where those fees and charges are permitted by the Iowa Code. Funds discussed in rules 281—98.73 98.74(283A,298A) through 281—98.76 98.77(298A) are enterprise funds. In addition, enterprise funds include those activities related to community service enterprises or enterprises that support the school curricular program. Community service enterprises are activities provided by the district for a fee to the general community or segment of the community that are not in the PERL or library funds such as public libraries, community pool, community wellness center, and community or adult education. Enterprises that support the school program include activities such as a student farm, greenhouse, cooperative purchasing, school stores, or major resale activities.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/15/15.

**ARC 1956C**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 455B.304, 455C.9, 455D.7(1), and 455E.9(1), the Environmental Protection Commission amends Chapter 107, “Beverage Container Deposits,” and rescinds Chapter 110, “Hydrogeologic Investigation and Monitoring Requirements,” Chapter 112, “Sanitary Landfills: Biosolids Monofills,” Chapter 210, “Beautification Grant Program,” and Chapter 218, “Waste Tire Stockpile Abatement Program,” Iowa Administrative Code.

This rule making results from the comprehensive five-year rules review that the Department of Natural Resources (Department) is currently undertaking pursuant to Iowa Code section 17A.7(2). The goal of the review is to identify and eliminate rules that are outdated, redundant or inconsistent with statute or other rules. This rule making eliminates unnecessary and unused verbiage and corrects cross references, thus simplifying the rules of the Commission and making them easier to use and understand.

**Amendments to Chapter 107, Beverage Container Deposits.**

- The second unnumbered paragraph of rule 567—107.1(455C) relates to Iowa Code section 455C.8, which was repealed in 2013. Therefore, the paragraph is rescinded.

- The definitions of “alcoholic beverage,” “alcoholic liquor,” “beer,” and “wine” in rule 567—107.2(455C) are unnecessarily redundant given the definitions cross-referenced in the definition of “beverage” in rule 567—107.2(455C) (see Iowa Code section 123.3). Therefore, these definitions are rescinded.

- The definition of “beverage” in rule 567—107.2(455C) is rescinded in order to be replaced with a new definition of “beverage” that updates the cross references to the definitions of “alcoholic liquor,” “beer,” and “wine” in Iowa Code section 123.3. In addition, the new definition of “beverage” includes a cross reference to the definition of “high alcoholic content beer” in Iowa Code section 123.3. The new definition of “beverage” also lists all referenced items from Iowa Code section 123.3 in alphabetical order.

- Rule 567—107.16(82GA, HF2700) provides means for managing a grant program for beverage container redemption centers under Iowa Code section 455C.17. The grant program was funded once in 2008. No funding has been appropriated since, and additional funding is not anticipated. If the grant program is ever funded again, it is likely that starting over with new administrative rules fashioned for the circumstances at that time would be beneficial. Therefore, this rule is rescinded.

**Rescission of Chapter 110, Hydrogeologic Investigation and Monitoring Requirements.** Provisions of this chapter have been incrementally incorporated into other individual landfill chapters and no longer apply to any sanitary disposal projects currently permitted by the Department. The chapter is obsolete and does not serve the purpose for which it was originally drafted.

**Rescission of Chapter 112, Sanitary Landfills: Biosolids Monofills.** This chapter is no longer implemented because there are no landfills that accept only biosolids in Iowa. Should a facility decide to construct a landfill to accept biosolids, the existing Chapter 113 for municipal solid waste landfills would be applicable.

**Rescission of Chapter 210, Beautification Grant Program.** The funding for this program expired on June 30, 2014. There is no longer a need for this chapter.

**Rescission of Chapter 218, Waste Tire Stockpile Abatement Program.** This program was funded through a surcharge on vehicle titles; however, the funding expired at the end of fiscal year 2007. Iowa Code section 455D.11F, cited as the authority for this chapter, was repealed in 2004. The correct statutory authority for this chapter is Iowa Code section 455D.11C(2)“d.” Although there are still stockpiles of waste tires, without funding, this program cannot continue.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1823C** on January 21, 2015. A public hearing was held on February 18, 2015. No public comment was received. The amendments are identical to those published under Notice of Intended Action.

The Environmental Protection Commission adopted these amendments on March 17, 2015.

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

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

These amendments are intended to implement Iowa Code chapter 455C and sections 455B.304, 455D.11C and 455E.11.

These amendments will become effective May 20, 2015.

The following amendments are adopted.

ITEM 1. Rescind the second unnumbered paragraph in rule **567—107.1(455C)**.

ITEM 2. Rescind the definitions of “Alcoholic beverage,” “Alcoholic liquor,” “Beer” and “Wine” in rule **567—107.2(455C)**.

ITEM 3. Rescind the definition of “Beverage” in rule **567—107.2(455C)** and adopt the following **new** definition in lieu thereof:

“*Beverage*” means alcoholic liquor or intoxicating liquor as defined in Iowa Code section 123.3(5), beer as defined in Iowa Code section 123.3(7), high alcoholic content beer as defined in Iowa Code section 123.3(19), wine as defined in Iowa Code section 123.3(47), and mineral water, soda water or similar carbonated soft drinks in liquid form intended for human consumption.

ITEM 4. Rescind and reserve rule **567—107.16(82GA, HF2700)**.

ITEM 5. Rescind and reserve **567—Chapter 110**.

ITEM 6. Rescind and reserve **567—Chapter 112**.

ITEM 7. Rescind and reserve **567—Chapter 210**.

ITEM 8. Rescind and reserve **567—Chapter 218**.

[Filed 3/19/15, effective 5/20/15]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 4/15/15.

**ARC 1970C**

**HISTORICAL DIVISION[223]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3, 303.1A, and 404A.6, the Department of Cultural Affairs hereby amends Chapter 48, “Historic Preservation and Cultural and Entertainment District Tax Credits,” Iowa Administrative Code.

In 2014 Iowa Acts, House File 2453, the General Assembly made changes to the Historic Preservation and Cultural and Entertainment District Tax Credit Program. This program is administered by the Department of Cultural Affairs with the assistance of the Department of Revenue. These amendments are necessary to implement new program requirements for the aspects of the program that are administered by the Department of Cultural Affairs (the Department). (See also Department of Revenue Adopted and Filed amendments published herein as **ARC 1968C** for the amendments and new rules relating to this program.)

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1836C** on January 21, 2015. A public hearing was held on February 11, 2015. Several public comments were received regarding the proposed amendments. Due to the volume of comments and the fact that many of them are related both to **ARC 1836C** and to **ARC 1837C** (the Department of Revenue’s Notice of Intended Action), the Department of Cultural Affairs and the Department of Revenue compiled all of the comments received into an appendix and created a document of combined responses to those comments. Both the appendix and the responses are available at <https://tax.iowa.gov/comments-administrative-rules>.

Among the many comments received, several were in regard to the registration application scoring criteria. The Department has not made any substantive changes to the scoring criteria because the scoring

## HISTORICAL DIVISION[223](cont'd)

criteria are supported by the statute, but the Department has made a change to clarify that certain criteria are only used as tiebreaker criteria. Based on the comments, this issue appeared to be a point of confusion, and the change should alleviate some of the commenters' concerns.

The Department has made changes to the proposed amendments based upon comments requesting minor clarifications, more specific language on amendments to applications, and changes to the length and requirements of the closing period that applicants have between registration and entering into an agreement with the Department. The Department has also revised the proposed amendments to specify the application fees based on a recommendation from the Legislative Services Agency.

These 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 of Cultural Affairs adopted these amendments on March 27, 2015.

After analysis and review of this rule making, the Department finds that there may be a positive impact on jobs as a result of program changes.

These amendments are intended to implement 2014 Iowa Acts, House File 2453.

These amendments will become effective May 20, 2015.

The following amendments are adopted.

ITEM 1. Add the following **new Division I** heading before rule 223—48.1(303,404A):

DIVISION I  
PROJECTS FOR WHICH APPLICATIONS WERE APPROVED AND  
TAX CREDITS WERE RESERVED PRIOR TO JULY 1, 2014

ITEM 2. Amend subrule 48.5(2) as follows:

**48.5(2)** Computing the tax credit. The state historic preservation office (hereinafter referred to as SHPO) shall compute the tax credit based on the final qualified rehabilitation costs documented on part three of the application and shall issue a tax credit certificate pursuant to subrule 48.6(8).

*a.* For projects for which part two of the application was approved and tax credits were reserved before July 1, 2009: The only costs which may be included on part three of the application are the qualified rehabilitation costs incurred between the period ending on the project completion date and beginning on the date two years prior to the project completion date, provided that any qualified rehabilitation costs incurred prior to the date on which part two of the application was approved must be qualified rehabilitation expenditures under the federal rehabilitation credit in Section 47 of the Internal Revenue Code.

*b.* For projects for which part two of the application was approved on or after July 1, 2009: The only costs which may be included on part three of the application are those qualified rehabilitation costs incurred for the rehabilitation of eligible property during the rehabilitation period, provided that any costs incurred prior to the date on which part two of the application was approved must be qualified rehabilitation expenditures as defined in Section 47(c)(2) of the Internal Revenue Code.

ITEM 3. Amend subrule 48.6(1) as follows:

**48.6(1)** All applications for historic tax credits shall be on the current state fiscal year's forms and in accordance with the current state fiscal year's instructions provided by the SHPO. All applications must be complete and include all required supporting documentation before being considered for review and before beginning the review periods outlined in subrule 48.6(3). Application forms are available from the Tax Incentives Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319-0290. Applications may also be downloaded from the department of cultural affairs—state historical society of Iowa Web site.

*a.* Part one of the application identifies the eligibility of the property for the historic tax credit. Part one of the application is accepted year-round. Part one of the application must include all requested

## HISTORICAL DIVISION[223](cont'd)

information. SHPO staff shall notify the applicant if part one of the application is incomplete. Incomplete applications will not be processed.

*b.* Part two of the application provides a detailed description of the rehabilitation project. Part two of the application is accepted when tax credits are available for the fund specified by the applicant pursuant to subrule 48.7(6) or, if no tax credits are available, in accordance with rule 223—48.8(303,404A). Part two of the application must include all requested information. SHPO staff shall notify the applicant if part two of the application is incomplete. Incomplete applications will not be processed.

*c.* Part three of the application provides the information and documentation required to request certification of project completion and includes an economic impact questionnaire. Part three of the application must include all requested information including certification in accordance with subrule 48.4(2). SHPO staff shall notify the applicant if part three of the application is incomplete. Incomplete applications will not be processed. Incomplete applications may be subject to abandonment as outlined in rule 223—48.12(303,404A).

(1) For projects for which part two of the application was approved and tax credits reserved before July 1, 2009, part three of the application shall be submitted within 6 months of the date on which the building is placed in service.

(2) For projects for which part two of the application was approved and tax credits reserved on or after July 1, 2009, and before July 1, 2014, part three of the application shall be submitted within 24 months of the date on which the rehabilitation period ends.

*d.* Amendments to applications. An applicant shall amend an approved part one of the application or an approved part two of the application if the property changes ownership or if the applicant's name or address changes. An applicant shall amend an approved part two of the application to notify SHPO of, and to request review of, modifications to the original description of the rehabilitation project. Amendments to part two of the application shall not include modification of the rehabilitation costs estimated in the originally approved part two of the application. Amendments to part two of the application shall not result in the reservation of additional tax credits for a project. Amendments to part two will not be accepted after SHPO has approved part three of the application pursuant to subrule 48.6(8). An applicant may amend an approved part three of the application. Any amendment to part three shall meet all requirements applicable to part three. The total application processing fee charged for part three under rule 223—48.16(303,404A) is based on the final qualified rehabilitation costs as reported on the part three amendment.

ITEM 4. Amend subrule 48.6(8) as follows:

**48.6(8)** Approval of part three of the application. Upon approval of part three of the application, the SHPO shall issue a tax credit certificate to the applicant in an amount equal to 25 percent of the qualified rehabilitation costs as estimated in part two of the application for the tax credit year originally reserved for the project upon approval of part two of the application, unless the qualified rehabilitation costs in part three of the application differ from the estimated qualified rehabilitation costs in part two of the application. Notwithstanding anything contained in this chapter to the contrary, the eligibility for the tax credit and the amount of the tax credit remain subject to audit by the department of revenue in accordance with Iowa Code chapters 421 and 422.

*a.* If the qualified rehabilitation costs documented in part three of the application are less than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue a certificate in an amount equal to 25 percent of the final qualified rehabilitation costs and return any unused tax credits to the tax credit fund from which they were reserved. Notwithstanding the foregoing, tax credits that were reserved for a project but not used for that project may be used in accordance with Iowa Code chapter 404A as in effect beginning July 1, 2014, and Division II of this chapter.

*b.* For projects with tax credits reserved from the small projects fund and final qualified rehabilitation costs of \$750,000 or less: If the final qualified rehabilitation costs documented in part three of the application are greater than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue tax credit certificates totaling 25 percent of the final qualified

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rehabilitation costs, with the initial tax credit certificate issued in the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the small projects fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

c. For projects with tax credits reserved from the small projects fund and final qualified rehabilitation costs over \$750,000: The SHPO shall notify the applicant that the applicant may either:

(1) Apply for the cumulative total of qualified rehabilitation costs under any other fund for which the project is eligible. If the applicant receives a tax credit reservation from another fund, the applicant shall abandon the entirety of the applicant's tax credit reservation in the small projects fund in accordance with rule 223—48.12(303,404A); or

(2) Claim only the final qualified rehabilitation costs up to \$750,000. If the applicant chooses this option, the SHPO shall issue tax credit certificates totaling no more than \$187,500 for the project, with the initial tax credit certificate issued in the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the small projects fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

d. For projects with tax credits reserved from any other fund: If the final qualified rehabilitation costs documented in part three of the application are greater than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue tax credit certificates totaling 25 percent of the final qualified rehabilitation costs in the same fund from which tax credits were initially awarded, with the initial tax credit certificate issued for the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the appropriate fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

e. Transition provisions. Notwithstanding anything to the contrary in paragraphs 48.6(8) "b," "c" and "d" above, beginning on and after July 1, 2014, the taxpayer shall not be eligible for a reservation for any credits awarded in excess of the reservation amount, but shall be eligible to receive credits as they become available, in the small projects fund or otherwise, in accordance with the procedures developed from time to time by the SHPO. Such procedures shall give preference to taxpayers that had a reservation prior to July 1, 2014.

ITEM 5. Amend subrule 48.7(1) as follows:

**48.7(1)** *The small projects fund.* The SHPO shall reserve 10 percent of the tax credit allocation for any tax credit year in a small projects fund for projects with final qualified rehabilitation costs totaling \$750,000 or less.

~~a. At the end of each state fiscal year, any credits in the small projects fund that have not been reserved for small projects shall be available for small projects in subsequent fiscal years.~~

~~b. If the small projects fund is fully reserved, any applications for small projects received after full reservation of the small projects fund may be eligible for the statewide fund.~~

ITEM 6. Amend paragraph **48.7(7) "c"** as follows:

c. For purposes of this subrule, the phrase "in any fiscal year" refers to each of the three fiscal years for which credits may be reserved pursuant to Iowa Code section 404A.4(5) ~~as amended by 2009 Iowa Acts, Senate File 481, section 3.~~

ITEM 7. Adopt the following **new** subrule 48.7(8):

**48.7(8)** *Transition provisions.* Notwithstanding anything contained in this chapter to the contrary, no tax credits shall be reserved under these administrative rules after July 1, 2014. See Iowa Code chapter 404A in effect beginning July 1, 2014, and Division II of this chapter.

ITEM 8. Amend subrule 48.8(7) as follows:

**48.8(7)** *Prioritization of review according to fund.* Once the master sequence list is set, the projects will be reviewed by fund in the sequential order in which they fall on the list.

a. Category A projects will be reviewed and reserved first. SHPO shall reserve the remaining credits for the project from the same tax credit fund selected by the applicant pursuant to subrule 48.7(6) if a selection was made. Otherwise, SHPO shall reserve the remaining credits for the project from the

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same tax credit fund from which the original reservation came or from another fund for which the project is eligible.

*b.* Following review of category A projects, tax credit funds will be reviewed in the following order:

- (1) Small projects fund, CED-GP fund, and new permanent jobs fund.
- (2) Disaster recovery fund.
- (3) Statewide fund.

*c.* Any tax credits that have not been reserved in a particular fund will be transferred, if applicable, to the appropriate fund as outlined in rule 223—48.7(303,404A). If a fund is exhausted before the completion of reviews for that fund, all remaining projects in that fund shall be eligible for the statewide fund and will be considered in the order shown on the master sequence list.

*d.* Notwithstanding the foregoing, no projects will be sequenced pursuant to this subrule on or after July 1, 2014.

ITEM 9. Adopt the following **new** subrule 48.9(5):

**48.9(5)** Notwithstanding the foregoing, no credits will be reserved under this rule on or after July 1, 2014.

ITEM 10. Amend rule 223—48.10(303,404A) as follows:

**223—48.10(303,404A) Project commencement.**

**48.10(1)** Once a tax credit reservation is made for a project, rehabilitation must begin before the end of the state fiscal year in which the SHPO approved part two of the application. The applicant shall submit to the SHPO a project commencement report and cover letter certifying the commencement date of rehabilitation and outlining expenditure of qualified rehabilitation costs. This report and cover letter are due within the first ten working days of the next state fiscal year. Information about the project commencement report is available from the Tax Incentives Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319-0290. It may also be downloaded from the department of cultural affairs—state historical society of Iowa Web site.

**48.10(2)** In the event rehabilitation on a project does not begin before the end of the state fiscal year in which the SHPO approved part two of the application, the SHPO shall recapture the tax credit reservation in accordance with the provisions of rule 223—48.12(303,404A). Beginning on and after July 1, 2014, the recaptured reserved tax credit amount shall only be available for award to the extent provided by Iowa Code chapter 404A as in effect beginning July 1, 2014, and Division II of this chapter.

ITEM 11. Amend subrule 48.11(1) as follows:

**48.11(1)** Once a tax credit reservation is made for a project, construction must be completed and the eligible property must be placed in service as follows:

*a.* For projects for which part two of the application was approved and tax credits reserved before July 1, 2009: The project shall be completed and the building shall be placed in service on or before June 30, 2011.

*b.* For projects for which part two of the application was approved and tax credits were reserved on or after July 1, 2009, and before July 1, 2014: The project shall be completed and the eligible property shall be placed in service within 60 months of the date on which part two of the application was approved or 72 months of the date on which part two of the application was approved if more than 50 percent of the qualified rehabilitation costs are incurred within 60 months of the date on which part two of the application was approved and the applicant requests the 12-month extension in writing from the SHPO.

(1) If the applicant requests the 12-month extension from the SHPO to complete the project and place the building in service, the applicant must complete a qualified rehabilitation costs schedule and cover letter documenting the expenditure of more than 50 percent of the qualified rehabilitation costs estimated in part two of the application. This report and cover letter are due within 30 days of the end of the 60-month period. Information about the qualified rehabilitation costs schedule is available from the Tax Incentives Program Manager, State Historic Preservation Office, Department of Cultural Affairs,

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600 E. Locust Street, Des Moines, Iowa 50319-0290. The qualified rehabilitation costs schedule may be downloaded from the department of cultural affairs—state historical society of Iowa Web site.

(2) If the applicant does not request the additional 12 months from the SHPO, the applicant will be held to the requirement that the building be placed in service within 60 months of the date on which part two of the application was approved.

ITEM 12. Amend subrule 48.11(2) as follows:

**48.11(2)** In the event actual construction on a project is not completed and the eligible property is not placed in service within the time period allowed in accordance with subrule 48.11(1), the SHPO shall recapture the tax credit reservation in accordance with the provisions of rule 223—48.12(303,404A). Beginning on and after July 1, 2014, the recaptured reserved tax credit amount shall only be available for award to the extent provided by Iowa Code chapter 404A as in effect beginning July 1, 2014, and Division II of this chapter.

ITEM 13. Amend subrule 48.12(5) as follows:

**48.12(5)** *Tax credit return to appropriate fund.* The SHPO shall return any recaptured tax credit reservations to the tax credit fund from which they were reserved. Beginning on and after July 1, 2014, the recaptured reserved tax credit amount shall only be available for award to the extent provided by Iowa Code chapter 404A as in effect beginning July 1, 2014, and Division II of this chapter.

ITEM 14. Amend rule 223—48.15(303,404A) as follows:

**223—48.15(303,404A) Tax credits in excess of tax liability.**

**48.15(1)** An applicant whose tax credit exceeds the tax liability in the tax year for which the tax credit may be redeemed is entitled to a refund of the excess tax credit with interest under Iowa Code section 422.25. See also administrative rules of the department of revenue, particularly rules 701—42.15(422) 701—42.19(404A,422) and 701—52.18(404A,422).

**48.15(2)** In lieu of a refund, the applicant may have the excess tax credit applied to the tax liability for the following year.

ITEM 15. Amend **223—Chapter 48, Division I**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~chapter chapters~~ 303 and ~~chapter~~ 404A as amended by 2009 Iowa Acts, Senate File 481.

ITEM 16. Reserve rules **223—48.18** to **223—48.20**.

ITEM 17. Add the following new Division II heading before rule 223—48.21(303,404A):

DIVISION II  
PROJECTS FOR WHICH PART 2 APPLICATIONS WERE APPROVED AND AGREEMENTS  
WERE ENTERED INTO ON OR AFTER JULY 1, 2014

ITEM 18. Adopt the following new rules 223—48.21(303,404A) to 223—48.37(303,404A):

**223—48.21(303,404A) Purpose.** A historic preservation and cultural and entertainment district tax credit (hereinafter referred to as “historic tax credit”) may be applied against the income tax imposed under Iowa Code chapter 422, division II, III, or V, or Iowa Code chapter 432 for qualified rehabilitation projects that have entered into and complied with an agreement with the department of cultural affairs (hereinafter referred to as “the department”) and complied with all applicable terms, laws, and rules. The program is administered by the department with the assistance of the department of revenue. The general assembly has mandated that the department and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. In general, the department evaluates whether projects comply with the prescribed standards for rehabilitation. The department shall make determinations on applications submitted to the program. The department may consult with the department of revenue on any matters related to Iowa Code chapter 404A, the administrative rules of the department, and any agreement entered into under Iowa Code chapter 404A, including but not limited to issues related to whether projects or claimed expenditures comply with the tax aspects of the program. After consulting

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with the department of revenue and verifying whether the requirements of the program and any agreement have been fulfilled, the department shall make the determination on an eligible taxpayer's tax credit claim. This chapter sets forth the administration of the program by the department. The administrative rules for the department of revenue's administration of the program can be found in rules 701—42.19(404A,422), 701—42.54(404A,422), 701—52.18(404A,422), and 701—58.10(404A,422).

**223—48.22(404A) Definitions.** The definitions listed in rules 223—1.2(17A,303) and 223—35.2(303) shall apply to terms as they are used throughout this chapter. In addition, for purposes of this chapter, unless the context otherwise requires:

*"Agreement"* means an agreement between an eligible taxpayer and the department concerning a qualified rehabilitation project as provided in Iowa Code section 404A.3(3) and rule 223—48.32(404A).

*"Applicant"* means an eligible taxpayer described in rule 223—48.27(404A).

*"Assessed value"* means the value of the eligible property on the most current property tax assessment at the time that the relevant application or agreement is submitted or the agreement is signed, as applicable.

*"Barn"* means an agricultural building or structure, in whatever shape or design, which was originally used for the storage of farm products or feed or for the housing of farm animals, poultry, or farm equipment.

*"Certificate"* means a historic preservation and cultural and entertainment district tax credit certificate issued pursuant to Iowa Code section 404A.3(5).

*"Commencement date"* means the date set forth in the agreement, which date shall not be later than the end of the fiscal year in which the agreement is entered into.

*"Commercial property"* means property classified as commercial, industrial, railroad, utility, or multiresidential for property tax purposes under rules 701—71.1(405,427A,428,441,499B), 701—76.1(434), and 701—77.1(428,433,437,438).

*"Completion date"* means the date on which property that is the subject of a qualified rehabilitation project is placed in service, as that term is used in Section 47 of the Internal Revenue Code.

*"Department"* means the department of cultural affairs.

*"Director"* means the director of the department of cultural affairs.

*"Eligible taxpayer"* means the fee simple owner of the property that is the subject of a qualified rehabilitation project, or another person who will qualify for the federal rehabilitation credit allowed under Section 47 of the Internal Revenue Code with respect to the property that is the subject of a qualified rehabilitation project.

*"Federal rehabilitation credit"* or *"federal credit"* means the tax credit allowed under Section 47 of the Internal Revenue Code.

*"Federal standards"* means the U.S. Secretary of the Interior's standards for rehabilitation set forth in 36 CFR Section 67.7.

*"Government funding"* or *"funding originating from a government"* includes but is not limited to:

1. Any funding the applicant received from a government; or
2. Funding from a third party or a series of third parties where those funds originally came from a government or were derived from a government payment, grant, loan, tax credit or rebate or other government incentive; or
3. Funding from a third party or a series of third parties where those funds are derived from, secured by, or otherwise received in anticipation of a government payment, grant, loan, tax credit or rebate or other government incentive.

*"Historically significant"* means a property that is at least one of the following:

1. Property listed on the National Register of Historic Places or eligible for such listing.
2. Property designated as contributing to a district listed in the National Register of Historic Places or eligible for such designation.
3. Property or district designated a local landmark by a city or county ordinance.
4. A barn constructed prior to 1937.

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“*Large project*” means a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than \$750,000.

“*Noncommercial property*” means property other than “commercial property” as defined in this rule. “Noncommercial property” includes barns constructed prior to 1937.

“*Nonprofit organization*” means an organization described in Section 501 of the Internal Revenue Code unless the exemption is denied under Section 501, 502, 503, or 504 of the Internal Revenue Code. “Nonprofit organization” does not include a governmental body, as that term is defined in Iowa Code section 362.2.

“*Placed in service*” means the same as used in Section 47 of the Internal Revenue Code.

“*Program*” means the historic preservation and cultural and entertainment district tax credit program set forth in this chapter.

“*Property*” means the real property that is the subject of a “qualified rehabilitation project” or that is the subject of an application to become a qualified rehabilitation project.

“*Qualified rehabilitation expenditures*” or “*QREs*” means the same as defined in Section 47 of the Internal Revenue Code. Notwithstanding the foregoing sentence, expenditures incurred by an eligible taxpayer that is a nonprofit organization shall be considered “qualified rehabilitation expenditures” if they are any of the following:

1. Expenditures made for structural components, as that term is defined in Treasury Regulation § 1.48-1(e)(2).
2. Expenditures made for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, and development fees.

“Qualified rehabilitation expenditures” does not include those expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under Section 47 of the Internal Revenue Code.

“Qualified rehabilitation expenditures” may include expenditures incurred prior to the date an agreement is entered into under Iowa Code section 404A.3(3).

For more information, consult department of revenue 701—subrule 42.54(2).

“*Qualified rehabilitation project*” or “*project*” means a project for the rehabilitation of property in this state that meets all of the following criteria:

1. The property is historically significant as defined in this rule.
2. The property meets the federal standards as defined in this rule.
3. The project is a substantial rehabilitation as defined in this rule.

“*Related entities*” means any entity owned or controlled in whole or in part by the applicant; any person or entity that owns or controls in whole or in part the applicant; or any entity owned or controlled in whole or in part by any current or prospective officer, principal, director, or owner of the applicant.

“*Related persons*” means any current or prospective officer, principal, director, member, shareholder, partner, or owner of the applicant.

“*Small project*” means a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of \$750,000 or less.

“*Substantial rehabilitation*” means qualified rehabilitation costs that meet or exceed the following:

1. In the case of commercial property, costs totaling at least 50 percent of the assessed value of the property, excluding the land, prior to the rehabilitation or at least \$50,000, whichever is less; or
2. In the case of noncommercial property, costs totaling at least \$25,000 or 25 percent of the assessed value, excluding the land, prior to rehabilitation, whichever is less.

“*Tax credit*” or “*historic tax credit*” means the historic preservation and cultural and entertainment district tax credit established in Iowa Code chapter 404A.

This rule is intended to implement Iowa Code chapter 404A as amended by 2014 Iowa Acts, House File 2453.

**223—48.23(404A) Amount of the tax credit.** An eligible taxpayer that has entered into and complied with an agreement under Iowa Code section 404A.3(3) and has complied with the program statute and rules is eligible to claim a historic preservation and cultural and entertainment district tax credit of 25

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percent of the qualified rehabilitation expenditures of a qualified rehabilitation project that are specified in the agreement. Notwithstanding any other provision in Iowa Code chapter 404A, this chapter, or any provision in the agreement to the contrary, the amount of the tax credits shall not exceed 25 percent of the final qualified rehabilitation expenditures verified by the department pursuant to Iowa Code section 404A.3(5) "c."

This rule is intended to implement Iowa Code section 404A.2 as amended by 2014 Iowa Acts, House File 2453.

**223—48.24(404A) Management of annual aggregate tax credit award limit.** The department shall not register, as described in rule 223—48.31(404A), more projects in a given fiscal year for tentative awards than there are tax credits available for that fiscal year under Iowa Code section 404A.4. The department will determine the projects for which sufficient tax credits are available based on the estimated qualified rehabilitation expenditures identified in the registration application, plus allowable cost overruns as described in paragraph 48.32(1) "c."

**48.24(1) Registration scoring.** If applicants' total tax credit requests from a fiscal year allocation exceed the tax credit allocation for that fiscal year, the department will prioritize its determinations based on the applicants' registration scores. If, after determining the projects for which sufficient tax credits are available, the department determines there are insufficient tax credits in the fiscal year allocation to fully award the next highest scoring project, then to maximize the use of the available tax credits, the department in its sole discretion may register the project with the next highest score whose tentative tax credit award amount, including allowable cost overruns as described in paragraph 48.32(1) "c," would not cause the department to exceed the annual aggregate tax credit award limit, so long as the project meets the minimum score as described in rule 223—48.31(404A). If there are no more projects that meet the minimum score described in rule 223—48.31(404A) that can be fully funded, the department in its sole discretion may make the remaining tax credits available for small projects or allow the remaining tax credits for the fiscal year to carry forward to the succeeding fiscal year to the extent permitted by Iowa Code section 404A.4.

**48.24(2) Registrations for future tax credit allocations.** Registrations for future tax credit allocations require a new application. When registering projects for a particular fiscal year, the department shall not award, reserve, or register tax credits from future fiscal years' tax credit allocations. An applicant whose project is not registered due to an insufficient score or noncompliance with the application or the program statute or rules may submit future applications for future fiscal year tax credit allocations.

**48.24(3) Reallocation or rollover of available tax credit awards.** Tax credits may be reallocated or rolled over into future fiscal years to the extent permitted by Iowa Code section 404A.4.

This rule is intended to implement Iowa Code section 404A.4 as amended by 2014 Iowa Acts, House File 2453.

**223—48.25(404A) Application and agreement process, generally.**

**48.25(1)** All applications and other filings related to the program shall be on such forms and in accordance with such instructions as may be established by the department from time to time. The current forms and instructions will be posted to the department's Web site.

**48.25(2)** An application shall not be considered submitted for review until the application is completed and all required supporting documentation and information are provided.

**48.25(3)** The application and agreement process consists of six steps:

*a.* The applicant submits a Part 1 application, which is used to evaluate the property's integrity and significance.

*b.* Unless the Part 1 application is denied, the applicant participates in a preapplication meeting with the department to discuss what to expect for the remainder of the application process.

*c.* If the Part 1 application is approved and the preapplication meeting is completed, the applicant submits a Part 2 application, which is used to evaluate the proposed rehabilitation work.

*d.* If the Part 2 application is approved, the applicant submits a registration application, which is used to score the applicant's rehabilitation plan and financial readiness. If the project is awarded a

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sufficient registration score, satisfies other requirements of the application and program, and sufficient tax credits are available, the department may register the project.

*e.* If the project is registered, the applicant may enter into an agreement with the department that establishes the maximum amount of the tax credit award and the terms and conditions that must be met to receive the tax credits. An applicant must enter into and comply with an agreement in order to participate in the program and claim any tax credits.

*f.* Once the project is completed and the property is placed in service, the applicant submits a Part 3 application, which is used to evaluate whether the completed work meets the federal standards and the other requirements of the agreement, laws, and regulations of the program.

A more detailed description of each step is provided in rules 223—48.28(404A) through 223—48.33(404A).

This rule is intended to implement Iowa Code chapter 404A as amended by 2014 Iowa Acts, House File 2453.

**223—48.26(404A) Small projects.** Projects with anticipated final qualified rehabilitation expenditures of more than \$750,000 will be evaluated as large projects. Projects with \$750,000 or less in anticipated final rehabilitation expenditures will be evaluated as small projects. If an applicant anticipates that the final qualified rehabilitation expenditures will exceed \$750,000, the applicant may only submit its application as a large project. The department will not permit a small project applicant to submit additional or amended applications that would cause the final qualified expenditures to exceed \$750,000.

**48.26(1) *Small project fund.*** The department shall allocate at least 5 percent of its annual fiscal year tax credit award limit to small projects.

**48.26(2) *Aggregate award limit.*** For applicants that receive credits from the small project allocation, the cumulative total award for multiple applications for a single property shall not exceed \$750,000 in qualified rehabilitation expenditures plus any allowable cost overruns as described in paragraph 48.32(1) “c,” regardless of the final qualified rehabilitation expenditures. The department will not accept an application by the same owner for a property for which credits were previously received through the small project fund if the application causes the cumulative total to exceed \$750,000, plus any allowable cost overruns as described in paragraph 48.32(1) “c.”

**48.26(3) *Application and agreement process.*** The Part 1, Part 2, and Part 3 application process and the agreement requirements are the same for small projects as for large projects. The registration process for small projects differs from that for large projects. See subrule 48.31(9) for more information on the registration process for small projects.

This rule is intended to implement Iowa Code section 404A.4 as amended by 2014 Iowa Acts, House File 2453.

**223—48.27(404A) Who may apply for the tax credit.** Only an eligible taxpayer may apply for the tax credit. To be an eligible taxpayer, the applicant must be either (1) the fee simple owner or (2) a person that will ultimately qualify for the federal rehabilitation credit with respect to the qualified rehabilitation project. A nonprofit organization as described in rule 223—48.22(404A) may apply for the tax credit if the nonprofit organization is the fee simple owner of the property.

**48.27(1) *Applicants that are fee simple owners.*** If the applicant qualifies as an eligible taxpayer on the basis that the applicant is the fee simple owner of the property, the applicant will be expected to provide proof of title as described in subrule 48.28(2).

**48.27(2) *Applicants that will qualify for the federal credit.*** If the applicant qualifies as an eligible taxpayer on the basis that the applicant will qualify for the federal rehabilitation credit with regard to the property, the applicant will be asked to provide increasingly substantial evidence as described in rule 223—48.30(404A) that the applicant will qualify for the federal credit, culminating with proof of actual fee simple ownership or a long-term lease that meets the requirements of the federal rehabilitation credit before the agreement is entered into with the department. Applicants that are eligible to apply under this subrule must obtain from the fee simple owner of the property a written statement which indicates that the owner is aware of the application and has no objection and include the statement with the application.

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**48.27(3) *Who may not apply.*** Government bodies as defined in Iowa Code section 362.2 may not apply. Additionally, an applicant may not initiate the application process to apply for tax credits by submitting a Part 1 application on a project if all of the work has been completed and the qualified rehabilitation project has already been placed in service.

This rule is intended to implement Iowa Code sections 404A.1 and 404A.3 as amended by 2014 Iowa Acts, House File 2453.

**223—48.28(404A) Part 1 application—evaluation of significance.** The Part 1 application is used to determine whether the property is eligible to be a qualified rehabilitation project.

**48.28(1) *Types of property that are eligible.*** The property must meet the federal standards for historical significance.

**48.28(2) *Proof of status as eligible taxpayer.*** The Part 1 application may be submitted by an eligible taxpayer as described in rule 223—48.27(404A).

*a.* To prove the applicant is the fee simple owner, the applicant will be expected to provide title documentation. If the title is held in the name of an entity, the application must be accompanied by documentation which indicates that the signatory is the authorized representative of the entity.

*b.* If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant must provide a copy of the approved federal Part 1 application, unless the property is individually listed on the National Register of Historic Places. The applicant must also certify that the applicant plans to apply and expects to qualify for the federal credit, and the applicant must provide proof of permission from the fee simple owner as described in subrule 48.27(2).

**48.28(3) *Submission period.*** Part 1 applications may be submitted year-round.

**48.28(4) *Required information.*** Applicants must provide the department a site plan, photographs of the property, a copy of the county assessor's statement for the property, and such other information as the department may require.

**48.28(5) *Review process.*** The department will evaluate the appearance and condition of the building and verify the information provided by the applicant. The department will notify the applicant if the Part 1 application is incomplete. Generally, the department will review fully completed Part 1 applications within 90 calendar days of receipt. The 90-day review period will be adhered to as closely as possible; however, it is not mandatory. If the application is incomplete when submitted or if for any other reason the department must request additional information, the 90-day review period will restart when the requested information is received by the department. The application may be rejected if any requested information is not provided.

**48.28(6) *Response from department.*** Upon completion of the review, the department shall issue a determination regarding whether the property meets the requirements to be considered historically significant.

**48.28(7) *Period of validity.*** A determination that the property meets the requirements to be considered historically significant shall be valid for five years from the issuance of the determination provided that the property is maintained in a manner consistent with the federal standards and that the fee simple owner of the property remains the same during such period. Changes to the property that are not approved by the department shall automatically invalidate the determination of historical significance, and reestablishment of the historical significance of the property as well as submittal of a new Part 1 application for a determination that the property is eligible shall be required.

**48.28(8) *Amendments.*** An applicant shall amend an approved Part 1 application if the property changes ownership or if the applicant's name or address changes prior to submission of a Part 2 application.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

**223—48.29(404A) Preapplication meeting.** The purpose of the preapplication meeting is to provide feedback to the applicant and other interested parties that will enable the applicant to better plan and prepare for submission of the Part 2 and registration applications.

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**48.29(1) Meeting requests.** Once the completed Part 1 application is submitted, the applicant may request a preapplication meeting by using the form available on the department's Web site.

**48.29(2) Timing of the preapplication meeting.** The meeting must take place no fewer than 30 days after the submission of the Part 1 application and prior to submission of the Part 2 application. Meetings may be held by teleconference at the department's discretion.

**48.29(3) Required information.** The applicant must bring at least the following items to the meeting: preliminary drawings, photographs of the exterior (all elevations) and interior, a preliminary list of character-defining features and treatments or a draft Part 2 application, and a list of questions for which specific guidance is needed. The department may request additional information. If the preapplication meeting will be held by telephone, the required documents must be submitted electronically at least one week prior to the meeting date.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

**223—48.30(404A) Part 2 application—description of rehabilitation.** The purpose of the Part 2 application is to determine whether the proposed rehabilitation work meets the federal standards. The applicant must describe the rehabilitation work to be undertaken on the property. The review of the Part 2 application is a preliminary determination only and is not binding upon the department. A formal certification of rehabilitation shall be issued only after the rehabilitation work is completed.

**48.30(1) Proof of status as eligible taxpayer.** The Part 2 application must be submitted by an eligible taxpayer as described in rule 223—48.27(404A).

*a.* An applicant that is the fee simple owner does not need to provide any additional information regarding ownership unless there has been a change in ownership since the Part 1 application was approved.

*b.* If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant must provide a copy of the signature page of the approved federal Part 2 application signed by the National Park Service. The applicant must also certify that the applicant plans to apply and expects to qualify for the federal credit and must provide proof of permission from the fee simple owner as described in subrule 48.27(2).

**48.30(2) Submission period.** Part 2 applications may be submitted at any time after the project has received an approved Part 1 and the applicant has participated in the preapplication meeting.

**48.30(3) Required information.**

*a.* The applicant must provide any information requested by the department, including but not limited to:

- (1) A detailed description of the rehabilitation;
- (2) An estimate of the total costs related to the rehabilitation and other work to be completed on the property, regardless of whether the costs will ultimately be qualified rehabilitation costs;
- (3) An estimate of the qualified rehabilitation expenditures; and
- (4) Photographs.

*b.* The applicant must also identify whether the applicant plans to submit a registration application as a small project or a large project. For more information on the differences in the registration application process for large and small projects, see rule 223—48.26(404A).

**48.30(4) Review process.** The department will evaluate the proposed work to determine whether the proposed project, including any new construction, is consistent with the federal standards, the historic character of the property and, where applicable, the registered or potential district in which the property is located. The department will notify the applicant if the Part 2 application is incomplete. Generally, the department will review fully completed Part 2 applications within 90 calendar days of receipt. The 90-day review period will be adhered to as closely as possible; however, it is not mandatory. If the application is incomplete when submitted or if for any other reason the department must request additional information, the 90-day review period will restart when the requested information is received by the department. The application may be rejected if any requested information is not provided.

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**48.30(5) *Response from the department.*** The review of the complete Part 2 application shall result in one of three responses:

*a.* The project is eligible to submit a registration application because the proposed rehabilitation described in the application is consistent with the historic character of the property or the district in which the property is located and the project, as proposed, appears to meet the federal standards;

*b.* The project is eligible to submit a registration application because the proposed rehabilitation described in the application will likely meet the federal standards if the stipulated conditions are met; or

*c.* The rehabilitation described in Part 2 of the application is not consistent with the historic character of the property or the district in which the property is located and the project does not meet the federal standards. The project is ineligible for registration. The project may amend its Part 2 application or submit a new Part 2 application for the property.

**48.30(6) *Amendments.*** Deviation from the original rehabilitation proposal could result in the denial of final project approval and revocation of the tax credit award. An applicant shall amend an approved Part 2 application to notify the department of, and to request review of, modifications to or deviations from the original rehabilitation proposal. Applicants that undertake any work not in the original approved Part 2 application without department approval do so at their own risk. Amendments to the Part 2 application shall not result in the awarding of additional tax credits for the project and may result in a reduction in the tax credit award specified in the agreement if the department determines that the work is not consistent with the federal standards or does not otherwise comply with the requirements of the agreement. Amendments to the Part 2 application will not be accepted after the department has approved the Part 3 application pursuant to rule 223—48.33(404A). Amendments must be submitted on forms approved by the department and available on the department's Web site.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

**223—48.31(404A) *Registration application.*** If the department has approved Part 1 and Part 2 applications for a project, the applicant may submit a historic tax credit registration application during the applicable registration period. The registration application is used to determine whether the project is ready to proceed both financially and logistically. The registration application is also used to confirm whether the proposed work will meet the substantial rehabilitation test and whether the project is a small project or a large project. The registration application is also used to obtain background information, including information that may disqualify an applicant from participating in the program, as well as other information about the applicant, related persons, and related entities. Though the application process is largely the same for small projects as it is for large projects, there are some differences. For details on those differences, see rule 223—48.26(404A).

**48.31(1) *Proof of status as eligible taxpayer.*** An eligible taxpayer as defined in rule 223—48.22(404A) may submit a registration application.

*a.* An applicant that is the fee simple owner must notify the department of any changes in ownership status since the Part 2 application was filed.

*b.* If the applicant is not the fee simple owner but plans to apply for the federal rehabilitation credit, the applicant's application will be scored based on the steps taken toward ownership as described in subrule 48.31(6). The applicant must certify that the applicant understands that the applicant will not qualify for any state historic tax credit if the applicant is not the fee simple owner or not otherwise an eligible taxpayer. The applicant must also provide proof of permission from the fee simple owner as described in subrule 48.27(2).

**48.31(2) *Submission period.*** In general, applications for registration will only be accepted during the established application period, or periods, as identified by the department from time to time on its Web site. However, applications for small project registration will be accepted year-round.

**48.31(3) *Required information.*** The registration application must include the following information as well as any additional information the department or the department of revenue may request: total project cost, an estimated schedule of qualified rehabilitation expenditures and a schedule of all funding sources received or anticipated to be received that will be used to fund the project, including

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those funding sources used or that will be used to finance or reimburse both qualified rehabilitation expenditures and those expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 223—48.22(404A), including any funding that originated or will originate from any government, whether federal, state, or local.

**48.31(4) Certification and release of information.** The applicant must identify and list all related persons and related entities, as those terms are defined in rule 223—48.22(404A). The applicant must release information requested by the department regarding the applicant, related persons, and related entities. The applicant must also certify that all representations, warranties, documents, or statements made or furnished in connection with the registration application are true and accurate. The certification and release of information are intended to identify information that will disqualify an applicant from participating in the program or that may have an adverse impact on the project. The certification and release of information are also intended to provide the department with information regarding the economic, ownership, and management realities related to the project by providing information about the actual persons and businesses affiliated with the applicant, the actual persons and businesses that will derive financial benefits from the project, as well as other businesses affiliated with the individuals involved with the project.

*a.* The department shall reject an application for registration if any of the following occurs or exists:

(1) The applicant fails to answer the questions and provide all requested information and documents in a timely manner as required by the rules or the application or in a timely manner as otherwise requested by the department.

(2) The applicant provides false or inaccurate information or documents to the department.

(3) The applicant, a related person, or a related entity has not filed any local, state, or federal tax returns that are due. This provision shall not apply to an applicant, related person, or related entity that has timely filed an extension to file a local, state or federal tax return.

(4) The applicant, a related person, or a related entity has any overdue local, state, or federal tax liability, including any tax, interest, or penalty.

(5) The applicant, a related person, or a related entity is currently in default, has an uncured breach, or is otherwise not in compliance with any contract, grant award, or tax credit program with the state of Iowa, any agency of the state of Iowa, or any other entity or instrumentality of the state of Iowa.

(6) The applicant, a related person, or a related entity has any past-due amounts owed to the state of Iowa, any agency of the state of Iowa, any other entity or instrumentality of the state of Iowa, or any person or entity that is eligible to submit claims to the state offset system under Iowa Code section 8A.504.

(7) The department determines, in its sole discretion, that registering the project, entering into an agreement with the department, or permitting the applicant's tax credit claim would cause the applicant or another person to default on, breach, or otherwise not comply with any contract, grant award, or tax credit program with the state of Iowa, any agency of the state of Iowa, or any other entity or instrumentality of the state of Iowa.

(8) The department determines, in its sole discretion, that the applicant will not be able to provide representations, warranties, conditions, or other terms of an agreement that would be acceptable to the department.

(9) Information is disclosed to the department that would cause the department, in its sole discretion, to decline to enter into an agreement with the applicant.

*b.* Scope of inquiry. The department may ask the applicant to disclose information and documents about other entities affiliated with the applicant, a related person, or a related entity if the department determines that the information regarding the applicant, related persons, and related entities does not adequately disclose to the department the economic, ownership, and management structure and realities related to a project.

**48.31(5) Review period.** In general, the department and the department of revenue will review fully completed registration applications within 30 calendar days of receipt. The 30-day review period

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will be adhered to as closely as possible; however, it is not mandatory. If any answers, responses, explanations, documents, or other information submitted in connection with the certification and release of information changes after the applicant has submitted this information to the department, the applicant must supplement its response to the certification and release of information in writing within 10 business days of the change. If the application is incomplete when submitted or if for any other reason the department or the department of revenue must request additional information, the 30-day review period will restart when the requested information is received by the department or the department of revenue, as the case may be. The department will reject an application if any requested information is not provided.

**48.31(6) Scoring process.** All completed applications will be reviewed and scored. In order for a project to be considered for registration, the application must meet a minimum score as established from time to time by the department and set forth in the current registration application. Scoring of the application will take into account readiness criteria, which may include the following:

- a. Rehabilitation planning and project readiness. Projects will be scored based on whether the Part 2 application was approved with or without conditions.
- b. Secured financing. Weighted preference will be given to projects that have financing or equity or both in place.
- c. Steps taken towards ownership. Weighted preference will be given to the projects of applicants that are currently fee simple owners of the property.
- d. Local government support. Weighted preference will be given to projects that have received support from their local jurisdiction.
- e. Rehabilitation time line. Weighted preference will be given to projects that will be completed in the shortest amount of time.
- f. Zoning and code review. Weighted preference will be given to the projects of applicants that can demonstrate a determination by the authority having jurisdiction that the project complies with the guidelines for construction permitting.
- g. Such other information as the department may find relevant and request on the registration application.

**48.31(7) Tiebreaker criteria.** If the estimated maximum tax credit awards for all projects that scored above the minimum-score threshold based on the criteria in subrule 48.31(6) exceed the fiscal year tax credit allocation and there is a tie between two or more projects and the department does not have sufficient tax credits to allocate to the two or more projects that have the same score, the department will use the following criteria to evaluate those projects that are tied for the lowest score:

- a. Statewide economic priorities. Weighted preference will be given to projects that address statewide economic priorities, including: permanent job creation; whether the project is in a federal or state disaster area; and whether the project is in a cultural and entertainment district or specifically mentioned in a great places contract.
- b. Vacant property. The department will consider whether the properties are underutilized or not occupied and give preference to those projects on properties that are the most underutilized.
- c. Preservation of rural resources. The department will evaluate projects based on the population size of the surrounding community with preference given to projects in communities with the lowest number of residents.
- d. Previous application. The department will give weighted preference to projects for which the registration application had been successfully completed and which met the minimum score threshold during a previous application period but were not registered due to lack of available tax credits.
- e. Other criteria. The department may give preference to projects based on such other criteria as the department may find relevant and request in the registration application.

**48.31(8) Registration.** Upon reviewing and scoring all applications that are part of the application period, the department may register the qualified rehabilitation projects to the extent sufficient tax credits are available based on the estimated qualified rehabilitation costs identified in the registration applications. Only projects that meet the minimum score established by the department may be registered. As described in rule 223—48.24(404A), in the case of insufficient funding, preference will

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be given to the projects with the highest registration score based on the criteria in subrules 48.31(6) and 48.31(7). At the time the project is registered, the department shall make a preliminary determination as to the amount of tax credits for which the project qualifies. The department shall make best efforts to notify the applicant within 45 calendar days after the close of the registration period as to whether the applicant's project has been registered. The registration notice shall include the amount of the applicant's tentative tax credit award, along with a notice that the amount is a preliminary, nonbinding determination only. The department will notify applicants whose projects were not registered and state whether the failure to register the project was due to the failure of the project to meet the minimum score, the lack of available tax credits, or another reason. A list of registered applicants will be posted on the department's Web site.

**48.31(9) *Small project registration application.*** The department may establish for small projects a registration application form and process that differ from the application form and process used for large projects. The forms will be available on the department's Web site. Small projects may submit registration applications year-round; however, the registration application must be submitted no later than 180 calendar days after receipt of approval of the Part 2 application from the department. Small project registration applications will be evaluated on a first-come, first-served basis, subject to the availability of tax credits.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

**223—48.32(404A) Agreement.** Upon successful registration of the project as described in subrule 48.31(8), the eligible taxpayer shall have 120 calendar days or until the end of the fiscal year, whichever is less, to purchase or lease the property, if applicable, and enter into an agreement with the department. Nothing in these rules shall affect the department's ability to comply with the annual award limitations described in Iowa Code section 404A.4. A condition precedent to any agreement will be proof that the eligible taxpayer is the actual fee simple owner or has a binding qualified long-term lease that meets the requirements of the federal rehabilitation credit. An eligible taxpayer shall not be eligible for historic tax credits unless the eligible taxpayer enters into an agreement with the department concerning the qualifying rehabilitation project and satisfies the terms and conditions that must be met to receive the tax credit award.

**48.32(1) *Terms and conditions.*** The agreement shall contain mutually agreeable terms and conditions, which shall, at a minimum, provide for the following:

*a.* The maximum amount of the tax credit award. Notwithstanding anything in this chapter to the contrary, no tax credit certificate shall be issued until the department and the department of revenue verify the amount of final qualified rehabilitation expenditures and compliance with all other requirements of the agreement, Iowa Code chapter 404A, and the applicable rules.

*b.* The rehabilitation work to be performed.

*c.* The budget of the qualified rehabilitation project, including the projected qualified rehabilitation expenditures, and those expenditures not qualified, and allowable cost overruns. The amount of allowable cost overruns provided for in the agreement shall not exceed the following amounts:

(1) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of not more than \$750,000, 15 percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(2) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than \$750,000 but not more than \$6 million, 10 percent of the projected qualified rehabilitation expenditures provided for in the agreement.

(3) For a qualified rehabilitation project with estimated final qualified rehabilitation expenditures of more than \$6 million, 5 percent of the projected qualified rehabilitation expenditures provided for in the agreement.

*d.* A schedule of all funding sources received or anticipated to be received that will be used to fund the project, including those funding sources used or that will be used to finance or reimburse both

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qualified rehabilitation expenditures and those expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 223—48.22(404A), including any funding that originated or will originate from any government, whether federal, state, or local.

*e.* The commencement date.

*f.* The completion date.

*g.* The agreement termination date, which shall not be earlier than five years from the date on which the tax credit certificate is issued.

*h.* Such other terms, conditions, representations, and warranties as the department may determine are necessary or desirable to protect the interests of the state.

**48.32(2) Amendments.** The department may for good cause amend an agreement. However, the department may not amend an agreement to allow cost overruns in excess of the amount described in paragraph 48.32(1)“c.” In addition, the commencement date, completion date, and agreement termination date may not be amended if such an amendment would violate the statutorily prescribed time limits as described in Iowa Code section 404A.3(3). Any amendment approved by the department shall be signed by both parties.

**48.32(3) Authority.** Only the director or deputy director may enter into agreements on behalf of the department. Any agreement entered into on behalf of the department by a person other than the director or deputy director shall be void.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

**223—48.33(404A) Part 3 application—request for certification of completed work and verification of qualified rehabilitation expenditures.** Part 3 of the application is used to determine whether the project has complied with the terms of the agreement as well as with applicable laws, rules and regulations.

**48.33(1) Submission period.** The fully completed Part 3 application must be submitted no more than 180 calendar days after the project completion date as defined in the agreement.

**48.33(2) Required information.** The Part 3 application must include the following information:

*a.* Certification that the eligible taxpayer is the fee simple owner or is qualified for the federal rehabilitation credit and has a binding qualified long-term lease that meets the requirements of the federal rehabilitation credit.

*b.* Using the qualified rehabilitation expenditures schedule form provided on the department’s Web site, a schedule of total expenditures for the project, which shall identify in detail the final qualified rehabilitation expenditures and those expenditures that are not qualified.

*c.* A schedule of all funding sources used to finance the project, including those funding sources used to finance or reimburse both qualified rehabilitation expenditures and expenditures not being claimed as qualified rehabilitation expenditures, along with supporting documentation. The schedule must identify all government funding as defined in rule 223—48.22(404A), including any funding that originated from any government, whether federal, state, or local.

*d.* CPA examination. An eligible taxpayer shall engage a certified public accountant authorized to practice in this state to conduct an examination of the project in accordance with the American Institute of Certified Public Accountants’ statements on standards for attestation engagements. Upon completion of the qualified rehabilitation project, the eligible taxpayer shall submit the examination to the department, along with a statement of the amount of final qualified rehabilitation expenditures and any other information deemed necessary by the department or the department of revenue in order to verify that all requirements of the agreement, Iowa Code chapter 404A, and all rules adopted pursuant to Iowa Code chapter 404A have been satisfied. The department may waive the examination requirement for projects if all of the following requirements are satisfied:

(1) The final qualified rehabilitation expenditures of the qualified rehabilitation project, as verified by the department, do not exceed \$100,000.

(2) The qualified rehabilitation project is funded exclusively by private funding sources.

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*e.* Any information the department or the department of revenue may require for program evaluation.

**48.33(3) Review period.** The department and the department of revenue will make best efforts to review Part 3 applications within 90 calendar days after the application is filed. However, this time frame is not binding upon either the department or the department of revenue. The department and the department of revenue shall review the information submitted by the eligible taxpayer and determine whether a tax credit certificate may be issued. See rule 223—48.36(404A) for more information on certificate issuance.

**223—48.34(404A) Fees.** Applicants must pay a nonrefundable fee for the processing of Parts 2 and 3 of an application. The review fee for Part 2 will be due with the filing of the Part 2 application and will be based on the estimated qualified rehabilitation costs. The fee for review of Part 3 will be due with the filing of the Part 3 application and will be based on the final qualified rehabilitation expenditures. The fee schedule is as follows:

For projects with qualified rehabilitation expenditures of:	Part 2 Processing Fee	Part 3 Processing Fee
\$50,000 or less	No cost	No cost
\$50,001 to \$100,000	\$250	\$250
\$100,001 to \$750,000	\$500	\$500
\$750,001 to \$6,000,000	\$1,000	0.5 percent of final qualified rehabilitation expenditures
Over \$6,000,000	\$1,500	\$30,000

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

**223—48.35(404A) Compliance.**

**48.35(1) Annual reports.** The eligible taxpayer shall, for the length of the agreement, annually certify to the department compliance with the requirements of the agreement. The certification shall be due each year on the anniversary of the date upon which the agreement was entered into. Instructions and forms shall be made available on the department's Web site.

**48.35(2) Burden of proof.** The eligible taxpayer shall have the burden of proof to demonstrate to the department that all requirements of the agreement, Iowa Code chapter 404A, and the applicable rules are satisfied. The taxpayer shall notify the department in a timely manner of any changes in the qualification of the rehabilitation project or in the eligibility of the taxpayer to claim the tax credit provided under this chapter, or of any other change that may have a negative impact on the eligible taxpayer's ability to successfully complete any requirement under the agreement.

**48.35(3) Events of default, revocation, recapture.** If, after entering into the agreement but before a tax credit certificate is issued, the eligible taxpayer or the qualified rehabilitation project no longer meets the requirements of the agreement, Iowa Code chapter 404A, and the applicable rules, the department may find the taxpayer in default and may revoke the tax credit award.

*a. Voluntary abandonment.* An applicant may choose to irrevocably decline the tax credit that is the subject of the agreement at any time after the agreement is entered into. To irrevocably decline the tax credit, the applicant shall send a letter to the department stating the applicant's decision to irrevocably decline the tax credit. The department shall notify the applicant by certified U.S. mail or courier that the tax credit has been irrevocably declined. The tax credit shall be reallocated to the extent permitted by Iowa Code section 404A.4. If the applicant wishes to apply for a tax credit on the same qualified rehabilitation project at a later date, the applicant must complete the application process as though the project is a new project.

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*b. Revocation and recapture for prohibited activity; liability of certain transferees.* If an eligible taxpayer obtains a tax credit certificate from the department by way of a prohibited activity, the eligible taxpayer and any transferee shall be jointly and severally liable to the state for the amount of the tax credits so issued, interest and penalties allowed under Iowa Code chapter 422, and reasonable attorney fees and litigation costs, except that the liability of the transferee shall not exceed an amount equal to the amount of the tax credits acquired by the transferee. The department of revenue, upon notification or discovery that a tax credit certificate was issued to an eligible taxpayer by way of a prohibited activity, shall revoke any outstanding tax credit and seek repayment of the value of any tax credit already claimed, and the failure to make such a repayment may be treated by the department of revenue in the same manner as a failure to pay the tax shown due or required to be shown due with the filing of a return or deposit form. A qualifying transferee is not subject to the liability, revocation, and repayment imposed under this paragraph. For purposes of this paragraph:

(1) “Prohibited activity” means a breach or default under the agreement with the department, the violation of any warranty provided by the eligible taxpayer to the department or the department of revenue, the claiming of a tax credit issued under this chapter for expenditures that are not qualified rehabilitation expenditures, the violation of any requirements of Iowa Code chapter 404A or rules adopted pursuant to Iowa Code chapter 404A, misrepresentation, fraud, or any other unlawful act or omission.

(2) “Qualifying transferee” means a transferee who acquires a tax credit certificate issued under this chapter for value, in good faith, without actual or constructive notice of a prohibited activity of the eligible taxpayer who was originally issued the tax credit, and without actual or constructive notice of any other claim to or defense against the tax credit, and which transferee is not associated with the eligible taxpayer by being one or more of the following:

1. An owner, member, shareholder, or partner of the eligible taxpayer who directly or indirectly owns or controls, in whole or in part, the eligible taxpayer.

2. A director, officer, or employee of the eligible taxpayer.

3. A relative of the eligible taxpayer or a person listed in paragraph “1” or “2” of this subparagraph or, if the eligible taxpayer or an owner, member, shareholder, or partner of the eligible taxpayer is a legal entity, the natural persons who ultimately own such legal entity.

4. A person who is owned or controlled, in whole or in part, by a person listed in paragraph “1” or “2” of this subparagraph.

(3) “Relative” means an individual related by consanguinity within the second degree as determined by common law, a spouse, or an individual related to a spouse within the second degree as so determined, and includes an individual in an adoptive relationship within the second degree.

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

**223—48.36(404A) Certificate issuance; claiming the tax credit.** After consultation with the department of revenue to determine whether the terms of the agreement, Iowa Code chapter 404A, and the applicable rules have been met, the department shall issue a tax credit certificate to the eligible taxpayer stating the amount of tax credit under Iowa Code section 404A.2 the eligible taxpayer may claim, or the department shall issue a notice that the eligible taxpayer is not eligible to receive a tax credit certificate. The department shall issue the tax credit certificate or the notice not later than 60 days following the completion of the examination review, if applicable, and the verifications and consultation required under this rule. Notwithstanding the foregoing, the eligibility of the tax credit remains subject to audit by the department of revenue in accordance with Iowa Code chapters 421 and 422. For information on how to claim the tax credit, see department of revenue rules 701—42.54(404A,422), 701—52.47(404A,422), and 701—58.10(404A,422).

This rule is intended to implement Iowa Code section 404A.3 as amended by 2014 Iowa Acts, House File 2453.

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**223—48.37(303,404A) Appeals.** Any person wishing to contest an application denial, the amount of the tax credit award, award revocation, or any department action that entitles the person to a contested case proceeding shall file an appeal, in writing, within 30 days of the department action giving rise to the appeal. Any person who does not seek an appeal within 30 days of the department action that gives rise to a right to a contested case proceeding shall be precluded from challenging the department action. Appeals will be governed by the procedures set forth in this rule, together with the process set out in Iowa Code sections 17A.10 to 17A.19. Challenges to an action by the department of revenue related to tax credit transfers, claiming of tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to department of revenue 701—Chapter 7.

**48.37(1) Contents.** The appeal shall contain the following in separate numbered paragraphs:

- a. A statement of the department action giving rise to the appeal.
- b. The date of the department action giving rise to the appeal.
- c. Each error alleged to have been committed, listed as a separate paragraph. For each error listed, an explanation of the error and all relevant facts related to the error shall be provided.
- d. Reference to the particular statutes, rules, or agreement terms involved, if known.
- e. A statement setting forth the relief sought.
- f. The signature of the person or that person's representative and the mailing addresses, telephone numbers, and e-mail addresses of the person and the person's representative.

**48.37(2) Contested case proceedings.** The presiding officer in any contested case proceeding shall be an administrative law judge who specializes in tax matters.

These rules are intended to implement Iowa Code chapter 404A as amended by 2014 Iowa Acts, House File 2453.

[Filed 3/27/15, effective 5/20/15]

[Published 4/15/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/15/15.

**ARC 1955C**

## **HOMELAND SECURITY AND EMERGENCY MANAGEMENT DEPARTMENT[605]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 29C.17A, the Homeland Security and Emergency Management Department hereby adopts new Chapter 15, "Mass Notification and Emergency Messaging System," Iowa Administrative Code.

New Chapter 15 implements changes to Iowa Code sections 22.7 and 29C.2 and new Iowa Code section 29C.17A, which creates a statewide mass notification and emergency messaging system. This system is to be used by state and local authorities to provide timely notification to the public when an emergency situation is happening that poses a threat to life and property and requires the public to take immediate action. This chapter specifies how state and local agencies shall access and utilize the system. This chapter includes how application is made to access and utilize the system, minimum operational plans and procedures, and how to access personal information that is provided by the public.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 12, 2014, as **ARC 1713C**. In addition, these rules were simultaneously Adopted and Filed Emergency and published as **ARC 1712C** on the same date. A public hearing was held on December 2, 2014. No public comment was provided on the rules.

References to 2014 Iowa Acts, Senate File 2349, division VIII, have been updated to reflect the incorporation of the relevant sections in the 2015 Iowa Code.

The Homeland Security and Emergency Management Department adopted new Chapter 15 on March 18, 2015.

After analysis and review, the Department does not anticipate any impact to jobs within Iowa.

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

These rules are intended to implement Iowa Code sections 22.7, 29C.2 and 29C.17A.

These rules will become effective May 20, 2015, at which time the Adopted and Filed Emergency rules are hereby rescinded.

The following amendment is adopted.

Adopt the following new 605—Chapter 15:

CHAPTER 15  
MASS NOTIFICATION AND EMERGENCY MESSAGING SYSTEM

**605—15.1(29C) Purpose.** In accordance with Iowa Code section 29C.17A, the department of homeland security and emergency management establishes the policies and procedures for the creation and administration of a statewide mass notification and emergency messaging system.

**605—15.2(29C) Definitions.** For the purpose of this chapter, the following definitions apply:

“*Commission*” means a local emergency management commission or joint emergency management commission.

“*Department*” means the department of homeland security and emergency management.

“*Director*” means the director of the department of homeland security and emergency management.

“*Mass notification and emergency messaging system*” or “*system*” means a system operated by the department which disseminates imminent emergency and public safety-related information.

“*State agency*” means a principal central department enumerated in Iowa Code section 7E.5.

**605—15.3(29C) Application for access.**

**15.3(1)** A state agency or commission may apply to the department for access to the system for use by state, county and local officials. The application is available on the department’s Web site at [www.homelandsecurity.iowa.gov](http://www.homelandsecurity.iowa.gov). The application shall contain the following:

- a. Name of state agency or commission submitting the application.
- b. Primary point of contact for implementation and administration of the system at the applicant’s level.
- c. Signature of the state agency director or chair of the commission.
- d. Operational plan and procedures created in accordance with rule 605—15.4(29C).

**15.3(2)** All applications shall be reviewed by the director or designated staff to ensure that the application meets all of the requirements established in this chapter. If the application does not meet all of the requirements, the state agency or commission shall be notified of such shortfalls and possible remedies.

**15.3(3)** If all of the requirements have been met and the director chooses to grant access to the system, the state agency or commission shall be notified of acceptance.

**15.3(4)** If the director chooses not to grant the state agency or commission access to the system, the director shall provide notice to the state agency or commission and provide information regarding the decision.

**15.3(5)** After access to the system has been granted, the director may revoke or suspend such access if the director determines that the state agency or commission is not using the system in accordance with Iowa Code sections 22.7, 29C.2 and 29C.17A and this chapter.

**605—15.4(29C) Operational plan and procedures.**

**15.4(1)** Each state agency or commission that submits an application to access the system shall develop and maintain an operational plan and procedures. The operational plan and procedures shall contain the following:

- a. Introductory paragraphs that provide a summary of, the purpose of, and the authorities for the operational plan and procedures document.
- b. A description of the system and a listing of the types of imminent emergency alerts and public safety-related information that will be communicated to the public via the system.

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*c.* The contact information for the individual who will function as the state agency's or commission's administrator for the system and who will be the primary contact point for the department and system vendor.

*d.* A listing of those positions or individuals that are authorized to initiate emergency alerts and mass notification messages via the system. These individuals shall complete any federally specified training needed to access any federal messaging systems that are utilized by the statewide system.

*e.* A listing of those positions or individuals that are authorized to conduct system database maintenance.

*f.* The detailed process by which emergency alerts or mass notification messages will be developed, reviewed, and authorized for dissemination.

*g.* A listing by the commission of any memorandums of understanding completed with neighboring counties for the purpose of allowing cross-border emergency alerts or mass notification messaging when an incident will impact the public outside the incident county within 30 minutes and will cause the public to be endangered if action is not taken by the public. Copies of such agreements shall be included within the operational plan and procedures document.

*h.* A glossary of definitions for message types that can be issued by the system.

**15.4(2)** The state agency or commission shall complete a memorandum of agreement with the Federal Emergency Management Agency (FEMA) Integrated Public Alert and Warning System (IPAWS) program management office for the purpose of accessing IPAWS. A copy of the approved agreement shall be included within the operational plan and procedures document.

**15.4(3)** The state agency or commission shall complete an All Hazards Emergency Message Collection System (HazCollect) registration with the National Weather Service. A copy of the approved registration shall be included within the operational plan and procedures document.

**15.4(4)** The state agency or commission shall complete a user agreement with the department. The user agreement shall specify that, by accessing the system, users may be exposed to information deemed confidential under Iowa Code chapter 22. A copy of the user agreement shall be included within the operational plan and procedures document.

**15.4(5)** The department has developed an operational plan and procedures template to be used by all state agencies and commissions making application to access the system. All operational plans and procedures developed by the state agencies or commissions and submitted for approval shall substantially conform to this template. This template is available on the department's Web site at [www.homelandsecurity.iowa.gov](http://www.homelandsecurity.iowa.gov).

These rules are intended to implement Iowa Code sections 22.7, 29C.2 and 29C.17A.

[Filed 3/18/15, effective 5/20/15]

[Published 4/15/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/15/15.

**ARC 1964C**

**LABOR SERVICES DIVISION[875]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board hereby amends Chapter 90, "Administration of the Boiler and Pressure Vessel Program," and Chapter 91, "General Requirements for All Objects," Iowa Administrative Code.

Pursuant to Iowa Code subsection 89.14(7), every three years the Boiler and Pressure Vessel Board reviews all administrative rules adopted by the Board. Most of the items in this rule making are a result of that review.

The purposes of these amendments are to make the rules more current, improve record keeping to make sure that repairs are performed safely, make the rules clearer, protect the safety of the public, and

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

implement legislative intent. Adopting rules that are consistent with current industry standards allows installation of the most recent technologies in Iowa.

Notice of Intended Action was published in the December 24, 2014, Iowa Administrative Bulletin as **ARC 1798C**. No public comment was received on the proposed amendments.

In Items 6 to 9, dates were changed to reflect the effective date of the amendments.

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

These amendments are intended to implement Iowa Code chapter 89.

These amendments shall become effective on May 20, 2015.

The following amendments are adopted.

ITEM 1. Rescind the definitions of “Blowoff valve” and “Reinstalled boiler or pressure vessel” in rule **875—90.2(89,261,252J,272D)**.

ITEM 2. Adopt the following new definition of “Reinstallation” in rule **875—90.2(89,261,252J,272D)**:

“*Reinstallation*” means the process of disconnecting an object, moving it, and reconnecting it at the same location or a new location.

ITEM 3. Amend subrule 90.6(1) as follows:

**90.6(1) General.** All boilers and unfired steam pressure vessels covered by Iowa Code chapter 89 shall be inspected according to the requirements of the National Board Inspection Code (~~2011~~) (2013), which is hereby adopted by reference. A division inspector or special inspector must perform the inspections.

ITEM 4. Amend rule 875—90.8(89) as follows:

**875—90.8(89) Certificate.** No boiler or pressure vessel shall be operated without a current, valid certificate to operate. A certificate to operate shall not be issued until the boiler or pressure vessel is in compliance with the applicable rules and all fees have been paid. The current certificate to operate or a copy of the current certificate to operate shall be conspicuously posted in the room where the object is installed.

ITEM 5. Amend subrule 91.1(1), introductory paragraph, as follows:

**91.1(1) ASME boiler and pressure vessel codes adopted by reference.** The ASME Boiler and Pressure Vessel Code (~~2010 with 2011a addenda~~) (2013) is adopted by reference. Regulated objects shall be designed and constructed in accordance with the ASME Boiler and Pressure Vessel Code (~~2010 with 2011a addenda~~) (2013) except for objects that meet one of the following criteria:

ITEM 6. Amend subrule 91.1(3) as follows:

**91.1(3) Inspection code adopted by reference.** The National Board Inspection Code (~~2011~~) (2013) is adopted by reference, and reinstallations, installations, alterations, and repairs after ~~October 10, 2012~~ May 20, 2015, shall comply with it.

ITEM 7. Amend subrule 91.1(4) as follows:

**91.1(4) Electric code adopted by reference.** The National Electrical Code (~~2008~~) (2011) is adopted by reference, and reinstallations and installations after ~~January 1, 2010~~ May 20, 2015, shall comply with it.

ITEM 8. Amend subrule 91.1(5) as follows:

**91.1(5) Piping codes adopted by reference.** The Power Piping Code, ASME B31.1 (~~2007~~), ASME B31.1a (~~2008~~), and ASME B31.1b (~~2009~~) (2014), and the Building Services Piping Code, ASME B31.9 (~~2008~~) (2014), are adopted by reference, and reinstallations and installations after ~~April 14, 2010~~ May 20, 2015, shall comply with them up to and including the first valve.

ITEM 9. Amend subrules 91.1(7) to 91.1(11) as follows:

**91.1(7) Mechanical code adopted by reference.** Excluding Section 701.1, Chapters 2 and 7 of the International Mechanical Code (IMC) (~~2009~~) (2012) are adopted by reference ~~effective January 1, 2010~~, and installations and reinstallations after May 20, 2015, shall comply with them.

LABOR SERVICES DIVISION[875](cont'd)

**91.1(8)** *Oil burning equipment code adopted by reference.* National Fire Protection Association Standard for the Installation of Oil Burning Equipment, NFPA 31 (2011), is adopted by reference, and installations and reinstallations after October 10, 2012, shall comply with it.

**91.1(9)** *Fuel gas code adopted by reference.* National Fire Protection Association National Fuel Gas Code, NFPA 54 (2009) (2012), is adopted by reference, and installations and reinstallations after May 20, 2015, shall comply with it.

**91.1(10)** *Liquefied petroleum gas code adopted by reference.* National Fire Protection Association Liquefied Petroleum Gas Code, NFPA 58 (2011), is adopted by reference, and installations and reinstallations after October 10, 2012, shall comply with it.

**91.1(11)** *Boiler and combustion systems hazards code adopted by reference.* National Fire Protection Association Boiler and Combustion Systems Hazards Code, NFPA 85 (2011), is adopted by reference, and installations and reinstallations after October 10, 2012, shall comply with it.

ITEM 10. Rescind rule 875—91.20(89) and adopt the following **new** rule in lieu thereof:

**875—91.20(89) CSD-1 reports and related documentation.** Documentation required by this rule shall be kept on site and shall be available for inspection.

**91.20(1)** The requirements of this rule do not apply to:

- a. An object within the scope of 875—Chapter 95;
- b. An object within the scope of 875—Chapter 96;
- c. A hot water supply boiler covered by ASME Section IV, Part HLW; or
- d. A boiler with a fuel input rating greater than or equal to 12,500,000 Btu per hour, falling within the scope of NFPA 85, Boiler and Combustion Systems Hazards Code.

**91.20(2)** The installer shall complete a Manufacturer's/Installing Contractor's Report for ASME CSD-1 (CSD-1 report) for each newly installed or reinstalled object.

**91.20(3)** A person who installs a new burner, new gas train, or new controller on an object shall complete a CSD-1 report.

**91.20(4)** A person who replaces a part or component of an object shall complete the relevant portions of the CSD-1 report unless the replacement satisfies the design specifications. A copy of an invoice containing the same information as the relevant portions of the CSD-1 report is an acceptable alternative.

[Filed 3/26/15, effective 5/20/15]

[Published 4/15/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/15/15.

**ARC 1954C**

## **LOTTERY AUTHORITY, IOWA[531]**

**Adopted and Filed**

Pursuant to the authority granted in Iowa Code section 99G.9(3), the Board of Directors of the Iowa Lottery Authority hereby amends Chapter 1, "General Operation of the Lottery," Chapter 2, "Purchasing," Chapter 3, "Procedure for Rule Making," Chapter 5, "Contested Cases," Chapter 6, "Declaratory Orders," Chapter 18, "Scratch Ticket General Rules," Chapter 19, "Pull-Tab General Rules," and Chapter 20, "Computerized Games—General Rules," Iowa Administrative Code.

Chapters 1 to 3, 5, 6 and 18 to 20 are each amended to update the business address of the Iowa Lottery Authority.

In addition, the rules in Chapters 18, 19, and 20 are amended to update the method for relaying game odds to players. Consistent with Iowa Code section 99G.9(3)"c," the Lottery maintains at Lottery offices materials on the games offered by the Lottery and the odds of winning the prizes available for each game, and those materials are available for review by the public. In addition, the Lottery presently utilizes other methods to ensure players have access to information on game odds. These methods include providing game odds in brochures and written materials found at the retail locations where Iowa Lottery

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

products are sold, as well as posting odds and other game information on the Iowa Lottery's Web site, [www.ialottery.com](http://www.ialottery.com). Lottery games use specially ordered paper for tickets and play slips. Consistent with the present administrative rules, those preprinted tickets and play slips contain game odds. The Lottery supplies game tickets and game slips to over 2,000 Iowa Lottery retailers across the state. If a change or upgrade to a game has an impact on published game odds, the process for recalling, reordering, and resupplying tickets and stocks to each Iowa Lottery retailer can create a significant administrative expense. Any such expense necessarily lowers the Lottery proceeds that provide support for veterans, supplement the state General Fund, and back the Vision Iowa program. That expense would seem unwarranted, as prize and odds information is already available at Lottery offices, at retail locations, and, in today's world, online.

These amendments were identified through a regular review of the Iowa Lottery Authority's administrative rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 4, 2015, as **ARC 1847C**. No public comment was received on these amendments. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Board on March 16, 2015.

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

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

These amendments are intended to implement Iowa Code chapter 99G.

These amendments shall become effective on May 20, 2015.

The following amendments are adopted.

ITEM 1. Amend rule 531—1.3(17A), introductory paragraph, as follows:

**531—1.3(17A) Location.** Lottery headquarters is located at ~~2323 Grand Avenue, Des Moines, Iowa 50312-5307~~ 13001 University Avenue, Clive, Iowa 50325-8225. The lottery has regional offices located throughout the state offering some of the services available at the headquarters office. Information regarding lottery headquarters and regional offices can be obtained on the lottery Web site, [www.ialottery.com](http://www.ialottery.com), on point-of-sale game-play publications, and by contacting the lottery headquarters. The lottery authority board may be contacted through lottery headquarters. Office hours at all offices are 8 a.m. to 4:30 p.m., Monday through Friday. Prize redemption operations close at 4 p.m.

ITEM 2. Amend rule 531—1.4(17A), introductory paragraph, as follows:

**531—1.4(17A) Board meetings.** The lottery authority board shall meet at least quarterly and may meet more often if necessary. The chief executive officer, the chairperson of the board, or a majority of the board may call a special board meeting. Board meetings are generally held at lottery headquarters at ~~2323 Grand Avenue, Des Moines, Iowa 50312-5307~~ 13001 University Avenue, Clive, Iowa 50325-8225. Board meetings may be held by teleconference.

ITEM 3. Amend subrule 1.5(5) as follows:

**1.5(5)** Copies of public lottery business records may be obtained upon a written request made to the Iowa Lottery Authority, ~~2323 Grand Avenue, Des Moines, Iowa 50312-5307~~ 13001 University Avenue, Clive, Iowa 50325-8225. The lottery may charge reasonable fees, including staff research and copying time, for the processing of any public records production requests.

ITEM 4. Amend rule 531—2.17(99G), introductory paragraph, as follows:

**531—2.17(99G) Vendor appeals.** Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the lottery may appeal the decision by filing a written notice of appeal before the Iowa Lottery Authority Board, ~~2323 Grand Avenue, Des Moines, Iowa 50312-5307~~ 13001 University Avenue, Clive, Iowa 50325-8225, within three days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays. The notice of appeal must actually be received at this address within the time frame specified to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the lottery's award. Following receipt of a notice of appeal

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

which has been timely filed, the board shall notify the aggrieved vendor and the vendor who received the contract award of the procedures to be followed in the appeal. The board may appoint a designee to proceed with the appeal on its behalf.

ITEM 5. Amend subrule 3.5(1) as follows:

**3.5(1) *Written comments.*** For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Iowa Lottery Authority, ~~2323 Grand Avenue, Des Moines, Iowa 50312-5307~~ 13001 University Avenue, Clive, Iowa 50325-8225, or the person designated in the Notice of Intended Action.

ITEM 6. Amend subrule 3.5(5) as follows:

**3.5(5) *Accessibility.*** The lottery shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Iowa Lottery Authority, ~~2323 Grand Avenue, Des Moines, Iowa 50312-5307~~ 13001 University Avenue, Clive, Iowa 50325-8225, telephone (515)281-7900 in advance to arrange access or other needed services.

ITEM 7. Amend subrule 3.6(2), introductory paragraph, as follows:

**3.6(2) *Mailing list.*** Small businesses or organizations of small businesses may be registered on the lottery's small business impact list by making a written application addressed to the Iowa Lottery Authority, ~~2323 Grand Avenue, Des Moines, Iowa 50312-5307~~ 13001 University Avenue, Clive, Iowa 50325-8225. The application for registration shall state:

ITEM 8. Amend subrule 3.11(1) as follows:

**3.11(1) *General.*** When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the lottery shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Iowa Lottery Authority, ~~2323 Grand Avenue, Des Moines, Iowa 50312-5307~~ 13001 University Avenue, Clive, Iowa 50325-8225. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

ITEM 9. Amend subrule 5.12(3) as follows:

**5.12(3) *Filing—when required.*** After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Office of the Chief Executive Officer, Iowa Lottery Authority, ~~2323 Grand Avenue, Des Moines, Iowa 50312-5307~~ 13001 University Avenue, Clive, Iowa 50325-8225. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously in the office of the chief executive officer.

ITEM 10. Amend rule 531—6.1(17A), introductory paragraph, as follows:

**531—6.1(17A) *Petition for declaratory order.*** Any person may file a petition with the lottery for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the lottery, at the Iowa Lottery Authority, ~~2323 Grand Avenue, Des Moines, Iowa 50312-5307~~ 13001 University Avenue, Clive, Iowa 50325-8225. A petition is deemed filed when it is received by that office. The lottery shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the lottery an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

ITEM 11. Amend subrule 6.3(3), introductory paragraph, as follows:

**6.3(3)** A petition for intervention shall be filed at the Iowa Lottery Authority, ~~2323 Grand Avenue, Des Moines, Iowa 50312-5307~~ 13001 University Avenue, Clive, Iowa 50325-8225. Such a petition is deemed filed when it is received by that office. The lottery will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

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

ITEM 12. Amend rule 531—6.5(17A) as follows:

**531—6.5(17A) Inquiries.** Inquiries concerning the status of a declaratory order proceeding may be made to the Chief Executive Officer, Iowa Lottery Authority, ~~2323 Grand Avenue, Des Moines, Iowa 50312-5307~~ 13001 University Avenue, Clive, Iowa 50325-8225.

ITEM 13. Amend subrule 6.6(2) as follows:

**6.6(2) Filing—when required.** All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa Lottery Authority, ~~2323 Grand Avenue, Des Moines, Iowa 50312-5307~~ 13001 University Avenue, Clive, Iowa 50325-8225. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the lottery.

ITEM 14. Amend rule 531—18.7(99G), introductory paragraph, as follows:

**531—18.7(99G) Disclosure of odds.** The overall probability of purchasing a winning ticket shall be displayed on ~~each ticket~~ the Iowa lottery's Web site and in game literature made available by the lottery.

ITEM 15. Amend subrule 18.8(3) as follows:

**18.8(3) Prizes claimed at lottery.** The specific game rules shall specify prizes that may be claimed only from the lottery. To claim a prize from the lottery, the player may personally present the completed claim form obtained from a licensed retailer or any lottery office and the ticket to any lottery office or may mail the ticket and claim form to the Iowa Lottery Authority, ~~2323 Grand Avenue, Des Moines, Iowa 50312-5307~~ 13001 University Avenue, Clive, Iowa 50325-8225. If the claim is validated by the lottery, the prize or a check, warrant, or draft shall be forwarded to the player in payment of the amount due less any applicable state or federal income tax withholding. If the claim is not validated by the lottery, the claim shall be denied and the player shall be promptly notified.

ITEM 16. Amend rule 531—19.7(99G), introductory paragraph, as follows:

**531—19.7(99G) Disclosure of odds.** The overall probability of purchasing a winning ticket shall be stated on the ~~ticket~~ Iowa lottery's Web site and in game literature made available by the lottery.

ITEM 17. Amend subrule 19.8(3) as follows:

**19.8(3) Prizes claimed at lottery.** The specific game rules shall specify prizes that may be claimed only from the lottery. To claim a prize from the lottery, the player may personally present the completed claim form obtained from a licensed retailer or any lottery office and the ticket to any lottery office or may mail the ticket and claim form to the Iowa Lottery Authority, ~~2323 Grand Avenue, Des Moines, Iowa 50312-4999~~ 13001 University Avenue, Clive, Iowa 50325-8225. If the claim is validated by the lottery, the prize or a check, warrant, or draft shall be forwarded to the player in payment of the amount due less any applicable state or federal income tax withholding. If the claim is not validated by the lottery, the claim shall be denied and the player shall be promptly notified.

ITEM 18. Amend rule 531—20.8(99G), introductory paragraph, as follows:

**531—20.8(99G) Disclosure of odds.** The overall probability of purchasing a winning ticket or share shall be stated on the ~~game ticket~~ Iowa lottery's Web site and in the game literature made available by the lottery.

ITEM 19. Amend subrule 20.14(1), introductory paragraph, as follows:

**20.14(1)** To receive payment for a prize or prizes on any single game ticket or share that total \$600 or less, the winner may take the signed ticket or share directly to any lottery retailer authorized to sell and validate the game, or to any lottery office, or mail the signed ticket or share, along with a completed claim form, to Iowa Lottery Authority, ~~2323 Grand Avenue, Des Moines, Iowa 50312-5307~~ 13001 University Avenue, Clive, Iowa 50325-8225.

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

ITEM 20. Amend subrule 20.14(2) as follows:

**20.14(2)** To receive payment for a prize or prizes on any single game ticket or share that total more than \$600, the winner may submit the signed ticket or share and a completed claim form directly to any lottery office. The winner may also mail the signed ticket or share and claim form to Iowa Lottery Authority, ~~2323 Grand Avenue, Des Moines, Iowa 50312-5307~~ 13001 University Avenue, Clive, Iowa 50325-8225.

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**ARC 1961C**

## **PHARMACY BOARD[657]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 6, "General Pharmacy Practice," Chapter 7, "Hospital Pharmacy Practice," Chapter 8, "Universal Practice Standards," Chapter 9, "Automated Medication Distribution Systems and Telepharmacy Services," Chapter 15, "Correctional Pharmacy Practice," Chapter 18, "Centralized Prescription Filling and Processing," Chapter 19, "Nonresident Pharmacy Practice," Chapter 22, "Unit Dose, Alternative Packaging, and Emergency Boxes," and Chapter 23, "Long-Term Care Pharmacy Practice," Iowa Administrative Code.

The amendments update and clarify the persons responsible for various activities required by Board rules including responsibilities shared by a pharmacy, by and through its owner or license holder, the pharmacist in charge (PIC), and staff pharmacists. The purpose for these amendments is to assign responsibility for pharmacy activities and functions to the party or parties that have the ability to control those activities and functions. The amendments are a result of recommendations made by the 2014 PIC Task Force. The PIC Task Force was established at the recommendation of the 2013 Patient Safety Task Force. In developing its recommendations to the Board, the PIC Task Force reviewed current Board rules and the rules and regulations of other state licensing authorities, in addition to discussing responsibility issues and current pharmacy management and practice issues and standards.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the December 10, 2014, Iowa Administrative Bulletin as **ARC 1793C**. The Board received written comments from two organizations regarding the proposed amendments. One commenter supported the amendments. The other commenter suggested that requiring a staff pharmacist to share the responsibility for ensuring the legal operation of the pharmacy was placing on the staff pharmacist responsibility for practices over which the staff pharmacist may have no control. The Board does not agree and believes that any pharmacist practicing at a pharmacy should be responsible for the legal operation of the pharmacy. Since publication of the Notice, several nonsubstantive technical changes have been made and language in paragraph 9.3(1)"d" has been transposed for readability.

The amendments were approved during the March 9, 2015, meeting of the Board of Pharmacy.

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

These amendments are intended to implement Iowa Code sections 124.301, 126.11, 147.107, 155A.13, 155A.13A, 155A.15, 155A.19, and 155A.33.

These amendments will become effective on May 20, 2015.

The following amendments are adopted.

## PHARMACY BOARD[657](cont'd)

ITEM 1. Amend rule 657—6.2(155A) as follows:

**657—6.2(155A) Pharmacist in charge.** One professionally competent, legally qualified pharmacist in charge in each pharmacy shall be responsible for, at a minimum, ~~the following:~~ the responsibilities identified in rule 657—8.3(155A).

- ~~1. Ensuring that the pharmacy utilizes an ongoing, systematic program for achieving performance improvement and ensuring the quality of pharmaceutical services.~~
- ~~2. Ensuring that the pharmacy employs an adequate number of qualified personnel commensurate with the size and scope of services provided by the pharmacy.~~
- ~~3. Ensuring the availability of any equipment and references necessary for the particular practice of pharmacy.~~
- ~~4. Ensuring that a pharmacist performs prospective drug use review as specified in rule 657—8.21(155A).~~
- ~~5. Ensuring that a pharmacist provides patient counseling as specified in rule 657—6.14(155A).~~
- ~~6. Dispensing drugs to patients, including the packaging, preparation, compounding, and labeling functions performed by pharmacy personnel.~~
- ~~7. Delivering drugs to the patient or the patient's agent.~~
- ~~8. Ensuring that patient medication records are maintained as specified in rule 657—6.13(155A).~~
- ~~9. Training pharmacy technicians and pharmacy support persons.~~
- ~~10. Procuring and storing prescription drugs and devices and other products dispensed from the pharmacy.~~
- ~~11. Distributing and disposing of drugs from the pharmacy.~~
- ~~12. Maintaining records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all drugs as required by applicable state and federal laws, rules, and regulations.~~
- ~~13. Establishing and maintaining effective controls against the theft or diversion of prescription drugs and records for such drugs.~~
- ~~14. Establishing, implementing, and periodically reviewing and revising written policies and procedures to reflect changes in processes, organization, and other functions for all operations of the pharmacy and ensuring that all pharmacy personnel are familiar with those policies and procedures.~~
- ~~15. Ensuring the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy.~~
- ~~16. Ensuring that there is adequate space within the prescription department or a locked room not accessible to the public for the storage of prescription drugs, devices, and controlled substances and to support the operations of the pharmacy.~~

ITEM 2. Amend rule 657—7.2(155A) as follows:

**657—7.2(155A) Pharmacist in charge.** One professionally competent, legally qualified pharmacist in charge in each pharmacy shall be responsible for, at a minimum, ~~the items identified in this rule~~ responsibilities identified in rule 657—8.3(155A). ~~A part-time pharmacist in charge has the same obligations and responsibilities as a full-time pharmacist in charge.~~ Where 24-hour operation of the pharmacy is not feasible, a pharmacist shall be available on an “on call” basis. ~~The pharmacist in charge, at a minimum, shall be responsible for:~~

- ~~1. Ensuring that the pharmacy utilizes an ongoing, systematic program for achieving performance improvement and ensuring the quality of pharmaceutical services.~~
- ~~2. Ensuring that the pharmacy employs an adequate number of qualified personnel commensurate with the size and scope of services provided by the pharmacy and sufficient to ensure adequate levels of quality patient care services. Drug dispensing by nonpharmacists shall be minimized and eliminated wherever possible.~~
- ~~3. Ensuring the availability of any equipment and references necessary for the particular practice of pharmacy.~~
- ~~4. Ensuring that a pharmacist performs therapeutic drug monitoring and drug use evaluation.~~

## PHARMACY BOARD[657](cont'd)

5. ~~Ensuring that a pharmacist provides drug information to other health professionals and to patients.~~
6. ~~Dispensing drugs to patients, including the packaging, preparation, compounding, and labeling functions performed by pharmacy personnel.~~
7. ~~Delivering drugs to the patient or the patient's agent.~~
8. ~~Ensuring that patient medication records are maintained as specified in rule 657—7.10(124,155A).~~
9. ~~Training pharmacy technicians and pharmacy support persons.~~
10. ~~Ensuring adequate and appropriate pharmacist oversight and supervision of pharmacy technicians and pharmacy support persons.~~
11. ~~Procuring and storing prescription drugs and devices and other products dispensed from the pharmacy.~~
12. ~~Distributing and disposing of drugs from the pharmacy.~~
13. ~~Maintaining records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all drugs as required by applicable state and federal laws, rules, and regulations.~~
14. ~~Establishing and maintaining effective controls against the theft or diversion of prescription drugs, controlled substances, and records for such drugs.~~
15. ~~Preparing a written operations manual governing pharmacy functions; periodically reviewing and revising those policies and procedures to reflect changes in processes, organization, and other pharmacy functions; and ensuring that all pharmacy personnel are familiar with the contents of the manual.~~
16. ~~Ensuring the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy.~~

ITEM 3. Amend rule 657—7.8(124,126,155A) as follows:

**657—7.8(124,126,155A) Drug distribution and control.** Policies and procedures governing drug distribution and control shall be ~~developed by the pharmacist in charge~~ established pursuant to rule 657—8.3(155A) with input from other involved hospital staff such as physicians and nurses, from committees such as the pharmacy and therapeutics committee or its equivalent, and from any related patient care committee. It is essential that the pharmacist in charge or designee routinely be available to or on all patient care areas to establish rapport with the personnel and to become familiar with and contribute to medical and nursing procedures relating to drugs.

**7.8(1) Drug preparation.** ~~The pharmacist shall institute the control~~ Control and adequate quality assurance procedures needed to ensure that patients receive the correct drugs at the proper times shall be established pursuant to rule 657—8.3(155A). ~~Adequate quality assurance procedures shall be developed.~~

a. Hospitals shall utilize a unit dose dispensing system pursuant to rule 657—22.1(155A). All drugs dispensed by the ~~pharmacist~~ pharmacy for administration to patients shall be in single unit or unit dose packages if practicable unless the dosage form or drug delivery device makes it impracticable to package the drug in a unit dose or single unit package.

(1) ~~The pharmacist in charge shall establish~~ Established policies and procedures that shall identify situations when drugs may be dispensed in other than unit dose or single unit packages outside the unit dose dispensing system.

(2) The need for nurses to manipulate drugs prior to their administration shall be minimized.

b. Pharmacy personnel shall, except as specified in policies and procedures, prepare all sterile products in conformance with 657—Chapter ~~13~~ 20.

c. Pharmacy personnel shall compound or prepare drug formulations, strengths, dosage forms, and packages useful in the care of patients.

**7.8(2) Drug formulary.** ~~The pharmacist in charge shall maintain~~ Established policies and procedures shall include a current formulary of drug products approved for use in the institution and ~~shall be responsible for include~~ specifications for those drug products ~~and for selecting their source of supply.~~

**7.8(3) to 7.8(6)** No change.

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~~7.8(7) Drugs brought into the institution. The pharmacist in charge~~ Established policies and procedures shall determine those circumstances when patient-owned drugs brought into the institution may be administered to a hospital patient and shall establish policies and identify procedures governing the use and security of drugs brought into the institution. Procedures shall address identification of the drug and methods for ensuring the integrity of the product prior to permitting its use by the patient. The use of patient-owned drugs shall be minimized to the greatest extent possible.

~~7.8(8) and 7.8(9)~~ No change.

~~7.8(10) Hazardous drugs and chemicals. The pharmacist, in cooperation with other hospital staff, shall establish policies~~ Policies and procedures for handling drugs and chemicals that are known occupational hazards shall be established pursuant to rule 657—8.3(155A). The procedures shall maintain the integrity of the drug or chemical and protect hospital personnel.

~~7.8(11) Leave meds.~~ Labeling of prescription drugs for a patient on leave from the facility for a period in excess of 24 hours shall comply with 657—subrule 6.10(1). The dispensing ~~pharmacy pharmacist~~ shall be responsible for packaging and labeling leave meds in compliance with this subrule.

~~7.8(12) Discharge meds.~~ Drugs authorized for a patient being discharged from the facility shall be labeled in compliance with 657—subrule 6.10(1) before the patient removes those drugs from the facility premises. The dispensing ~~pharmacy pharmacist~~ shall be responsible for packaging and labeling discharge meds in compliance with this subrule.

~~7.8(13) Own-use outpatient prescriptions.~~ If the hospital pharmacy dispenses own-use outpatient prescriptions, the ~~pharmacy pharmacist~~ shall comply with all requirements of 657—Chapter 6 except rule 657—6.1(155A).

~~7.8(14)~~ No change.

ITEM 4. Amend rule 657—7.9(124,155A) as follows:

~~657—7.9(124,155A) Drug information. The pharmacy is responsible for providing the institution's staff and patients with~~ Established policies and procedures shall include the provision to the institution's staff and patients of accurate, comprehensive information about drugs and their use and shall serve as its center for drug information. The pharmacy shall serve as the institution's center for drug information.

~~7.9(1) and 7.9(2)~~ No change.

ITEM 5. Amend rule 657—7.10(124,155A) as follows:

~~657—7.10(124,155A) Ensuring rational drug therapy.~~ An important aspect of pharmaceutical services is that of maximizing rational drug use. ~~The pharmacist, in concert with the medical staff, shall develop policies~~ Policies and procedures for ensuring the quality of drug therapy shall be established pursuant to rule 657—8.3(155A).

~~7.10(1)~~ No change.

~~7.10(2) Adverse drug events. The pharmacist, in cooperation with the appropriate patient care committee, shall develop~~ Established policies and procedures shall include a mechanism for the reporting and review, by the committee or other appropriate medical group, of adverse drug events. The pharmacist shall be informed of all reported adverse drug events occurring in the facility. Adverse drug events include but need not be limited to adverse drug reactions and medication errors.

ITEM 6. Amend rule 657—7.11(124,126,155A) as follows:

~~657—7.11(124,126,155A) Outpatient services.~~ No prescription drugs shall be dispensed to patients in a hospital outpatient setting. If a need is established for the dispensing of a prescription drug to an outpatient, a prescription drug order shall be provided to the patient to be filled at a pharmacy of the patient's choice.

~~7.11(1)~~ No change.

~~7.11(2) Administration in the outpatient setting.~~ Drugs shall be administered only to outpatients who have been examined and evaluated by a prescriber who determined the patient's need for the drug therapy ordered.

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*a. Accountability.* ~~A Established policies and procedures shall include a system of drug control and accountability shall be developed and supervised by the pharmacist in charge and the facility's outpatient services committee, or a similar group or person responsible for policy in the outpatient setting. The system shall ensure accountability of drugs incidental to outpatient nonemergency therapy or treatment. Drugs shall be administered only in accordance with the system.~~

*b. and c.* No change.

ITEM 7. Amend rule 657—7.12(124,126,155A) as follows:

**657—7.12(124,126,155A) Drugs in the emergency department.** Drugs maintained in the emergency department are kept for use by or at the direction of prescribers in the emergency department. Drugs shall be administered or dispensed only to emergency department patients. For the purposes of this rule, “emergency department patient” means an individual who is examined and evaluated in the emergency department.

**7.12(1) Accountability.** ~~A Established policies and procedures shall include a system of drug control and accountability shall be developed and supervised by the pharmacist in charge and the facility's emergency department committee, or a similar group or person responsible for policy in the emergency department. The system shall identify drugs of the nature and type to meet the immediate needs of emergency department patients. Drugs shall be administered or dispensed only in accordance with the system.~~

**7.12(2)** No change.

**7.12(3) Drug dispensing.** In those facilities with 24-hour pharmacy services, only a pharmacist or prescriber may dispense any drugs to an emergency department patient. In those facilities located in an area of the state where 24-hour outpatient or 24-hour on-call pharmacy services are not available within 15 miles of the hospital, and which facilities are without 24-hour outpatient pharmacy services, the provisions of this rule shall apply.

*a. Pharmacist in charge responsibility Responsibility.* ~~The pharmacist in charge is responsible for maintaining Pursuant to rule 657—8.3(155A), the accuracy and labeling of prepackaged drugs shall be ensured and accurate records of dispensing of drugs from the emergency department and for ensuring the accuracy of prepackaged drugs and the complete and accurate labeling of prepackaged drugs pursuant to this paragraph shall be maintained.~~

(1) and (2) No change.

*b.* No change.

**7.12(4)** No change.

ITEM 8. Amend rule 657—8.3(155A) as follows:

**657—8.3(155A) Responsibility Responsible parties.**

**8.3(1) Pharmacy operations.** ~~The pharmacy and the pharmacist in charge share responsibility for ensuring that all operations of the pharmacy are in compliance with federal and state laws, rules, and regulations relating to pharmacy operations and the practice of pharmacy.~~

**8.3(1) Pharmacist in charge.** One professionally competent, legally qualified pharmacist in charge in each pharmacy shall work cooperatively with the pharmacy, by and through its owner or license holder, and with all staff pharmacists to ensure the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy. A part-time pharmacist in charge has the same obligations and responsibilities as a full-time pharmacist in charge.

**8.3(2) Pharmacy.** Each pharmacy, by and through its owner or license holder, shall work cooperatively with the pharmacist in charge and with all staff pharmacists to ensure the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy. The pharmacy, by and through its owner or license holder, shall be responsible for employing a professionally competent, legally qualified pharmacist in charge.

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**8.3(3) Pharmacy and pharmacist in charge.** The pharmacist in charge and the pharmacy, by and through its owner or license holder, shall share responsibility for, at a minimum, the following:

a. Ensuring that the pharmacy employs an adequate number of qualified personnel commensurate with the size and scope of services provided by the pharmacy.

b. Ensuring the availability of any equipment and references necessary for the particular practice of pharmacy.

c. Ensuring that there is adequate space within the prescription department or a locked room not accessible to the public for the storage of prescription drugs, including controlled substances, devices, and pharmacy records, and to support the operations of the pharmacy.

**8.3(4) Pharmacist in charge and staff pharmacists.** The pharmacist in charge and staff pharmacists shall share responsibility for, at a minimum, the following:

a. Ensuring that a pharmacist performs prospective drug use review as specified in rule 657—8.21(155A).

b. Ensuring that a pharmacist provides patient counseling as specified in rule 657—6.14(155A).

c. Dispensing drugs to patients, including the packaging, preparation, compounding, and labeling functions performed by pharmacy personnel.

d. Delivering drugs to the patient or the patient's agent.

e. Ensuring that patient medication records are maintained as specified in rule 657—6.13(155A).

f. Training and supervising pharmacist-interns, pharmacy technicians, pharmacy support persons, and other pharmacy employees.

g. Procuring and storing prescription drugs and devices and other products dispensed from the pharmacy.

h. Distributing and disposing of drugs from the pharmacy.

i. Maintaining records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all drugs as required by applicable state and federal laws, rules, and regulations.

j. Ensuring the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy.

**8.3(5) Pharmacy, pharmacist in charge, and staff pharmacists.** The pharmacy, by and through its owner or license holder, the pharmacist in charge, and all staff pharmacists shall share responsibility for, at a minimum, the following:

a. Establishing and periodically reviewing (by the pharmacy and the pharmacist in charge), implementing (by the pharmacist in charge), and complying (by the pharmacist in charge and staff pharmacists) with policies and procedures for all operations of the pharmacy. The policies and procedures shall identify the frequency of review.

b. Establishing and maintaining effective controls against the theft or diversion of prescription drugs, including controlled substances, and records for such drugs.

c. Establishing (by the pharmacy and the pharmacist in charge), implementing (by the pharmacist in charge), and utilizing (by the pharmacist in charge and staff pharmacists) an ongoing, systematic program of continuous quality improvement for achieving performance enhancement and ensuring the quality of pharmaceutical services.

**8.3(2) 8.3(6) Practice functions.** The pharmacist is responsible for all functions performed in the practice of pharmacy. The pharmacist maintains responsibility for any and all delegated functions including functions delegated to pharmacist-interns, pharmacy technicians, and pharmacy support persons.

**8.3(3) 8.3(7) Pharmacist-documented verification.** The pharmacist shall provide, document, and retain a record of the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication order prior to the delivery of the medication to the patient or the patient's representative.

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ITEM 9. Amend rule 657—8.5(155A) as follows:

**657—8.5(155A) Environment and equipment requirements.** There shall be adequate space, equipment, and supplies for the professional and administrative functions of the pharmacy pursuant to rule 657—8.3(155A). Space and equipment in an amount and type to provide secure, environmentally controlled storage of drugs shall be available.

**8.5(1) to 8.5(6)** No change.

**8.5(7) Other equipment.** The pharmacist in charge and the pharmacy, by and through its owner or license holder, shall ensure share the responsibility for ensuring the availability of any other equipment necessary for the particular practice of pharmacy and to meet the needs of the patients served by the pharmacy.

**8.5(8) Bulk counting machines.** Unless bar-code scanning is required and utilized to verify the identity of each stock container of drugs utilized to restock a counting machine cell or bin, a pharmacist shall verify the accuracy of the drugs to be restocked prior to filling the counting machine cell or bin. A record identifying the individual who verified the drugs to be restocked, the individual who restocked the counting machine cell or bin, and the date shall be maintained. ~~The pharmacy~~ Established policies and procedures shall ~~have~~ include a method to calibrate and verify the accuracy of the counting device, and The pharmacy shall, at least quarterly, verify the accuracy of the device and maintain a dated record identifying the individual who performed the quarterly verification.

ITEM 10. Amend rule 657—8.14(155A) as follows:

**657—8.14(155A) Training and utilization of pharmacy technicians or pharmacy support persons.** ~~All Pursuant to rule 657—8.3(155A), all~~ Iowa-licensed pharmacies utilizing pharmacy technicians or pharmacy support persons shall ~~develop, implement, and periodically review~~ have written policies and procedures for the training and utilization of pharmacy technicians and pharmacy support persons appropriate to the practice of pharmacy at that licensed location. ~~Pharmacy policies shall specify the frequency of review.~~ Pharmacy technician and pharmacy support person training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of pharmacy technician and pharmacy support person training shall be available for inspection by the board or an agent of the board.

ITEM 11. Amend subrule 8.15(2) as follows:

**8.15(2) Policies and procedures required.** ~~Every Pursuant to rule 657—8.3(155A), every~~ pharmacy shipping or otherwise delivering prescription drugs or devices to Iowa patients shall ~~develop and implement~~ have policies and procedures to ensure accountability, safe delivery, and compliance with temperature requirements as defined by subrule 8.7(4).

ITEM 12. Amend rule 657—8.26(155A) as follows:

**657—8.26(155A) Continuous quality improvement program.** ~~Each Pursuant to rule 657—8.3(155A),~~ each pharmacy licensed to provide pharmaceutical services to patients in Iowa shall implement or participate in a continuous quality improvement program ~~or~~ (CQI program). The CQI program is intended to be an ongoing, systematic program of standards and procedures to detect, identify, evaluate, and prevent medication errors, thereby improving medication therapy and the quality of patient care. A pharmacy that participates as an active member of a hospital or corporate CQI program that meets the objectives of this rule shall not be required to implement a new program pursuant to this rule.

**8.26(1)** No change.

**8.26(2) Responsibility.** ~~The pharmacist in charge is responsible for ensuring that the pharmacy utilizes a CQI program consistent with the requirements of this rule.~~ The pharmacist in charge may delegate program administration and monitoring, but the pharmacist in charge maintains ultimate responsibility for the validity and consistency of program activities.

**8.26(3) Policies and procedures.** ~~Each Pursuant to rule 657—8.3(155A), each~~ pharmacy shall ~~develop, implement, and adhere to~~ have written policies and procedures for the operation and

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management of the pharmacy's CQI program. A copy of the pharmacy's CQI program description and policies and procedures shall be maintained and readily available to all pharmacy personnel. The policies and procedures shall address, at a minimum, a planned process to:

*a. to f.* No change.

**8.26(4) to 8.26(6)** No change.

ITEM 13. Amend rule 657—9.3(147,155A) as follows:

**657—9.3(147,155A) Pharmacist in charge responsibilities Responsibilities.**

**9.3(1) AMDS.** ~~The pharmacist in charge of~~ In any pharmacy utilizing an AMDS, the following responsibilities, which are in addition to the responsibilities required by all applicable federal and state laws, rules and regulations and the responsibilities described in rule 657—8.3(155A), shall be ~~responsible for the following in addition to other responsibilities assigned under federal and state laws and regulations as follows:~~

*a. Implementing* ~~The pharmacy and the pharmacist in charge shall share responsibility for establishing, the pharmacist in charge shall be responsible for implementing, and the pharmacist in charge and staff pharmacists shall share responsibility for utilizing an ongoing quality assurance program the purpose of which purpose is to monitor and improve performance of each AMDS as provided in rule 657—9.10(147,155A).~~

~~*b.* Establishing and ensuring compliance with all policies and procedures relating to the AMDS.~~

~~*e. b.* Assigning~~ The pharmacist in charge shall be responsible for assigning, discontinuing, or changing drug and information access to the AMDS.

~~*c.*~~ The pharmacist in charge and staff pharmacists shall share responsibility for:

(1) Ensuring that drug access, including access to controlled substances, is in compliance with state and federal laws, rules and regulations.

(2) Ensuring that each AMDS component is filled or stocked accurately and in accordance with established, written policies and procedures.

(3) Ensuring that each AMDS component is in good working order and performs its designated tasks, including ensuring the correct strength, dosage form, and quantity of the prescribed drug.

(4) Ensuring that confidentiality of patient-specific information is maintained.

(5) Ensuring that all personnel utilizing or accessing the AMDS or any component of the AMDS have been appropriately trained.

~~*e.* Ensuring that each AMDS component is filled or stocked accurately and in accordance with established, written policies and procedures.~~

~~*f.* Ensuring that each AMDS component is in good working order and performs its designated tasks, including ensuring the correct strength, dosage form, and quantity of the prescribed drug.~~

~~*g. d.* Ensuring~~ The pharmacist in charge, staff pharmacists, and the pharmacy, by and through its owner or license holder, shall share responsibility for ensuring that the AMDS has adequate security safeguards regarding drug access and information access.

~~*h.* Ensuring that confidentiality of patient specific information is maintained.~~

~~*i.* Ensuring that all personnel utilizing or accessing the AMDS or any component of the AMDS have been appropriately trained.~~

~~*j. e.* Ensuring that the board is provided~~ The pharmacy shall provide the board with written notice at least 30 days prior to an installation, removal, or upgrade that significantly changes the operation of an AMDS. The notice shall include:

(1) to (6) No change.

**9.3(2)** No change.

ITEM 14. Amend rule 657—9.10(147,155A) as follows:

**657—9.10(147,155A) Quality assurance and performance improvement.** The goal of any AMDS is the accurate dispensing of drugs. In all dispensing activities, the pharmacy shall strive for 100 percent accuracy. Quality assurance data shall be utilized to monitor and improve systems.

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**9.10(1) AMDS.** Pharmacies utilizing an AMDS shall ~~develop~~ have a written quality assurance and monitoring plan pursuant to rule 657—9.3(147,155A) prior to implementation of the AMDS. The quality assurance plan shall target the preparation, delivery, and verification of AMDS unit contents during fill and refill processes and shall include, but not be limited to, the following:

*a. to d.* No change.

**9.10(2) to 9.10(4)** No change.

ITEM 15. Amend rule 657—9.11(147,155A) as follows:

**657—9.11(147,155A) Policies and procedures.** Notwithstanding rule 657—8.3(155A), policies and procedures for an AMDS shall be required pursuant to this chapter. All policies and procedures shall be in writing and shall be maintained in the pharmacy responsible for the AMDS or, if a telepharmacy practice, shall be maintained at both the managing pharmacy and the remote site. All policies and procedures shall be reviewed at least annually and revised as necessary, and the review shall be documented. Additions, deletions, amendments, and other changes to policies and procedures shall be signed or initialed by the pharmacist in charge, shall include the date on which the change was approved, and shall be maintained for a minimum of two years following the date of the change. The policy and procedure manual and retained changes shall be available for inspection and copying by the board or an agent of the board.

**9.11(1) AMDS.** ~~All pharmacies utilizing AMDS shall develop, implement, and adhere to policies and procedures that address~~ Pursuant to rule 657—8.3(155A) and this chapter, a pharmacy shall have policies and procedures for an AMDS that provide, at a minimum, the following:

*a. to k.* No change.

**9.11(2)** No change.

ITEM 16. Amend rule 657—15.3(155A) as follows:

**657—15.3(155A) Pharmacist in charge Responsibilities.** ~~One professionally competent, legally qualified pharmacist who is licensed to practice pharmacy in Iowa shall be the pharmacist in charge of the~~ In any correctional pharmacy and, the following responsibilities, which are in addition to the responsibilities required by all applicable federal and state laws, rules and regulations and the responsibilities as described in rule 657—8.3(155A), shall be responsible for, at a minimum, the following assigned as follows:

1. ~~Ensuring that the pharmacy utilizes an ongoing, systematic program for achieving performance improvement and ensuring the quality of pharmaceutical services;~~

2. ~~Ensuring that the pharmacy employs an adequate number of qualified personnel commensurate with the size and scope of services provided by the pharmacy;~~

3. 1. Ensuring The pharmacist in charge or designee shall ensure that a quarterly inspection of all pharmaceuticals located at the correctional facility, including any emergency/first dose drug supply located outside the confines of the pharmacy, is completed and documented;

4. ~~Ensuring the availability of any equipment and references necessary for the particular practice of pharmacy;~~

5. ~~Preparing written policies and procedures governing pharmacy functions; periodically reviewing and revising those policies and procedures to reflect changes in processes, organization, and other pharmacy functions; ensuring that policies and procedures are consistent with board rules; and ensuring that all pharmacy personnel are familiar with the policies and procedures;~~

6. ~~Ensuring that a pharmacist performs prospective drug use reviews as specified in rule 657—8.21(155A);~~

7. 2. Ensuring that The pharmacist in charge or a pharmacist provides shall provide drug information to other health professionals, to other caregivers, and to patients as required or requested;

8. ~~Dispensing drugs to patients, including the packaging, preparation, compounding, and labeling functions performed by pharmacy personnel;~~

9. ~~Delivering drugs to the patient or the patient's agent;~~

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~~10. Ensuring that patient drug records are maintained as specified in rule 657—15.8(124,126,155A);~~

~~11. Training pharmacy technicians and pharmacy support persons;~~

~~12. Establishing policies and procedures for the procurement and storage of prescription drugs and devices and other products dispensed from the pharmacy;~~

~~13. Disposing of and distributing drugs from the pharmacy;~~

~~14. Maintaining records of all transactions of the pharmacy necessary to maintain accurate control over and accountability for all drugs as required by applicable state and federal laws, rules, and regulations;~~

~~15. Establishing and maintaining effective controls against the theft or diversion of prescription drugs and records for such drugs;~~

~~16. Ensuring the legal operation of the pharmacy, including meeting all inspection and other requirements of state and federal laws, rules, and regulations governing the practice of pharmacy.~~

ITEM 17. Amend subrule 15.5(2) as follows:

**15.5(2) Access when pharmacist absent.** ~~The pharmacist in charge, with the concurrence of the department, shall establish and implement~~ Pursuant to rule 657—8.3(155A), the pharmacy shall have policies and procedures for the security of the correctional pharmacy. Policies and procedures shall identify who will have access to the pharmacy, what areas may be accessed, and the procedures to be followed for obtaining drugs and chemicals when the pharmacist is absent from the pharmacy.

ITEM 18. Amend rule 657—15.7(124,126,155A) as follows:

**657—15.7(124,126,155A) Training and utilization of pharmacy technicians or pharmacy support persons.** ~~All correctional pharmacies utilizing pharmacy technicians or pharmacy support persons shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians and pharmacy support persons appropriate to the practice of pharmacy at that licensed location. Pharmacy policies shall specify the frequency of the review. Pharmacy technician and pharmacy support person training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of pharmacy technician and pharmacy support person training shall be available for inspection by the board or an agent of the board.~~

ITEM 19. Amend rule 657—15.10(124,126,155A) as follows:

**657—15.10(124,126,155A) Policies and procedures.** ~~The pharmacist in charge shall develop and implement written policies and procedures for the pharmacy drug distribution system consistent with board rules and department policies and procedures pertaining to pharmaceutical services. Pharmacy policies and procedures, established, implemented, and complied with pursuant to rule 657—8.3(155A), shall address, but not be limited to, the following:~~

1. to 22. No change.

ITEM 20. Amend rule 657—18.10(155A) as follows:

**657—18.10(155A) Policy and procedures.**

**18.10(1) Manual maintained.** A Pursuant to rule 657—8.3(155A), a policy and procedure manual relating to centralized filling or centralized processing activities shall be maintained at all pharmacies involved in centralized filling or centralized processing and shall be available for inspection and copying by the board or an agent of the board.

**18.10(2)** No change.

ITEM 21. Amend rule 657—19.7(155A) as follows:

**657—19.7(155A) Confidential data.** ~~The pharmacist in charge shall be responsible for developing, implementing, and enforcing~~ Pursuant to rule 657—8.3(155A), each nonresident pharmacy shall have policies and procedures to ensure patient confidentiality and to protect patient identity and

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patient-specific information from inappropriate or nonessential access, use, or distribution pursuant to the requirements of 657—8.16(124,155A).

ITEM 22. Amend rule 657—19.8(124,155A) as follows:

**657—19.8(124,155A) Storage and shipment of drugs and devices.** ~~The pharmacist in charge shall be responsible for developing, implementing, and enforcing~~ Pursuant to rule 657—8.3(155A), each nonresident pharmacy shall have policies and procedures to ensure compliance with rules 657—8.7(155A) and 657—8.15(155A) and USP standards for the storage and shipment of drugs and devices. Policies and procedures shall provide for the shipment of controlled substances via a secure and traceable method, and all records of such shipment and delivery to Iowa patients shall be maintained for a minimum of two years from date of delivery.

ITEM 23. Amend rule 657—19.9(155A) as follows:

**657—19.9(155A) Patient record system, prospective drug use review, and patient counseling.**

**19.9(1) and 19.9(2)** No change.

**19.9(3) Patient counseling.** ~~The pharmacist in charge shall be responsible for developing, implementing, and enforcing~~ Pursuant to rule 657—8.3(155A), each nonresident pharmacy shall have policies and procedures to ensure that Iowa patients receive appropriate counseling pursuant to the requirements of rule 657—6.14(155A).

ITEM 24. Amend subrule 22.7(6) as follows:

**22.7(6) Notifications.** Whenever an emergency/first dose drug supply is opened or has expired, the provider pharmacy shall be notified and the pharmacist shall be responsible for replacing the drug within 72 hours to prevent risk of harm to patients. ~~Policy must be developed by the provider pharmacist to~~ Pursuant to rule 657—8.3(155A), established policies and procedures shall address notification, record keeping, and documentation procedures for use of the supply.

ITEM 25. Amend subrule 22.7(7) as follows:

**22.7(7) Procedures.**

*a.* ~~The consultant or provider pharmacist shall~~ The pharmacy, in communication with the director of nursing of the facility and the medical director of the facility, or their respective designees, ~~develop and implement~~ and as provided in rule 657—8.3(155A), shall have written policies and procedures to ensure compliance with this rule.

*b. to d.* No change.

ITEM 26. Amend subrule 22.9(6) as follows:

**22.9(6) Policies and procedures.** ~~The pharmacist in charge of the provider pharmacy and~~ The pharmacy, pursuant to rule 657—8.3(155A) and in coordination with the home health agency or hospice, ~~shall develop~~ have policies and procedures to address storage conditions and security for drugs and kit maintenance. Outdated, expired drugs shall be properly disposed of by the pharmacy.

ITEM 27. Amend subrule 22.9(7) as follows:

**22.9(7) Responsibility for compliance.** ~~The provider pharmacy is responsible to ensure~~ The pharmacist in charge and staff pharmacists shall share responsibility for compliance with this rule, and any abuse or misuse of the intent of this rule shall be immediately reported to the board.

ITEM 28. Amend rule 657—23.4(124,155A) as follows:

**657—23.4(124,155A) Pharmacy responsibilities Responsibilities.** ~~The long-term care pharmacy pharmacist in charge and staff pharmacists in any pharmacy providing pharmaceutical services to long-term care facility patients shall be responsible~~ share responsibility for:

1. to 4. No change.

5. ~~Developing~~ Complying with a drug recall procedure, established pursuant to rule 657—8.3(155A), that protects the health and safety of residents including immediate discontinuation

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of any recalled drug or device and subsequent notification of the prescriber and director of nursing of the facility.

6. Providing a 24-hour emergency service ~~procedure~~ either directly or by contract with another pharmacy.

7. to 9. No change.

ITEM 29. Amend rule 657—23.6(124,155A) as follows:

**657—23.6(124,155A) Space, equipment, and supplies.** ~~Each~~ Pursuant to rule 657—8.3(155A), each pharmacy serving a long-term care facility shall have adequate space, equipment, and supplies for the professional and administrative functions of the pharmacy and to meet the needs of the residents served. The pharmacy shall also comply with all reference, environment, and equipment requirements contained in rules 657—6.3(155A) and 657—8.5(155A).

ITEM 30. Amend rule 657—23.7(124,155A) as follows:

**657—23.7(124,155A) Policies and procedures.** ~~Policies and procedures shall be formulated to cover the provider~~ Pursuant to rule 657—8.3(155A), each pharmacy shall have policies and procedures related to all aspects of the pharmacy's packaging and dispensing responsibilities to the residents of the long-term care facility. The policies and procedures shall be maintained at the provider pharmacy and shall be available to the facility and the consultant pharmacist. Policies and procedures shall include, at a minimum:

1. to 4. No change.

ITEM 31. Amend rule 657—23.10(124,155A) as follows:

**657—23.10(124,155A) Stop orders.** ~~The consultant pharmacist, in consultation with the provider pharmacist, the medical director, and the appropriate committee or representative of the facility, shall develop and implement an automatic stop order policy.~~ To ensure that drug orders are not continued inappropriately, drugs the pharmacy's policies and procedures, established pursuant to rule 657—8.3(155A) and in consultation with the medical director and the appropriate committee or representative of the facility, shall include an automatic stop order policy. Drugs not specifically limited when ordered as to duration of therapy or number of doses shall be controlled by the automatic stop order policy in accordance with the status of the patient.

ITEM 32. Amend subrule 23.13(4) as follows:

**23.13(4) Leave meds.** Labeling of prescription drugs for residents on leave from the facility for a period in excess of 24 hours shall comply with 657—subrule 6.10(1). The dispensing ~~pharmacy~~ pharmacist shall be responsible for packaging and labeling leave meds in compliance with this subrule.

ITEM 33. Amend subrule 23.13(5) as follows:

**23.13(5) Discharge meds.** Drugs authorized for a resident being discharged from the facility shall be labeled in compliance with 657—subrule 6.10(1) before the resident removes those drugs from the facility premises. The dispensing ~~pharmacy~~ pharmacist shall be responsible for packaging and labeling discharge meds in compliance with this subrule.

ITEM 34. Amend rule 657—23.16(124,155A) as follows:

**657—23.16(124,155A) Destruction of outdated and improperly labeled drugs.** ~~The consultant pharmacist, in consultation with the provider pharmacist and a facility representative, shall develop and implement~~ The pharmacy, pursuant to rule 657—8.3(155A) and in consultation with a facility representative, shall have written policies and procedures to ensure that all discontinued, outdated, deteriorated, or improperly labeled drugs and all containers with worn, illegible or missing labels are

## PHARMACY BOARD[657](cont'd)

destroyed or disposed of so as to render them unusable. Drugs shall be destroyed by means that will ensure protection against unauthorized possession or use.

[Filed 3/26/15, effective 5/20/15]

[Published 4/15/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/15/15.

**ARC 1962C**

**PHARMACY BOARD[657]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendment requires the pharmacy owner or the owner's authorized representative and the temporary pharmacist in charge to provide written notification to the Board in the event that a pharmacist in charge has been identified to fill a temporary need. The amendment also removes the requirement for a signature of the owner or corporate officer on the notification.

Requests for waiver or variance of the discretionary provisions of Board rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the December 10, 2014, Iowa Administrative Bulletin as **ARC 1792C**. The Board received no written comments regarding the proposed amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the March 9, 2015, meeting of the Board of Pharmacy.

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

This amendment is intended to implement Iowa Code sections 155A.13, 155A.13A, 155A.13B, 155A.15, and 155A.19.

This amendment will become effective on May 20, 2015.

The following amendment is adopted.

Amend subrule 8.35(6) as follows:

**8.35(6) Pharmacy license changes.** When a pharmacy changes its name, location, ownership, or pharmacist in charge, a new pharmacy license application with a license fee as provided in subrule 8.35(4) shall be submitted to the board office. Upon receipt of the fee and properly completed application, the board will issue a new pharmacy license certificate. The old license certificate shall be returned to the board office within ten days of the change of name, location, ownership, or pharmacist in charge.

*a. and b.* No change.

*c. Pharmacist in charge.* A change of pharmacist in charge shall require completion and submission of the application and fee for a new pharmacy license.

(1) If a permanent pharmacist in charge has not been identified by the time of the vacancy, a temporary pharmacist in charge shall be identified. Written notification identifying the temporary pharmacist in charge, ~~signed by the pharmacy owner or corporate officer and the temporary pharmacist in charge,~~ shall be submitted to the board by the pharmacy owner or the pharmacy owner's authorized representative and by the temporary pharmacist in charge within 10 days following the vacancy.

(2) Within 90 days following the vacancy, a permanent pharmacist in charge shall be identified, and an application for pharmacy license, including the license fee as provided in subrule 8.35(4), shall be submitted to the board office.

[Filed 3/26/15, effective 5/20/15]

[Published 4/15/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/15/15.

## ARC 1963C

## PHARMACY BOARD[657]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 36, "Discipline," Iowa Administrative Code.

This amendment provides clearer and more direct references to certain common violations by licensees or registrants for use by the Board when initiating and hearing disciplinary action. With respect to the addition of the submission of a false certification of continuing education as a ground for discipline, pharmacist licensees are now required to utilize the CPE Monitor for documenting the completion of continuing education requirements for licensure, and upon license renewal, pharmacists may now submit a certification of completion in lieu of reporting each educational program completed.

This rule does not provide for waiver or variance. The Board simply, by means of deciding not to initiate disciplinary action against a licensee or registrant based on any of the listed grounds for disciplinary action, implies a waiver or variance of the specific ground for disciplinary action.

Notice of Intended Action was published in the December 10, 2014, Iowa Administrative Bulletin as **ARC 1790C**. The Board received no written comments regarding the proposed amendment. A member of the Board did, however, request reconsideration of proposed new paragraph "ai," and the Board agreed to change that paragraph to require the reporting of only a criminal conviction relating to the practice of pharmacy or the distribution of drugs.

The amendment was approved during the March 9, 2015, meeting of the Board of Pharmacy.

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

This amendment is intended to implement Iowa Code sections 147.55, 272C.3, 272C.5, 155A.15, 155A.23, 126.3, 124.304, and 124.401 to 124.407.

This amendment will become effective on May 20, 2015.

The following amendment is adopted.

Amend subrule 36.1(4) as follows:

**36.1(4) Grounds for discipline.** The board may impose any of the disciplinary sanctions set out in subrule 36.1(2) when the board determines that the licensee, registrant, or permittee is guilty of the following acts or offenses:

*a. to n.* No change.

*o.* Submission of a false report of continuing education, submission of a false certification of completion of continuing education, or failure to submit biennial reports of continuing education as directed by the board.

*p. to t.* No change.

*u.* Violating any of the grounds for revocation or suspension of a license or registration listed in Iowa Code sections section 147.55, 155A.12, and 155A.15 Iowa Code chapter 155A, or any of the rules of the board.

*v. to ah.* No change.

*ai.* Failure to notify the board of a criminal conviction relating to the practice of pharmacy or to the distribution of drugs within 30 days of the action, regardless of the jurisdiction where it occurred.

*aj.* Obtaining, possessing, or attempting to obtain or possess prescription drugs without lawful authority.

*ak.* Diverting prescription drugs from a pharmacy for personal use or for distribution.

*al.* Practicing pharmacy, or assisting in the practice of pharmacy, while under the influence of alcohol or illicit substances.

*am.* Practicing pharmacy, or assisting in the practice of pharmacy, while under the influence of prescription drugs or substances for which the licensee or registrant does not have a lawful prescription or while impaired by the use of legitimately prescribed pharmacological agents, drugs, or substances.

*an.* Forging or altering a prescription.

*ao.* Practicing outside the scope of the profession.

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ap. Dispensing, or contributing to the dispensing of, an incorrect prescription, which includes, but is not limited to, the incorrect drug, the incorrect strength, the incorrect patient or prescriber, or the incorrect or incomplete directions.

aq. Failing to comply with a confidential order for evaluation.

[Filed 3/26/15, effective 5/20/15]

[Published 4/15/15]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/15/15.

**ARC 1968C**

## **REVENUE DEPARTMENT[701]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3, 404A.6, 421.14, and 422.68, the Department of Revenue hereby adopts amendments to Chapter 42, "Adjustments to Computed Tax and Tax Credits," Chapter 52, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," and Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," Iowa Administrative Code.

In 2014 Iowa Acts, House File 2453, the General Assembly made changes to the Historic Preservation and Cultural and Entertainment District Tax Credit Program. This program is administered by the Department of Cultural Affairs with the assistance of the Department of Revenue. The amendments are necessary to implement new program requirements for the aspects of the program that are administered by the Department of Revenue. (See also **ARC 1970C** published herein for the Historical Division's Adopted and Filed rule making relating to this program.)

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1837C** on January 21, 2015. A public hearing was held on February 11, 2015.

Several public comments were received regarding the Department's proposed subrules 42.54(3) and 52.47(3) on "qualified rehabilitation expenditures" for projects with agreements entered into on or after the effective date of 2014 Iowa Acts, House File 2453. In general, the comments expressed concern that proposed subrules 42.54(3) and 52.47(3) were more restrictive than federal law regarding a taxpayer's ability to receive the tax credit for expenditures paid for with other public financing. The federal law is incorporated by reference into Iowa Code section 404A.1(6). The Department recognizes that the business structures involved in historic development projects are complex and that the interplay between public and private financing must be reviewed on a case-by-case basis. Therefore, the Department did not adopt the language originally proposed in paragraphs "a" and "b" of subrules 42.54(3) and 52.47(3). The Department instead revised the relevant portion of paragraphs 42.54(3)"b" and 52.47(3)"b" to include the language in Iowa Code section 404A.1(6)"b" to clarify that projects are permitted to receive the state tax credit for expenses paid for with other public dollars if the federal law permits the projects to receive the federal credit on those expenses. However, because the state program permits a broader range of applicants than does the federal program, the Department has included an explanation of how public dollars are treated for those projects to provide guidance to applicants to which the federal law does not apply. The Department also revised the language in paragraphs 42.54(3)"a" and 52.47(3)"a" on the types of property and services that are eligible. The paragraphs now reference Internal Revenue Code Section 47, rather than the Treasury Regulation, for projects in general. The Department retained the reference to the Treasury Regulation for nonprofits to mirror Iowa Code section 404A.1(6).

One comment was received recommending that in subrule 52.18(3), the Department strike the last sentence of the example, which describes federal basis reduction. As recommended, the last sentence has been stricken in subrule 52.18(3) as well as in subrule 42.19(3), which includes identical language.

The Department also received two questions regarding why subrules 42.19(4), 42.19(6), and 42.54(5) require a transferee of a tax credit to provide information about the consideration provided in exchange for the transferred tax credit. Under Iowa Code section 404A.2(5), a transferee must provide any information required by the Department. The Department requires information about the price paid for

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transferred tax credits because transferable tax credits are often sold. The Department needs information on the price paid for those tax credits in order to fulfill its statutory obligation, pursuant to Iowa Code section 404A.5, to assist the Department of Cultural Affairs in keeping the General Assembly and the Legislative Services Agency informed about the economic impact of qualified rehabilitation projects. Because this information is necessary and within the Department's authority to require, the Department did not make any changes to the rule making in regard to the questions.

In addition, due to the volume of comments and the fact that many of them are related both to **ARC 1837C** and to **ARC 1836C** (the Historical Division's Notice of Intended Action), the Department of Cultural Affairs and the Department of Revenue compiled all of the comments received into an appendix and created a document of combined responses to those comments. Both the appendix and the responses are available at: <https://tax.iowa.gov/comments-administrative-rules>.

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 adopted these amendments on March 27, 2015.

After analysis and review of this rule making, the Department finds that the changes to the program could have a positive impact on jobs. The adopted changes clarify existing rules and provide guidance on the type of expenses that qualify, which should help program users better prepare for project success.

These amendments are intended to implement 2014 Iowa Acts, House File 2453.

These amendments will become effective May 20, 2015.

The following amendments are adopted.

ITEM 1. Amend rule 701—42.19(404A,422) as follows:

**701—42.19(404A,422) Historic preservation and cultural and entertainment district tax credit for projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014.** A historic preservation and cultural and entertainment district tax credit, subject to the availability of the credit, may be claimed against a taxpayer's Iowa individual income tax liability for 25 percent of the qualified costs of rehabilitation of property to the extent the costs were incurred on or after July 1, 2000, for approved rehabilitation projects of eligible property in Iowa. ~~The administrative rules for the historic preservation and cultural and entertainment district tax credit for the historical division of the department of cultural affairs may be found under 223—Chapter 48.~~

The general assembly has mandated that the department of cultural affairs and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. 2014 Iowa Acts, House File 2453, amended the historic preservation and cultural and entertainment district tax credit program effective July 1, 2014. The department of revenue's provisions for projects with tax credits reserved prior to July 1, 2014, are found in this rule. The department of revenue's provisions for projects with agreements entered into on or after July 1, 2014, are found in rule 701—42.54(404A,422). The department of cultural affairs' rules related to this program may be found at 223—Chapter 48. Division I of 223—Chapter 48 applies to projects with reservations approved prior to July 1, 2014. Division II of 223—Chapter 48 applies to projects with agreements entered into on or after July 1, 2014.

Notwithstanding anything contained herein to the contrary, the department of cultural affairs shall not reserve tax credits under 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1, for applicants that do not have an approved Part 2 application and a tax credit reservation on or before June 30, 2014. Projects with approved Part 2 applications and provisional tax credit reservations on or before June 30, 2014, shall be governed by 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1; by 223—Chapter 48, Division I; and by rule 701—42.19(404A,422). Projects for which Part 2 applications were approved and agreements entered into after June 30, 2014, shall be governed by 2014 Iowa Acts, House File 2453; by 223—Chapter 48, Division II; and by rule 701—42.54(404A,422).

**42.19(1) Eligible properties for the historic preservation and cultural and entertainment district tax credit.** The following types of property are eligible for the historic preservation and cultural and entertainment district tax credit:

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- a. Property verified as listed on the National Register of Historic Places or eligible for such listing.
- b. Property designated as of historic significance to a district listed in the National Register of Historic Places or eligible for such designation.
- c. Property or district designated a local landmark by a city or county ordinance.
- d. Any barn constructed prior to 1937.

**42.19(2)** *Application and review process for the historic preservation and cultural and entertainment district tax credit.*

a. Taxpayers who want to claim an income tax credit for completing a historic preservation and cultural and entertainment district project must submit an application for approval of the project. The application forms for the historic preservation and cultural and entertainment district tax credit may be requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515)281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered. For fiscal years beginning on or after July 1, 2000, \$2.4 million shall be appropriated for historic preservation and cultural and entertainment district tax credits for each year. For the fiscal years beginning July 1, 2005, and July 1, 2006, an additional \$4 million of tax credits is appropriated for projects located in cultural and entertainment districts which are certified by the department of cultural affairs. If less than \$4 million of tax credits is appropriated during a fiscal year, the remaining amount shall be applied to reserved tax credits for projects not located in cultural and entertainment districts in the order of original reservation by the department of cultural affairs. For the fiscal year beginning July 1, 2007, \$10 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2008, \$15 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2009, through the fiscal year beginning July 1, 2011, \$50 million in historic preservation and cultural and entertainment district tax credits is available. The allocation of the \$50 million of credits for the fiscal year beginning July 1, 2009, through the fiscal year beginning July 1, 2011, is set forth in rule 223—48.7(303,404A). For fiscal years beginning on or after July 1, 2012, \$45 million in historic preservation and cultural and entertainment district tax credits is available. Tax credits shall not be reserved by the department of cultural affairs for more than three years except for tax credits issued for contracts entered into prior to July 1, 2007.

b. For the state fiscal year beginning on July 1, 2009, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2009, and \$30 million of the credits may be claimed on tax returns beginning on or after January 1, 2010. For the state fiscal year beginning July 1, 2010, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2010, and \$30 million of tax credits may be claimed on tax returns beginning on or after January 1, 2011. For the state fiscal year beginning July 1, 2011, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2011, and \$30 million of tax credits may be claimed on tax returns beginning on or after January 1, 2012.

~~e. b.~~ Applicants for the historic preservation and cultural and entertainment district tax credit must include all information and documentation requested on the application forms for the credit in order for the application to be processed.

d. The state historic preservation office (SHPO) shall establish selection criteria and standards for rehabilitation projects involving eligible property. The approval process shall not exceed 90 days from the date the application is received by SHPO. To the extent possible, the standards used by SHPO shall be consistent with the standards of the United States Secretary of the Interior for rehabilitation of eligible property.

e. Once SHPO approves a particular historic preservation and cultural and entertainment district tax credit project application, the office will encumber an estimated historic preservation and cultural and entertainment district tax credit under the name of the applicant(s) for the year the project is approved.

**42.19(3)** *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.* The amount of the historic preservation and cultural and entertainment district tax

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credit is 25 percent of the qualified rehabilitation costs made to an eligible property in a project. Qualified rehabilitation costs are those rehabilitation costs approved by ~~SHPO~~ the state historic preservation office for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

*a.* In the case of commercial property, qualified rehabilitation costs must equal at least \$50,000 or 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation, whichever is less. In the case of property other than commercial property, the qualified rehabilitation costs must equal at least \$25,000 or 25 percent of the assessed value, excluding the value of the land, prior to the rehabilitation, whichever amount is less.

*b.* In computing the tax credit, the only costs which may be included are the qualified rehabilitation costs incurred commencing from the date on which the first qualified rehabilitation cost is incurred and ending with the end of the taxable year in which the property is placed in service. The rehabilitation period may include dates that precede approval of a project, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project are qualified rehabilitation costs.

*c.* For purposes of the historic preservation and cultural and entertainment district tax credit, qualified rehabilitation costs include those costs properly included in the basis of the eligible property for income tax purposes. Costs treated as expenses and deducted in the year paid or incurred and amounts that are otherwise not added to the basis of the property for income tax purposes are not qualified rehabilitation costs. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis of the eligible property for tax purposes. Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs. Any rehabilitation costs used in the computation of the historic preservation and cultural and entertainment district tax credit are not added to the basis of the property for Iowa income tax purposes if the rehabilitation costs were incurred in a tax year beginning on or after January 1, 2000, but prior to January 1, 2001. Any rehabilitation costs incurred in a tax year beginning on or after January 1, 2001, are added to the basis of the rehabilitated property for income tax purposes except those rehabilitation expenses that are equal to the amount of the computed historic preservation and cultural and entertainment district tax credit for the tax year.

EXAMPLE: ~~For example, the~~ The basis of a commercial building in a historic district was \$500,000, excluding the value of the land, before the rehabilitation project. During a project to rehabilitate this building, \$600,000 in rehabilitation costs were expended to complete the project and \$500,000 of those rehabilitation costs were qualified rehabilitation costs which were eligible for the historic preservation and cultural and entertainment district tax credit of \$125,000. Therefore, the basis of the building for Iowa income tax purposes was \$975,000, since the qualified rehabilitation costs of \$125,000, which are equal to the amount of the historic preservation and cultural and entertainment district tax credit for the tax year, are not added to the basis of the rehabilitated property. The basis of the building for federal income tax purposes was \$1,100,000. ~~However, for tax years beginning only in the 2000 calendar year, the basis of the building for Iowa income tax purposes would have been \$600,000, since for those tax periods, any qualified rehabilitation expenses used to compute the historic preservation and cultural and entertainment district tax credit for the tax year could not be added to the basis of the property.~~ It should be noted that this example does not consider any possible reduced basis for the building for federal income tax purposes due to the rehabilitation investment credit provided in Section 47 of the Internal Revenue Code. ~~If the building in this example were eligible for the federal rehabilitation credit provided in Section 47 of the Internal Revenue Code, the basis of the building for Iowa tax purposes would be reduced accordingly by the same amount as the reduction required for federal tax purposes.~~

**42.19(4)** *Completion of the historic preservation and cultural and entertainment district project and claiming the historic preservation and cultural and entertainment district tax credit on the Iowa return.* After the taxpayer completes an authorized rehabilitation project, the taxpayer must be issued a certificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the historic preservation and cultural and entertainment district tax credit, the state historic preservation office shall issue a historic preservation

## REVENUE DEPARTMENT[701](cont'd)

and cultural and entertainment district tax credit certificate, which shall be ~~attached to~~ included with the taxpayer's income tax return for the tax year in which the rehabilitation project is completed or the year the credit was reserved, whichever is the later. For example, if a project was completed in 2008 and the credit was reserved for the state fiscal year ending June 30, 2010, the credit can be claimed on the 2009 calendar year return that is due on April 30, 2010. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the year the tax credit was reserved and the amount of the historic preservation and cultural and entertainment district tax credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee, ~~and the amount of the tax credit being transferred, and any consideration received in exchange for the tax credit,~~ as provided in subrule 42.19(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate. The tax credit certificate shall be ~~attached to~~ included with the income tax return for the period in which the project was completed. ~~If the amount of the historic preservation and cultural and entertainment district tax credit exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value for tax periods ending prior to July 1, 2007. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit shall be computed on the basis of the following table:~~

Annual Interest Rate	Five-Year Present Value/Dollar Compounded Annually
5%	\$.784
6%	\$.747
7%	\$.713
8%	\$.681
9%	\$.650
10%	\$.621
11%	\$.594
12%	\$.567
13%	\$.543
14%	\$.519
15%	\$.497
16%	\$.476
17%	\$.456
18%	\$.437

~~EXAMPLE: The following is an example to show how the table can be used to compute a refund for a taxpayer. An individual has a historic preservation and cultural and entertainment district tax credit of \$800,000 for a project completed in 2001. The individual had an income tax liability prior to the credit of \$300,000 on the 2001 return, which leaves an excess credit of \$500,000. The annual interest rate for tax refunds issued by the department of revenue in the 2001 calendar year is 11 percent. Therefore, to compute the five-year present value of the \$500,000 excess credit, \$500,000 is multiplied by the compound factor for 11 percent of .594 in the table, which results in a refund of \$297,000.~~

For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

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**42.19(5)** *Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity for tax credits reserved for fiscal years beginning on or after July 1, 2012.*

*a. Projects beginning prior to July 1, 2005.* When the taxpayer that has earned a historic preservation and cultural and entertainment district tax credit is a partnership, limited liability company, S corporation, estate or trust where the individual owners of the business entity are taxed on the income of the entity, the historic preservation and cultural and entertainment district tax credit shall be allocated to the individual owners. The business entity shall allocate the historic preservation and cultural and entertainment district tax credit to each individual owner on the same pro rata basis as the earnings of the business are allocated to the owners for projects beginning prior to July 1, 2005. For example, if a partner of a partnership received 25 percent of the earnings or income of the partnership for the tax year in which the partnership had earned a historic preservation and cultural and entertainment district tax credit, 25 percent of the credit would be allocated to this partner.

*b. Projects beginning on or after July 1, 2005, for tax credits reserved for fiscal years beginning prior to July 1, 2012.* For projects beginning on or after July 1, 2005, for tax credits reserved for fiscal years beginning prior to July 1, 2012, which used low-income housing credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the rehabilitation project, the credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.

*c. Tax credits reserved for fiscal years beginning on or after July 1, 2012.* For tax credits reserved for fiscal years beginning on or after July 1, 2012, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation.

**42.19(6)** *Transfer of the historic preservation and cultural and entertainment district tax credit.* For tax periods beginning on or after January 1, 2003, the historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. A tax credit certificate of less than \$1,000 shall not be transferable.

~~Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the state historic preservation office of the department of cultural affairs, along with a statement which contains the transferee's name, address and tax identification number and amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the state historic preservation office shall issue a replacement tax credit certificate to the transferee.~~

*a.* For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. Within 90 days of the transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number and address, the denomination that each replacement tax credit certificate is to carry, the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided

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among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

*b.* The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

*c.* If the historic preservation and cultural and entertainment district tax credit of the transferee exceeds the tax liability shown on the transferee's return, the ~~refund tax credit shall be discounted as described in subrule 42.19(4) for tax years ending prior to July 1, 2007, just as the refund would have been discounted on the Iowa income tax return of the taxpayer. For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit of the transferee in excess of the transferee's tax liability is fully refundable.~~

This rule is intended to implement Iowa Code chapter 404A as amended by 2013 Iowa Acts, Senate File 436, and Iowa Code section 422.11D.

ITEM 2. Adopt the following new rule 701—42.54(404A,422):

**701—42.54(404A,422) Historic preservation and cultural and entertainment district tax credit for projects with Part 2 applications approved on or after July 1, 2014, and agreements entered into on or after July 1, 2014.** The department of cultural affairs is authorized by the general assembly to award tax credits for a percentage of the qualified rehabilitation expenditures on a qualified rehabilitation project as described in the historic preservation and cultural and entertainment district tax credit program, Iowa Code chapter 404A. The program is administered by the department of cultural affairs with the assistance of the department of revenue. The general assembly has mandated that the department of cultural affairs and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. In general, the department of cultural affairs is responsible for evaluating whether projects comply with the prescribed standards for rehabilitation while the department of revenue is responsible for evaluating whether projects comply with the tax aspects of the program.

2014 Iowa Acts, House File 2453, amended the historic preservation and cultural and entertainment district tax credit program effective July 1, 2014. The department of revenue's provisions for projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014, are found in rule 701—42.19(404A,422). The department of revenue's provisions for projects with Part 2 applications approved on or after July 1, 2014, and with agreements entered into on or after July 1, 2014, are found in this rule. The department of cultural affairs' rules related to this program may be found at 223—Chapter 48. Division I of 223—Chapter 48 applies to projects with tax credit reservations approved prior to July 1, 2014. Division II of 223—Chapter 48 applies to projects with Part 2 applications approved on or after July 1, 2014, and agreements entered into on or after July 1, 2014.

Notwithstanding anything contained herein to the contrary, the department of cultural affairs shall not reserve tax credits under 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1, for applicants that do not have an approved Part 2 application and a tax credit reservation on or before June 30, 2014. Projects with approved Part 2 applications and provisional tax credit reservations on or before June 30, 2014, shall be governed by 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1; by 223—Chapter 48, Division I; and by rule 701—42.19(404A,422). Projects for which Part 2 applications were approved and agreements entered into after June 30, 2014, shall be governed by 2014 Iowa Acts, House File 2453; by 223—Chapter 48, Division II; and by this rule.

**42.54(1) Application, registration, and agreement for the historic preservation and cultural and entertainment district tax credit.** Taxpayers that want to claim an income tax credit for completing a qualified rehabilitation project must submit an application for approval of the project. The application forms and instructions for the historic preservation and cultural and entertainment district tax credit are

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available on the department of cultural affairs' Web site. Once a project is registered, the taxpayer must enter into an agreement with the department of cultural affairs to be eligible for the credit.

**42.54(2) Computation of the amount of the historic preservation and cultural and entertainment district tax credit.** The amount of the historic preservation and cultural and entertainment district tax credit is a maximum of 25 percent of the qualified rehabilitation expenditures verified by the department of cultural affairs and the department of revenue following project completion, up to the amount specified in the agreement between the taxpayer and the department of cultural affairs.

**42.54(3) Qualified rehabilitation expenditures.** "Qualified rehabilitation expenditures" means the same as defined in rule 223—48.22(404A) of the historical division of the department of cultural affairs. In general, the department of cultural affairs evaluates whether expenditures comply with the prescribed standards for rehabilitation while the department of revenue evaluates whether expenditures comply with the tax requirements to be considered qualified rehabilitation expenditures, including whether the expenditures are in accordance with the requirements of Internal Revenue Code Section 47 and its related regulations.

*a. Type of property and services eligible.* In accordance with Iowa Code section 404A.1(6), the types of property and services claimed for the state tax credit must be "qualified rehabilitation expenditures" in accordance with Internal Revenue Code Section 47. Notwithstanding the foregoing sentence, expenditures incurred by an eligible taxpayer that is a nonprofit organization as defined in Iowa Code section 404A.1(4) shall be considered "qualified rehabilitation expenditures" if they are for "structural components," as that term is defined in Treasury Regulation § 1.48-1(e)(2), and for amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees and other construction-related costs.

*b. Effect of financing sources on eligibility of expenditures.* Qualified rehabilitation expenditures do not include expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under Section 47 of the Internal Revenue Code. For an eligible taxpayer that is a nonprofit organization as defined in Iowa Code section 404A.1(4) that is not eligible for the federal rehabilitation credit, or another person that is not eligible for the federal rehabilitation credit, expenditures financed with federal, state, or local government grants or forgivable loans are not qualified rehabilitation expenditures.

**42.54(4) Completion of the qualified rehabilitation project and claiming the tax credit on the Iowa return.** After the taxpayer completes a qualified rehabilitation project, the taxpayer will be issued a certificate of completion of the project from the department of cultural affairs if the project complies with the federal standards, as defined in rule 223—48.22(404A). After the department of cultural affairs and the department of revenue verify the taxpayer's eligibility for the tax credit, the department of cultural affairs shall issue a tax credit certificate. For the taxpayer to claim the credit, the certificate must be included with the taxpayer's income tax return for the tax year in which the rehabilitation project is completed or the year in which the certificate is issued, whichever is later.

*a. Information required.* The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed and the amount of the historic preservation and cultural and entertainment district tax credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.54(5). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, and the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate. The tax credit certificate shall be included with the income tax return for the period in which the project was completed or in which the certificate is issued, whichever is later.

*b. Refund or carryforward.* Any historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable with interest computed under Iowa Code section 422.25. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

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*c. Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity.* A partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation.

**42.54(5)** *Transfer of the historic preservation and cultural and entertainment district tax credit.* The historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, for any tax year the original transferor could have claimed the tax credit. Any credit in excess of the transferee's tax liability is not refundable. A tax credit certificate of less than \$1,000 shall not be transferable.

*a. Transfer process—information required.* Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement that contains the transferee's name, address and tax identification number, the amount of the tax credit being transferred, the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of the nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The certificate must have the same information required for the original tax certificate and must have the same expiration date as the original tax credit certificate. The transferee may not claim a tax credit until a replacement certificate identifying the transferee as the proper holder has been issued.

*b. Consideration.* Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

**42.54(6)** *Appeals.* Challenges to an action by the department of revenue related to tax credit transfers, the claiming of tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 404A as amended by 2014 Iowa Acts, House File 2453, and Iowa Code section 422.11D.

ITEM 3. Amend rule 701—52.18(404A,422) as follows:

**701—52.18(404A,422) Historic preservation and cultural and entertainment district tax credit for projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014.** A historic preservation and cultural and entertainment district tax credit, subject to the availability of the credit, may be claimed against a taxpayer's Iowa corporate income tax liability for 25 percent of the qualified costs of rehabilitation of property to the extent the costs were incurred on or after July 1, 2000, for the approved rehabilitation projects of eligible property in Iowa. ~~The administrative rules for the historic preservation and cultural and entertainment district tax credit for the historical division of the department of cultural affairs may be found under 223—Chapter 48.~~

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The general assembly has mandated that the department of cultural affairs and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. 2014 Iowa Acts, House File 2453, amended the historic preservation and cultural and entertainment district tax credit program effective July 1, 2014. The department of revenue's provisions for projects with tax credits reserved prior to July 1, 2014, are found in this rule. The department of revenue's provisions for projects with agreements entered into on or after July 1, 2014, are found in rule 701—52.47(404A,422). The department of cultural affairs' rules related to this program may be found at 223—Chapter 48. Division I of 223—Chapter 48 applies to projects with reservations approved prior to July 1, 2014. Division II of 223—Chapter 48 applies to projects with agreements entered into on or after July 1, 2014.

Notwithstanding anything contained herein to the contrary, the department of cultural affairs shall not reserve tax credits under 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1, for applicants that do not have an approved Part 2 application and a tax credit reservation on or before June 30, 2014. Projects with approved Part 2 applications and provisional tax credit reservations on or before June 30, 2014, shall be governed by 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1; by 223—Chapter 48, Division I; and by rule 701—52.18(404A,422). Projects for which Part 2 applications were approved and agreements entered into after June 30, 2014, shall be governed by 2014 Iowa Acts, House File 2453; by 223—Chapter 48, Division II; and by rule 701—52.47(404A,422).

**52.18(1)** *Eligible property for the historic preservation and cultural and entertainment district tax credit.* The following types of property are eligible for the historic preservation and cultural and entertainment district tax credit:

- a. Property verified as listed on the National Register of Historic Places or eligible for such listing.
- b. Property designated as of historic significance to a district listed in the National Register of Historic Places or eligible for such designation.
- c. Property or district designated a local landmark by a city or county ordinance.
- d. Any barn constructed prior to 1937.

**52.18(2)** *Application and review process for the historic preservation and cultural and entertainment district tax credit.*

a. Taxpayers who want to claim an income tax credit for completing a historic preservation and cultural and entertainment district project must submit an application for approval of the project. The application forms for the historic preservation and cultural and entertainment district tax credit may be requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515)281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered. ~~For fiscal years beginning on or after July 1, 2000, \$2.4 million shall be appropriated for historic preservation and cultural and entertainment district tax credits for each year. For the fiscal years beginning July 1, 2005, and July 1, 2006, an additional \$4 million of tax credits is appropriated for projects located in cultural and entertainment districts which are certified by the department of cultural affairs. If less than \$4 million of tax credits is appropriated during a fiscal year, the remaining amount shall be applied to reserved tax credits for projects not located in cultural and entertainment districts in the order of original reservation by the department of cultural affairs. For the fiscal year beginning July 1, 2007, \$10 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2008, \$15 million in historic preservation and cultural and entertainment district tax credits is available. For the fiscal year beginning July 1, 2009, through the fiscal year beginning July 1, 2011, \$50 million in historic preservation and cultural and entertainment district tax credits is available. The allocation of the \$50 million of credits for the fiscal year beginning July 1, 2009, through the fiscal year beginning July 1, 2011, is set forth in rule 223—48.7(303,404A). For fiscal years beginning on or after July 1, 2012, \$45 million in historic preservation and cultural and entertainment district tax credits is available. Tax credits shall not be reserved by the department of cultural affairs for more than three years except for tax credits issued for contracts entered into prior to July 1, 2007.~~

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~~b.~~ For the state fiscal year beginning on July 1, 2009, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2009, and \$30 million of the credits may be claimed on tax returns beginning on or after January 1, 2010. For the state fiscal year beginning July 1, 2010, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2010, and \$30 million of the credits may be claimed on tax returns beginning on or after January 1, 2011. For the state fiscal year beginning July 1, 2011, \$20 million of the credits may be claimed on tax returns beginning on or after January 1, 2011, and \$30 million of the credits may be claimed on tax returns beginning on or after January 1, 2012.

~~e. b.~~ Applicants for the historic preservation and cultural and entertainment district tax credit must include all information and documentation requested on the application forms for the credit in order for the applications to be processed.

~~d.~~ The state historic preservation office (SHPO) is to establish selection criteria and standards for rehabilitation projects involving eligible property. The approval process is not to exceed 90 days from the date the application is received by SHPO. To the extent possible, the standards used by SHPO are to be consistent with the standards of the United States Secretary of the Interior for rehabilitation of eligible property.

~~e.~~ Once SHPO approves a particular historic preservation and cultural and entertainment district tax credit project application, the office will encumber an estimated historic preservation and cultural and entertainment district tax credit under the name of the applicant(s) for the year the project is approved.

**52.18(3) Computation of the amount of the historic preservation and cultural and entertainment district tax credit.** The amount of the historic preservation and cultural and entertainment district tax credit is 25 percent of the qualified rehabilitation costs made to eligible property in a project. Qualified rehabilitation costs are those rehabilitation costs approved by SHPO the state historic preservation office for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

*a.* In the case of commercial property, qualified rehabilitation costs must equal at least \$50,000 or 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation, whichever is less. In the case of property other than commercial property, the qualified rehabilitation costs must equal at least \$25,000 or 25 percent of the assessed value, excluding the value of the land, prior to the rehabilitation, whichever amount is less.

*b.* In computing the tax credit, the only costs which may be included are the qualified rehabilitation costs incurred commencing from the date on which the first qualified rehabilitation cost is incurred and ending with the end of the taxable year in which the property is placed in service. The rehabilitation period may include dates that precede approval of a project, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project must be qualified rehabilitation costs.

*c.* For purposes of the historic preservation and cultural and entertainment district tax credit, qualified rehabilitation costs include those costs properly included in the basis of the eligible property for income tax purposes. Costs treated as expenses and deducted in the year paid or incurred and amounts that are otherwise not added to the basis of the property for income tax purposes are not qualified rehabilitation costs. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis of the eligible property for tax purposes. Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs. Any rehabilitation costs used in the computation of the historic preservation and cultural and entertainment district tax credit are not added to the basis of the property for Iowa income tax purposes if the rehabilitation costs were incurred in a tax year beginning on or after January 1, 2000, but prior to January 1, 2001. Any rehabilitation costs incurred in a tax year beginning on or after January 1, 2001, are added to the basis of the rehabilitated property for income tax purposes except those rehabilitation costs that are equal to the amount of the computed historic preservation and cultural and entertainment district tax credit for the tax year.

EXAMPLE: ~~For example, the~~ The basis of a commercial building in a historic district was \$500,000, excluding the value of the land, before the rehabilitation project. During a project to rehabilitate this

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building, \$600,000 in rehabilitation costs were expended to complete the project and \$500,000 of those rehabilitation costs were qualified rehabilitation costs which were eligible for the historic preservation and cultural and entertainment district tax credit of \$125,000. Therefore, the basis of the building for Iowa income tax purposes was \$975,000, since the qualified rehabilitation costs of \$125,000, which are equal to the amount of the historic preservation and cultural and entertainment district tax credit for the tax year, are not added to the basis of the rehabilitated property. The basis of the building for federal income tax purposes was \$1,100,000. ~~However, for tax years beginning only in the 2000 calendar year, the basis of the rehabilitated property would have been \$600,000, since for those tax periods any qualified rehabilitation costs used to compute the historic preservation and cultural and entertainment district tax credit for the tax year could not be added to the basis of the property.~~ It should be noted that this example does not consider any possible reduced basis for the building for federal income tax purposes due to the rehabilitation investment credit provided in Section 47 of the Internal Revenue Code. ~~If the building in this example were eligible for the federal rehabilitation credit provided in Section 47 of the Internal Revenue Code, the basis of the building for Iowa tax purposes would be reduced accordingly by the same amount as the reduction required for federal tax purposes.~~

**52.18(4)** *Completion of the historic preservation and cultural and entertainment district project and claiming the historic preservation and cultural and entertainment district tax credit on the Iowa return.* After the taxpayer completes an authorized rehabilitation project, the taxpayer must get a certificate of completion of the project from the state historic preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the historic preservation and cultural and entertainment district tax credit, the state historic preservation office shall issue a historic preservation and cultural and entertainment district tax credit certificate, which shall be ~~attached to~~ included with the taxpayer's income tax return for the tax year in which the rehabilitation project is completed or the year the credit was reserved, whichever is the later. For example, if a project was completed in 2008 and the credit was reserved for the state fiscal year ending June 30, 2010, the credit can be claimed on the 2009 calendar year return that is due on April 30, 2010. The tax credit certificate is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed, the year the tax credit was reserved, and the amount of the historic preservation and cultural and entertainment district tax credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, and any consideration received in exchange for the tax credit, as provided in subrule 52.18(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary should be provided with the certificate. The tax credit certificate should be ~~attached to~~ included with the income tax return for the period in which the project was completed. ~~If the amount of the historic preservation and cultural and entertainment district tax credit exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value for tax periods ending prior to July 1, 2007. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit is to be computed on the basis of the following table:~~

Annual Interest Rate	Five-Year Present Value/Dollar Compounded Annually
5%	\$.784
6%	\$.747
7%	\$.713
8%	\$.681
9%	\$.650
10%	\$.621
11%	\$.594

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Annual Interest Rate	Five-Year Present Value/Dollar Compounded Annually
12%	\$.567
13%	\$.543
14%	\$.519
15%	\$.497
16%	\$.476
17%	\$.456
18%	\$.437

~~EXAMPLE: The following is an example to show how the table can be used to compute a refund for a taxpayer. An individual has a historic preservation and cultural and entertainment district tax credit of \$800,000 for a project completed in 2001. The individual had an income tax liability prior to the credit of \$300,000 on the 2001 return, which leaves an excess credit of \$500,000. We will assume that the annual interest rate for tax refunds issued by the department of revenue in the 2001 calendar year is 11 percent. Therefore, to compute the five-year present value of the \$500,000 excess credit, \$500,000 is multiplied by the compound factor for 2001 which is 11 percent or .594 which results in a refund of \$297,000.~~

For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

**52.18(5)** *Allocation of historic preservation and cultural and entertainment district tax credits to individual owners of the entity for tax credits reserved for fiscal years beginning on or after July 1, 2012.*

*a.—Projects beginning prior to July 1, 2005.* When the business entity that has earned a historic preservation and cultural and entertainment district tax credit is an S corporation, partnership, limited liability company, estate or trust where the individual owners of the business entity are taxed on the income of the entity, the historic preservation and cultural and entertainment district tax credit is to be allocated to the individual owners. The business entity is to allocate the historic preservation and cultural and entertainment district tax credit to each individual owner in the same pro rata basis that the earnings or profits of the business entity are allocated to the owners for projects beginning prior to July 1, 2005. For example, if a shareholder of an S corporation received 25 percent of the earnings of the corporation and the corporation had earned a historic preservation and cultural and entertainment district tax credit, 25 percent of the credit would be allocated to the shareholder.

*b.—Projects beginning on or after July 1, 2005, for tax credits reserved for fiscal years beginning prior to July 1, 2012.* For projects beginning on or after July 1, 2005, for tax credits reserved for fiscal years beginning prior to July 1, 2012, which used low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the rehabilitation project, the credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.

*c.—Tax credits reserved for fiscal years beginning on or after July 1, 2012.* For tax credits reserved for fiscal years beginning on or after July 1, 2012, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation.

**52.18(6)** *Transfer of the historic preservation and cultural and entertainment district tax credit.* For tax periods beginning on or after January 1, 2003, the historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. A tax credit certificate of less than \$1,000 shall not be transferable.

~~Within 90 days of transfer of the tax credit certificate for transfers prior to July 1, 2006, the transferee must submit the transferred tax credit certificate to the state historic preservation office of~~

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~~the department of cultural affairs, along with a statement which contains the transferee's name, address and tax identification number and the amount of the tax credit being transferred. For transfers on or after July 1, 2006, the transferee must submit the transferred tax credit certificate to the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee for transfers prior to July 1, 2006, the state historic preservation office shall issue a replacement tax credit certificate to the transferee.~~

~~a. For transfers on or after July 1, 2006, the department of revenue will issue the replacement tax credit certificate to the transferee. Within 90 days of the transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number and address, the denomination that each replacement tax credit certificate is to carry, the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.~~

~~b. The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.~~

~~c. If the historic preservation and cultural and entertainment district tax credit of the transferee exceeds the tax liability shown on the transferee's return, the refund tax credit shall be discounted as described in subrule 52.18(4) for tax years ending prior to July 1, 2007, just as the refund would have been discounted on the Iowa income tax return of the taxpayer. For tax years ending on or after July 1, 2007, any historic preservation and cultural and entertainment district tax credit of the transferee in excess of the transferee's tax liability is fully refundable.~~

This rule is intended to implement Iowa Code chapter 404A as amended by 2013 Iowa Acts, Senate File 436, and Iowa Code section 422.33.

ITEM 4. Adopt the following new rule 701—52.47(404A,422):

**701—52.47(404A,422) Historic preservation and cultural and entertainment district tax credit for projects with Part 2 applications approved on or after July 1, 2014, and agreements entered into on or after July 1, 2014.** The department of cultural affairs is authorized by the general assembly to award tax credits for a percentage of the qualified rehabilitation expenditures on a qualified rehabilitation project as described in the historic preservation and cultural and entertainment district tax credit program, Iowa Code chapter 404A. The program is administered by the department of cultural affairs with the assistance of the department of revenue. The general assembly has mandated that the department of cultural affairs and the department of revenue adopt rules to jointly administer Iowa Code chapter 404A. In general, the department of cultural affairs is responsible for evaluating whether projects comply with the prescribed standards for rehabilitation while the department of revenue is responsible for evaluating whether projects comply with the tax aspects of the program.

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2014 Iowa Acts, House File 2453, amended the historic preservation and cultural and entertainment district tax credit program effective July 1, 2014. The department of revenue's provisions for projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014, are found in rule 701—52.18(404A,422). The department of revenue's provisions for projects with Part 2 applications approved on or after July 1, 2014, and with agreements entered into on or after July 1, 2014, are found in this rule. The department of cultural affairs' rules related to this program may be found at 223—Chapter 48. Division I of 223—Chapter 48 applies to projects with reservations approved prior to July 1, 2014. Division II of 223—Chapter 48 applies to projects with Part 2 applications approved on or after July 1, 2014, and agreements entered into on or after July 1, 2014.

Notwithstanding anything contained herein to the contrary, the department of cultural affairs shall not reserve tax credits under 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1, for applicants that do not have an approved Part 2 application and a tax credit reservation on or before June 30, 2014. Projects with approved Part 2 applications and provisional tax credit reservations on or before June 30, 2014, shall be governed by 2013 Iowa Code chapter 404A as amended by 2013 Iowa Acts, chapter 112, section 1; by 223—Chapter 48, Division I; and by rule 701—52.18(404A,422). Projects for which Part 2 applications were approved and agreements entered into after June 30, 2014, shall be governed by 2014 Iowa Acts, House File 2453; by 223—Chapter 48, Division II; and by this rule.

**52.47(1) *Application, registration, and agreement for the historic preservation and cultural and entertainment district tax credit.*** Taxpayers that want to claim a corporation income tax credit for completing a qualified rehabilitation project must submit an application for approval of the project. The application forms and instructions for the historic preservation and cultural and entertainment district tax credit are available on the department of cultural affairs' Web site. Once a project is registered, the taxpayer must enter into an agreement with the department of cultural affairs to be eligible for the credit.

**52.47(2) *Computation of the amount of the historic preservation and cultural and entertainment district tax credit.*** The amount of the historic preservation and cultural and entertainment district tax credit is a maximum of 25 percent of the qualified rehabilitation expenditures verified by the department of cultural affairs and the department of revenue following project completion, up to the amount specified in the agreement between the taxpayer and the department of cultural affairs.

**52.47(3) *Qualified rehabilitation expenditures.*** "Qualified rehabilitation expenditures" means the same as defined in rule 223—48.22(404A) of the historical division of the department of cultural affairs. In general, the department of cultural affairs evaluates whether expenditures comply with the prescribed standards for rehabilitation while the department of revenue evaluates whether expenditures comply with the tax requirements to be considered qualified rehabilitation expenditures, including whether the expenditures are in accordance with the requirements of Internal Revenue Code Section 47 and its related regulations.

*a. Type of property and services eligible.* In accordance with Iowa Code section 404A.1(6), the types of property and services claimed for the state tax credit must be "qualified rehabilitation expenditures" in accordance with Internal Revenue Code Section 47. Notwithstanding the foregoing sentence, expenditures incurred by an eligible taxpayer that is a nonprofit organization as defined in Iowa Code section 404A.1(4) shall be considered "qualified rehabilitation expenditures" if they are for "structural components," as that term is defined in Treasury Regulation § 1.48-1(e)(2), and for amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees and other construction-related costs.

*b. Effect of financing sources on eligibility of expenditures.* Qualified rehabilitation expenditures do not include expenditures financed by federal, state, or local government grants or forgivable loans unless otherwise allowed under Section 47 of the Internal Revenue Code. For an eligible taxpayer that is a nonprofit organization as defined in Iowa Code section 404A.1(4) that is not eligible for the federal rehabilitation credit, or another person that is not eligible for the federal rehabilitation credit, expenditures financed with federal, state, or local government grants or forgivable loans are not qualified rehabilitation expenditures.

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**52.47(4)** *Completion of the qualified rehabilitation project and claiming the tax credit on the Iowa return.* After the taxpayer completes a qualified rehabilitation project, the taxpayer will be issued a certificate of completion of the project from the department of cultural affairs if the project complies with the federal standards, as defined in rule 223—48.22(404A). After the department of cultural affairs and the department of revenue verify the taxpayer's eligibility for the tax credit, the department of cultural affairs shall issue a tax credit certificate. For the taxpayer to claim the credit, the certificate must be included with the taxpayer's corporation income tax return for the tax year in which the rehabilitation project is completed or the year in which the certificate is issued, whichever is later.

*a. Information required.* The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed and the amount of the historic preservation and cultural and entertainment district tax credit. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.47(5). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, and the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary shall be provided with the certificate. The tax credit certificate shall be included with the income tax return for the period in which the project was completed or in which the certificate is issued, whichever is later.

*b. Refund or carryforward.* Any historic preservation and cultural and entertainment district tax credit in excess of the taxpayer's tax liability is fully refundable with interest computed under Iowa Code section 422.25. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following tax year.

*c. Allocation of historic preservation and cultural and entertainment district tax credits to the individual owners of the entity.* A partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder. The credit does not have to be allocated based on the pro rata share of earnings of the partnership, limited liability company or S corporation.

**52.47(5)** *Transfer of the historic preservation and cultural and entertainment district tax credit.* The historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, for any tax year the original transferor could have claimed the tax credit. Any credit in excess of the transferee's tax liability is not refundable. A tax credit certificate of less than \$1,000 shall not be transferable.

*a. Transfer process—information required.* Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the department of revenue along with a statement that contains the transferee's name, address and tax identification number, the amount of the tax credit being transferred, the amount of all consideration provided in exchange for the tax credit and the names of recipients of any consideration provided in exchange for the tax credit. If a payment of money was any part of the consideration provided in exchange for the tax credit, the transferee shall list the amount of the payment of money in its statement to the department of revenue. If any part of the consideration provided in exchange for the tax credit included nonmonetary consideration, including but not limited to any promise, representation, performance, discharge of debt or nonmonetary rights or property, the tax credit transferee shall describe the nature of the nonmonetary consideration and disclose any value the transferor and transferee assigned to the nonmonetary consideration. The tax credit transferee must indicate on its statement to the department of revenue if no consideration was provided in exchange for the tax credit. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the department of revenue will issue the replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the historic preservation and cultural and entertainment district tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The certificate must have the same information

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required for the original tax certificate and must have the same expiration date as the original tax credit certificate. The transferee may not claim a tax credit until a replacement certificate identifying the transferee as the proper holder has been issued.

*b. Consideration.* Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

**52.47(6) Appeals.** Challenges to an action by the department of revenue related to tax credit transfers, claiming tax credits, tax credit revocation, or repayment or recovery of tax credits must be brought pursuant to 701—Chapter 7.

This rule is intended to implement Iowa Code chapter 404A as amended by 2014 Iowa Acts, House File 2453, and Iowa Code section 422.11D.

ITEM 5. Amend rule 701—58.10(422) as follows:

**701—58.10(404A,422) Historic preservation and cultural and entertainment district tax credit.** For tax years beginning on or after January 1, 2001, a historic preservation and cultural and entertainment district tax credit, subject to the availability of the credit, may be claimed against a taxpayer's Iowa franchise tax liability for 25 percent of the qualified rehabilitation costs to the extent the costs were incurred for the rehabilitation of eligible property in Iowa. ~~For information on those types of property that are eligible for the historic preservation and cultural and entertainment district tax credit, how to file applications for the credit, how the historic preservation and cultural and entertainment district tax credit is computed, how the historic preservation and cultural and entertainment district tax credit can be transferred for tax periods beginning on or after January 1, 2003, and other details about the credit related to projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014, see rule 701—52.18(404A,422). For information related to projects with Part 2 applications approved on or after July 1, 2014, and agreements entered into on or after July 1, 2014, see rule 701—52.47(404A,422). See also the administrative rules for the historic preservation and cultural and entertainment district tax credit for the historical division of the department of cultural affairs under 223—Chapter 48. Division I of 223—Chapter 48 applies to projects with Part 2 applications approved and tax credits reserved prior to July 1, 2014. Division II of 223—Chapter 48 applies to projects with Part 2 applications approved on or after July 1, 2014, and agreements entered into on or after July 1, 2014.~~

This rule is intended to implement Iowa Code chapter 404A as amended by ~~2005 Iowa Acts, House File 868, sections 20 through 26~~ 2014 Iowa Acts, House File 2453, and Iowa Code section 422.60.

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**ARC 1953C**

## **UTILITIES DIVISION[199]**

### **Adopted and Filed**

Pursuant to Iowa Code sections 17A.4, 476.1, 476.1A, and 476.17, the Utilities Board (Board) gives notice that on March 17, 2015, the Board issued an order in Docket No. RMU-2014-0007, In re: Peak Alert Rules, "Order Adopting Rules and Requiring Reports." The amendments adopted to the peak alert rules, 199 IAC 20.11, update the rules to reflect changes since the rules were last modified. The Board's order also contains information on the investor-owned electric utilities first customer notification plans under the amended rules, which will be due on or before June 1, 2015.

The Board's peak alert rules became effective in 1983 and were last amended in 2003. Since 2004, the Board has granted MidAmerican Energy Company (MidAmerican) a series of one- and two-year waivers of the Board's peak alert rules. In the order granting MidAmerican's waiver request in Docket

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No. WRU-2013-0005-0156, the Board noted that it might be appropriate to consider modifying or eliminating the peak alert rules.

On January 23, 2014, the Board initiated a notice of inquiry (NOI) regarding the Board's peak alert rules. The docket was identified as Docket No. NOI-2014-0002. Various comments were filed in response to that order and to another order issued on April 17, 2014, requesting additional comments. Participants that filed written comments included the Office of Consumer Advocate (OCA), the Environmental Law & Policy Center and the Iowa Environmental Council (ELPC and IEC), MidAmerican, Interstate Power and Light Company (IPL), the Iowa Association of Electric Cooperatives (IAEC), and the Iowa Association of Municipal Utilities (IAMU).

Inquiry participants generally agreed that the Board's peak alert rules should be revised to reflect changes in the electric industry. IPL and MidAmerican, the state's two investor-owned electric utilities, recommended that the rules be rescinded because utilities can measurably shed electric load through demand response programs in a reliable and consistent manner. IPL and MidAmerican stated that load shed as a result of peak alert rules is not easily measured. The IAEC was supportive of rescinding the rules or, in the alternative, modifying the rules to allow utilities to voluntarily notify customers of the benefits of reducing demand during peak periods, thus allowing utilities to educate consumers in the manner they deem most appropriate.

OCA and ELPC and IEC recommended that the Board retain the rules because they serve an important public purpose alongside energy efficiency programs and can potentially engage customers who do not participate in energy efficiency programs to reduce usage when a peak approaches. The IAMU noted that municipal utilities are not subject to the Board's peak alert rules pursuant to Iowa Code section 476.1B but filed general comments pertaining to the practices of municipal utilities.

While the load reductions resulting from peak alert notices may be difficult to measure, the Board does not believe the rules should be rescinded. Peak alerts request that consumers change their actions temporarily, potentially engaging customers who do not participate in energy efficiency programs to make some changes in actions that may become habits. The adopted rules make the rules more flexible to meet the needs of individual utilities.

Notice of Intended Action in Docket No. RMU-2014-0007 was published in IAB Vol. XXXVII, No. 12 (12/10/2014), p. 1037, as **ARC 1768C**. Written comments were filed by IPL, MidAmerican, OCA, and ELPC and IEC. All who provided written comments also participated in the oral presentation on January 28, 2015. The IAEC also participated in the oral presentation and offered comments.

OCA suggested additional language to the annual notice requirement in subrule 20.11(1) that would provide customers with information on the benefits of energy efficiency and ways customers can access additional information on a utility's energy efficiency programs. No one objected to the language, although ELPC and IEC offered more prescriptive language. The Board included OCA's suggested language in the adopted amendment; the more prescriptive language goes beyond the intent of the rules and could cause customer confusion. OCA's suggestion carries forward to the notification plan in paragraph 20.11(2)"c" and is also included there. However, the Board added the word "potential" before the phrase "benefits of energy efficiency" to make it clear that the Board is not prejudging that all energy efficiency programs are beneficial. Those issues are determined in energy efficiency plan proceedings.

From prior experience, more prescriptive language does not work well in every situation, which is why the rule had to be waived for MidAmerican during its extended revenue requirement freeze. Less prescriptive language will give utilities an opportunity to tailor the message to their specific situations and also recognizes that there are both summer and winter peaking utilities in Iowa. No other changes from the Noticed amendment have been made.

The changes to the Noticed amendment were the result of written and oral comments received in the rule-making process, and participants had an opportunity to respond to the proposed changes. Therefore, no additional notice is necessary prior to the adoption of these amendments.

The Board does not find it necessary to include a separate waiver provision in this rule making. The Board has a general waiver provision in 199 IAC 1.3 that is applicable to this amendment.

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

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This amendment is intended to implement Iowa Code sections 476.1, 476.1A, and 476.17.

This amendment will become effective on May 20, 2015.

The following amendment is adopted.

Amend rule 199—20.11(476) as follows:

**199—20.11(476) Customer notification of peaks in electric energy demand.** Each electric utility shall inform its customers of the significance of reductions in consumption of electricity during hours of peak demand.

**20.11(1) Annual notice.** Each electric utility shall provide its customers, on an annual basis, with a written notice ~~explaining how growth in demand affects a utility's investment costs and why reduction of customer usage~~ that informs customers of the significance of reductions in consumption of electricity during periods of peak demand may help delay or reduce the amount of future rate increases and the potential benefits of energy efficiency. ~~The notice shall include an explanation of the condition(s) under which peak alerts will be issued and the means by which the utility will inform customers that a peak alert is being issued. The notice shall provide ways a customer can access additional information on the utility's energy efficiency programs.~~ The notice shall include an explanation of the condition(s) under which peak alerts will be issued and the means by which the utility will inform customers that a peak alert is being issued. The notice shall provide ways a customer can access additional information on the utility's energy efficiency programs. The notice shall be delivered to its customers ~~between May 1 and June 15 of each year if peak demand is likely to occur during the months of June through September. If peak demand usually occurs during the months of October through February, the notice shall be delivered to its customers between August 1 and September 15~~ prior to the start of the utility's historical seasonal peak demand.

**20.11(2) Notification plan.** Each investor-owned utility shall have on file with the board a plan to notify its customers of an approaching peak demand on the day when peak demand is likely to occur.

~~a.~~ The plan shall include, at a minimum, the following:

~~a.~~ A description and explanation of the condition(s) that will prompt a peak alert.

~~(1) b.~~ (1) b. A provision for a general notice to be given to customers prior to the time when peak demand is likely to occur ~~as prescribed in 20.11(2) "b"~~ and an explanation of when and how notice of an approaching peak in electric demand will be given to customers.

~~(2)~~ (2) A provision for direct notice to be given customers whose load reduction will have a significant impact on the utility's peak. ~~The utility shall provide for such notice to be given prior to the time when peak demand is likely to occur, as prescribed in 20.11(2) "b," and shall explain the criteria used to identify customers to whom notice will be given and when and how notice will be given.~~

~~(3)~~ (3) A statement showing the total costs, with each component thereof itemized, projected to be associated with implementing the plan. ~~Notice should be provided in the most efficient manner available. The board may reject a plan which includes excessive costs or which specifies an ineffective method of customer notification and may direct development of a new plan.~~

~~(4) c.~~ (4) c. The text of the ~~general and direct message or messages~~ to be given in the general notice to customers. The message shall, ~~at a minimum,~~ include the name of the utility ~~or utilities~~ providing the notice, an explanation that conditions exist which indicate a peak in electric demand is approaching, and a statement that reduction in usage of electricity during the period of peak demand will ease the burden placed on the utility's system by growth in peak demand ~~and may help delay or reduce the amount of future rate increases~~ an explanation of the significance of reductions in electricity use during a period of peak demand and the potential benefits of energy efficiency.

~~(5)~~ (5) A designation of the U.S. weather station(s), situated within the utility's service territory, whose temperature readings and predictions will be used by the utility in applying the standard in 20.11(2) "b."

~~(6)~~ (6) A provision for joint delivery, by two or more utilities, of the general notice to customers in regions of the state where U.S. weather station(s) predict conditions specified in 20.11(2) "b" will exist on the same day.

~~b.~~ b. For purposes of this rule, peak demand is likely to occur on a nonholiday weekday between June 15 and September 15 when the following conditions exist:

~~(1)~~ (1) The utility's designated weather station predicts the temperature will rise above 95° Fahrenheit (35° Celsius), and the designated weather station officially recorded a temperature above 95° Fahrenheit (35° Celsius) on the previous day, or

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~~(2) The utility's designated weather station predicts the temperature will rise to above 90° Fahrenheit (33° Celsius) on a day following at least two consecutive days of temperatures above 95° Fahrenheit (35° Celsius), as officially recorded by the designated weather station, but~~

~~(3) If a utility can demonstrate it would have been required to provide between June 15 and September 15 a peak alert notice to customers, because of the existence of the conditions set forth in 20.11(2) "b"(1) or 20.11(2) "b"(2), on more than six days in any one of the preceding ten years, the utility may substitute a 97° Fahrenheit (36° Celsius) standard in lieu of the 95° Fahrenheit (35° Celsius) standard in the subrule.~~

~~20.11(3) *Implementation of notification plan.* The utility shall implement the approved its notification plan on each day of the year when peak demand is likely to occur, as prescribed by as needed to alleviate the conditions described in 20.11(2) "b a."~~

~~20.11(4) *Permissive notices.* The standard for implementing peak alert notification ~~in subrule 20.11(2)~~ is a minimum standard and does not prohibit a utility ~~or association of utilities~~ from issuing a notice requesting customers to reduce usage at any other time.~~

~~20.11(5) *Annual report.* Each electric utility required by subrule 20.11(2) to file a plan for customer notification shall file, on or before April 1 of each year, a report stating for the prior year providing the number text of the annual written notice and of the peak alert notices given its customers, the dates when the notices were issued, and the annual cost costs of providing both general and direct notice the annual written notice and the peak alert notices to customers and measures of kilowatt hour demand at the time when notice was given and at hourly intervals thereafter until kilowatt hour demand decreases to the level at which it was measured when the notice was issued. The annual report shall also include a statement of any problems experienced by the utility in providing customer notification of a peak demand and a proposal to modify modifications of the plan, if necessary, to make customer notification more effective. ~~Modifications must be approved by the board before they are implemented.~~~~

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**ARC 1959C**

## UTILITIES DIVISION[199]

### Adopted and Filed

Pursuant to Iowa Code sections 17A.4, 476.86, and 476.87, the Utilities Board (Board) gives notice that on March 24, 2015, the Board issued an order in Docket No. RMU-2014-0004, In re: Disconnection of Public Water Utility Service for Failure to Pay Sewer, Wastewater, or Storm Drainage Bill [199 IAC Chapter 21], "Order Adopting Amendments," in which the Board adopts amendments to the Board's water service rules to implement the statutory provisions in Iowa Code section 476.20(1)"b" that allow a public water utility to enter into an agreement with a city utility, city enterprise, combined city utility, or combined city enterprise to disconnect water service if an overdue debt is owed for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment.

The Board followed the procedures in Executive Order 80 prior to publication of the proposed amendments in the Iowa Administrative Bulletin. In accordance with Executive Order 80, the Board appointed a Stakeholder Group to provide recommendations on amendments to implement the statutory provisions. The members of the Stakeholder Group were: Julie Smith, Iowa Association of Municipal Utilities; Jeffrey K. Rosencrants, Iowa-American Water Company (Ken Jones replaced Rosencrants as the Iowa-American member); John Long, Consumer Advocate Division of the Department of Justice; Jim Odean, City of Davenport, Iowa; Jessica Kinser, City of Clinton, Iowa; Kristine Stone, City of Bettendorf, Iowa; and Don Tormey, Iowa Utilities Board.

On December 9, 2014, the Stakeholder Group submitted three alternative recommendations to the Board. Based upon the Stakeholder Group recommendations, the Board issued an order on January 15,

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2015, proposing amendments to its water service rules and approving a Notice of Intended Action to be submitted for publication in the Iowa Administrative Bulletin. The Notice of Intended Action on the proposed amendments was published in the Iowa Administrative Bulletin at IAB Vol. XXXVII, No. 16, (2/4/15), p. 1417, as **ARC 1848C**.

Comments were received supporting the proposed amendments from the Office of Consumer Advocate (OCA), a division of the Iowa Department of Justice. No other comments were received.

On March 12, 2015, the Board conducted an oral presentation to provide for additional public comment about the proposed amendments. OCA and Iowa-American Water Company (Iowa-American) appeared at the oral presentation. OCA had no additional comments. Iowa-American stated its support for recovery of any lost revenue that might occur from disconnection of water service based upon agreements with the cities in a general rate proceeding.

The order approving this Adopted and Filed rule making can be found on the Board's Electronic Filing System (EFS) Web site, <http://efs.iowa.gov>, in Docket No. RMU-2014-0004. The Board has adopted some nonsubstantive revisions to the language added to subrule 21.4(7).

After analysis and review of this rule making, the Board tentatively concludes that the adopted amendments will have a beneficial effect on the ability of cities served by public water utilities regulated by the Board to recover debts owed for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment.

These amendments are intended to implement Iowa Code sections 17A.4 and 476.20(1)“b.”

These amendments will become effective May 20, 2015.

The following amendments are adopted.

ITEM 1. Amend subrule 21.4(7) as follows:

**21.4(7) Refusal or disconnection of service.** Service may be refused or discontinued only for the reasons listed in paragraphs “a” through “f” below. Unless otherwise stated, the customer shall be permitted at least 12 days, excluding Sundays and legal holidays, following mailing of notice of disconnect in which to take necessary action before service is discontinued. When a person is refused service, the utility shall notify the person promptly of the reason for the refusal to serve and of the person's right to file a complaint about the utility's decision with the board.

- a. Without notice in the event of an emergency.
- b. Without notice in the event of tampering with the equipment furnished and owned by the utility or obtaining water by fraudulent means.
- c. For violation of or noncompliance with the utility's rules on file with the board.
- d. For failure of the customer to permit the utility reasonable access to its equipment.
- e. For nonpayment of bill provided that the utility has: (1) made a reasonable attempt to effect collection; and (2) given the customer written notice that the customer has at least 12 days, excluding Sundays and legal holidays, in which to make settlement of the account. In the event there is dispute concerning a bill for water service, the utility may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill pending settlement and thereby avoid discontinuance of service for nonpayment of the disputed bill for up to 45 days after the rendering of the bill. The 45 days shall be extended by up to 60 days if requested of the utility by the board in the event the customer files a written complaint with the board.

~~f. When a prospective customer is refused service, the utility shall notify the prospective customer promptly of the reason for the refusal to serve and of the applicant's right to appeal the utility's decision to the board.~~

f. For failure to pay a debt owed to a city utility, city enterprise, combined city utility, or combined city enterprise for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment. Disconnection of water service pursuant to this paragraph shall only be allowed if the governing body of a city utility, city enterprise, combined city utility, or combined city enterprise has entered into a written agreement with the public water utility that includes provisions:

- (1) Requiring that a notice of disconnection of water service for failure to pay a debt owed to the city utility, city enterprise, combined city utility, or combined city enterprise for wastewater service or

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services of sewer systems, storm water drainage systems, or sewage treatment be made by the public water utility and allow the customer 12 days, excluding Sundays and legal holidays, after the mailing of the notice to take necessary action to satisfy the debt.

(2) Providing for prompt notice from the city utility, city enterprise, combined city utility, or combined city enterprise to the public water utility that the debt for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment has been satisfied and providing that, once notified of the payment of the debt, the public water utility shall reconnect water service to the customer as provided for in the public water utility's tariff.

(3) Requiring the city utility, city enterprise, combined city utility, or combined city enterprise, prior to contacting the public water utility for disconnection of water service to a customer, to have completed the disconnection notification procedures established in the tariffs or ordinances of the city utility, city enterprise, combined city utility, or combined city enterprise.

(4) Providing that the customer may be charged a fee for disconnection and reconnection of water service by the public water utility for failure of the customer to pay a debt owed to the city utility, city enterprise, combined city utility, or combined city enterprise for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment, that the fee be no greater than the rates or charges established for reconnection and disconnection of water service in the water utility's tariffs approved by the utilities board, and that recovery of lost revenue by the public water utility as a result of disconnection of water service pursuant to this paragraph is not authorized under these rules.

ITEM 2. Amend paragraph **21.4(9)“c”** as follows:

c. Failure to pay for a different type or class of public utility service. Disconnection of water service pursuant to the provisions of paragraph 21.4(7)“f” is not considered a different type or class of public utility service for purposes of subrule 21.4(9).

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