

**IOWA FINANCE AUTHORITY[265]**

**Adopted and Filed Emergency**

Pursuant to the authority of 2013 Iowa Acts, House File 607, sections 28 and 38, and Iowa Code section 16.5(1)“r,” the Iowa Finance Authority hereby adopts new Chapter 44, “Iowa Agricultural Development Division,” and rescinds Agricultural Development Authority 25—Chapters 1 to 11, Iowa Administrative Code.

The purpose of this adoption is to establish rules in new Chapter 44 for the administration of the programs of the newly created Iowa Agricultural Development Division of the Iowa Finance Authority pursuant to 2013 Iowa Acts, House File 607, and Iowa Code chapter 175. In addition, pursuant to 2013 Iowa Acts, House File 607, section 28, the rules of the former Iowa Agricultural Development Authority, 25—Chapters 1 to 11, are rescinded.

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

The adoption of these rules on an emergency basis is authorized by 2013 Iowa Acts, House File 607, section 38. Accordingly the rules are Adopted and Filed Emergency, and the normal effective date of these rules is waived pursuant to Iowa Code section 17A.5(2)“b”(1). The Authority is also concurrently publishing these rules under Notice of Intended Action as **ARC 1113C** to allow for public comment.

The Authority adopted these rules on September 3, 2013.

After analysis and review of these rules, no impact on jobs has been found, as the rules merely continue programs already previously administered by the former Iowa Agricultural Development Authority.

These amendments are intended to implement 2013 Iowa Acts, House File 607, Iowa Code section 16.5(1) and Iowa Code chapter 175.

These amendments became effective on September 26, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following new 265—Chapter 44:

CHAPTER 44

IOWA AGRICULTURAL DEVELOPMENT DIVISION

**265—44.1(175) General.**

**44.1(1)** *Description of Iowa agricultural development division (IADD) board.* The IADD board consists of five members appointed by the governor. The executive director of the Iowa finance authority or the executive director’s designee shall serve as an ex officio nonvoting member. Members are appointed for staggered six-year terms. The appointed members shall elect a chairperson and vice chairperson annually, and other officers as the appointed members determine. The executive director of the authority may organize the division and employ necessary qualified personnel.

**44.1(2)** *General course and method of operations.* The IADD board generally meets on a monthly basis or at the call of the chairperson or whenever two appointed members so request. The purpose of the meetings shall be to review progress in implementation and administration of programs, to consider and act upon proposals for assistance, and take other actions as necessary and appropriate.

**44.1(3)** *Location where public may submit requests for assistance or obtain information.* Requests for assistance or information should be directed to the Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312; telephone (515)725-4900. Requests may be made personally, by telephone, U.S. mail or any other medium available, between the hours of 8 a.m. and 4:30 p.m., Monday through Friday. Special arrangements for accessibility to the authority at other times will be provided as needed.

**265—44.2(175) Definitions.** For any terms not defined in this rule, refer to Iowa Code section 175.2.

“Act” means together Iowa Code chapters 16 and 175 as amended by 2013 Iowa Acts, House File 607.

“*Agricultural asset*” means agricultural land, agricultural improvements, depreciable agricultural property, crops or livestock used for farming purposes.

“*Agricultural asset transfer agreement*” means any commonly accepted written agreement which specifies the terms of the transfer of operation of the agricultural asset. This may be made on a cash basis or a commodity share basis.

“*Agricultural improvements*” means any improvements, buildings, structures or fixtures suitable for use in farming which are located on agricultural land. “Agricultural improvements” includes a single-family dwelling located on agricultural land which is or will be occupied by the beginning farmer and structures attached to or incidental to the use of the dwelling.

“*Agricultural land*” means land suitable for use in farming and which is or will be operated as a farm.

“*Application*” means a completed instrument on a form approved by IADD.

“*BFCF*” means beginning farmer custom farming tax credit program.

“*BFCF eligible applicant*” means an individual, partnership, family farm corporation or family farm limited liability company, who has a net worth of not more than the maximum allowable net worth. The applicant must also satisfy all of the criteria contained in Iowa Code sections 175.36A and 175.38, who satisfies all of the criteria contained in the Act and provisions of these rules relating to recipient eligibility and who operates or will operate a farm.

“*BFLP*” means beginning farmer loan program.

“*BFLP eligible applicant*” means an individual who has a net worth of not more than the maximum allowable net worth. The applicant must also be a beginning farmer, as defined in Iowa Code section 175.12, who satisfies all of the criteria contained in the Act and provisions of these rules relating to recipient eligibility and who operates or will operate a farm.

“*BFTC*” means beginning farmer tax credit program.

“*BFTC eligible applicant*” means an individual, partnership, family farm corporation or family farm limited liability company, who has a net worth of not more than the maximum allowable net worth. The applicant must also satisfy all of the criteria contained in Iowa Code sections 175.36A and 175.37, who satisfies all of the criteria contained in the Act and provisions of these rules relating to recipient eligibility and who operates or will operate a farm.

“*Bond purchaser*” means any lender or any person, as defined in Iowa Code section 4.1(13), who purchases an authority bond under the individual agricultural development bond program.

“*Cash basis agreement*” means an agreement whereby operation of the agricultural asset is transferred via a fixed cash payment per annum.

“*Commodity share basis*” means an agreement whereby operation of the agricultural asset is transferred via a risk-sharing mechanism, whereby the agricultural asset owner receives a portion of the production and payment for use of the agricultural asset.

“*Custom farming contract*” means any commonly accepted written contract which specifies the terms of the work to be performed by the beginning farmer for an Iowa landowner or tenant and/or livestock owner. The contract must provide for the production of crops or livestock located on agricultural land. The taxpayer will pay the BFCF eligible applicant on a cash basis and must equal at least \$1,000. The contract must be in writing for a term of not more than 12 months. A contract is not allowed if the taxpayer and BFCF eligible applicant are: persons who hold a legal or equitable interest in the same agricultural land or livestock; related family members such as spouse, child, stepchild, brother, or sister; partners in the same partnership which holds a legal or equitable interest.

“*Farm*” means a farming enterprise which is generally recognized as a farm rather than a rural residence.

“*Farming*” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing, the production of livestock, aquaculture, hydroponics, the production of forest products, or other activities designated by the authority.

“*Lender*” means any regulated bank, trust company, bank holding company, mortgage company, national banking association, savings and loan association, life insurance company, state or federal

governmental agency or instrumentality, or other financial institution or entity authorized and able to make mortgage loans or secured loans in this state.

*“Low-income farmer”* means a farmer who cannot obtain financing to purchase agricultural property without the assistance of an LPP loan with the authority.

*“LPP”* means loan participation program.

*“LPP eligible applicant”* means an individual who has a net worth of not more than the maximum allowable net worth. The applicant must be a low-income farmer, who satisfies all of the criteria contained in the Act and provisions of these rules relating to recipient eligibility and who operates or will operate a farm.

*“LPP loan”* means the “last-in/last-out” loan participation requested by the lender from the authority.

*“Maximum allowable net worth”* for calendar year 2013 is \$691,172. The maximum allowable net worth for each calendar year shall be increased or decreased as of January 1 of such calendar year by an amount equal to the percentage increase or decrease (September to September) in the United States Department of Agriculture “Index of Prices Paid for Commodities and Services, Interest, Taxes, and Farm Wage Rates” reported as of October 1 of the immediately preceding calendar year.

*“Net worth”* means total assets minus total liabilities as determined in accordance with generally accepted accounting principles with appropriate exceptions and exemptions reasonably related to an equitable determination of the net worth of the individual, partnership, limited liability company or corporation. Assets shall be valued at fair market value.

*“Participated loan”* means a loan, any portion of which is participated to the authority by the lender.

*“Projected gross income”* is the total of all nonfarm income plus gross farm revenues which include revenue from cash sales, inventory and receivable charges; crops, livestock products, government program payments, and other farm income received by the borrower during the next calendar year.

*“Term debt coverage ratio”* is the total of net farm income from operations plus total nonfarm income plus depreciation/amortization expense plus interest on term debt plus interest on capital leases minus total income tax expense minus withdrawals for family living multiplied by 100 and divided by the sum of annual scheduled principal and interest payments on term debt and the annual scheduled principal and interest payments on capital leases. The ratio provides a measure of the ability of the borrower to cover all term debt and capital lease payments. The greater the ratio over 100 percent, the greater the margin to cover the payments.

*“Total assets”* shall include but not be limited to the following: cash; crops or feed on hand; livestock held for sale; breeding stock; marketable bonds and securities; securities (not readily marketable); accounts receivable; notes receivable; cash invested in growing crops; net cash value of life insurance; machinery, equipment, cars and trucks; farm and other real estate including life estates and personal residence; value of beneficial interest in a trust; government payments or grants; any other assets.

*“Total assets”* shall not include items used for personal, family or household purposes by the applicant; but in no event shall any property be excluded, to the extent a deduction for depreciation is allowable for federal income tax purposes. All assets shall be valued at fair market value by the lender. The value shall be what a willing buyer would pay a willing seller in the locality. A deduction of 10 percent may be made from fair market value of farm and other real estate.

*“Total liabilities”* shall include but not be limited to the following: accounts payable; notes or other indebtedness owed to any source; taxes; rent; amount owed on real estate contract or real estate mortgages; judgments; accrued interest payable; any other liabilities. Liabilities shall be determined on the basis of generally accepted accounting principles.

In only those cases where the liabilities include an amount for deferred tax liability that causes the applicant’s net worth to change from exceeding the maximum allowable net worth to an amount no greater than the maximum allowable net worth, the applicant is required to have a certified public accountant prepare the financial statement and provide supporting calculations and documentation acceptable to the board.

*“Veteran”* means the same as defined in Iowa Code section 35.1.

**265—44.3(175) General recipient eligibility.**

**44.3(1) Residence.** The eligible applicant must be a resident of Iowa. The project must be located in Iowa.

**44.3(2) Training and experience.** The eligible applicant must have documented to the satisfaction of the authority sufficient education, training, and experience for the anticipated farm operations.

**44.3(3) Access to capital.** The eligible applicant must demonstrate to the satisfaction of the authority access to the following as may be needed: adequate working capital; farm machinery; livestock; agricultural land.

**265—44.4(175) Beginning farmer loan program.**

**44.4(1) Individual agricultural development bond program description.** This program is intended to allow BFLP eligible applicants to obtain lower interest rate loans for qualified purposes by obtaining loan funds from the proceeds of a tax-exempt bond issued by the authority and purchased by the bond purchaser. The authority will enter into a loan agreement with the BFLP eligible applicant and assign that BFLP loan to the bond purchaser. At the same time, the authority will issue a tax-exempt bond in the amount of the BFLP loan, and the bond purchaser will purchase that bond, which is used to fund the BFLP loan assigned to the bond purchaser. The bond which is issued by the authority and purchased by the bond purchaser is a nonrecourse obligation. The only security for the bond purchaser is the underlying security on the assigned BFLP loan.

**44.4(2) Application procedures.** The BFLP eligible applicant may apply for a BFLP loan with any bond purchaser. Any BFLP loan approved will be assigned to that bond purchaser. BFLP loan eligibility is determined by the requirements of the Act and the rules of the authority.

*a.* If a BFLP eligible applicant meets the BFLP loan eligibility requirements, the decision on whether to enter into the loan agreement is between the BFLP eligible applicant and the bond purchaser. They must agree on terms of the loan, such as interest rates, length of loan, down payment, service fees, origination charges, and repayment schedule, which may not be any more onerous than those charged to similar customers for similar loans, but taking into account the tax-exempt nature of interest on the BFLP loan.

*b.* Following completion of the BFLP loan application by the BFLP eligible applicant and approval by the bond purchaser, the BFLP loan application must be submitted to the authority for its review and approval.

*c.* The authority's review will include, but not be limited to, whether:

- (1) The BFLP loan applicant is a BFLP eligible applicant;
- (2) The BFLP loan proceeds will be used for a qualified purpose under the Act, rules of the authority, and the Internal Revenue Code and IRS regulations relating to private activity bonds;
- (3) The terms of the BFLP loan comply with these rules; and
- (4) The bond purchaser meets the definition of a lender or bond purchaser.

*d.* The authority may require that the bond purchaser furnish any information which the authority deems necessary to determine whether the bond purchaser qualifies as either a lender or bond purchaser. If the authority determines that the bond purchaser does not qualify as either a lender or bond purchaser, it may deny the application.

*e.* Following approval and issuance of the bond, the authority will enter into a loan agreement with the BFLP eligible applicant and then assign the BFLP loan without recourse to the bond purchaser. The authority may charge fees as needed to defray its costs for processing the BFLP loan and bond.

**44.4(3) Issuance of bond.** The authority will not issue a bond for the purpose of financing a project for a specific BFLP eligible applicant unless, prior to its issuance, the authority has conformed to the applicable requirements of the United States Internal Revenue Code of 1986 as amended, and its regulations.

*a.* Public hearings may be held by a staff member, board member of the authority, an appointee or employee of the authority, or other qualified hearing officer.

*b.* Following approval of the BFLP loan by the authority, and upon completion of a public hearing and approval of the bond issuance by the governor or another elected state official designated by the

governor, the authority will issue a bond, to be purchased by the bond purchaser, in the amount and fitting the terms of the BFLP loan to the BFLP eligible applicant. The principal and interest on the bond is a limited obligation payable solely out of the revenues derived from the BFLP loan to the BFLP eligible applicant and the underlying collateral or other security furnished by or on behalf of the BFLP eligible applicant. The bond purchaser shall have no other recourse against the authority. The principal and interest on the bond does not constitute an indebtedness of the authority or a charge against its general credit or general fund.

**44.4(4) Priority of applications.** Applications shall be processed by the authority on a first-come, first-served basis, based upon the receipt of all completed documents by the authority.

**44.4(5) Procedures following bond issuance.** No bond proceeds may be used for a nonqualified purpose or by a nonqualified user. Following disbursement of the bond proceeds, the bond purchaser and BFLP eligible applicant may be required to certify to the authority that the proceeds were used by the BFLP eligible applicant for a qualified purpose.

**44.4(6) Assignment of BFLP loans by bond purchasers.** A bond purchaser may assign a BFLP loan in whole or in part to any person, as defined in Iowa Code section 4.1(13). Serving of the BFLP loan may also be assigned. The authority must be notified in writing prior to assignment of the BFLP loan.

**44.4(7) Assumption of BFLP loans, substitution of collateral and transfer of property.** BFLP loans may not be assumed without the prior approval of the authority, and then only if the purchaser of the property is a BFLP eligible applicant for a BFLP loan. Equipment and other depreciable property may be exchanged or traded for similar property, and other property such as breeding livestock may be added or substituted as collateral at the discretion of the bond purchaser without the prior approval of the authority.

**44.4(8) Right to audit.** The authority shall have at any time the right to audit the records of the bond purchaser and the BFLP eligible applicant relating to the BFLP loan and bond to ensure that bond proceeds were used for a qualified purpose by a qualified user.

## **265—44.5(175) Loan participation program.**

**44.5(1) Program summary.** The loan participation program is intended to assist lenders and LPP eligible applicants (hereafter referred to as “borrower(s)”) by participating in a loan for the purchase of agricultural property.

*a. Supplement to borrower’s down payment.* The LPP loan can be used to supplement the borrower’s down payment so that the borrower can more readily secure a loan (the “participated loan”) from a lender.

*b. Last-in/last-out collateral position.* The program enables lenders to request a “last-in/last-out” LPP loan from the authority. The lender, on behalf of the borrower, shall apply for the LPP loan on application forms provided by the authority.

*c. Lender’s certification.* The lender and the borrower shall certify that the information included in the application and any other documents submitted for consideration is true and correct to the best of their knowledge.

*d. LPP loan in conjunction with BFLP loan.* The loan participation program may be used in conjunction with the authority’s beginning farmer loan program, provided the borrower meets the criteria for both programs.

**44.5(2) Underwriting criteria.** Commercial underwriting criteria will be used as determined by the authority.

**44.5(3) Eligible projects and activities.**

*a. Use of project.* LPP loans must be for new purchases or new construction. Assets purchased or constructed with LPP loan funds must be used for agricultural purposes.

*b. Agricultural land.* The participated loan can be used for the purchase of agricultural land, which may include small acreages on which sufficient agricultural improvements are located to conduct a livestock operation. If a house is located on land for which an LPP loan is requested, an appraisal of the house will be made. If the appraised value of the house exceeds 50 percent of the appraised value of the property or total collateral, then the property will not be eligible for an LPP loan.

*c. Agricultural improvements.* The participated loan can be used for the construction or purchase of improvements located on agricultural land (which is suitable for use in farming). Examples of such improvements include, but are not limited to, the following: confinement systems for swine, cattle, or poultry; barns or other outbuildings; grain storage facilities and silos.

*d. Livestock used for breeding purposes.* The participated loan can be used for the purchase of livestock for which an income tax deduction for depreciation is allowed in computing state and federal income taxes.

*e. Machinery and equipment.* The participated loan can be used for the purchase of agricultural machinery and equipment for which an income tax deduction for depreciation is allowed in computing state and federal income taxes. This machinery and equipment must be used in the borrower's farming operation.

*f. Interim financing by lender.* Interim financing by the lender may be done.

**44.5(4) Ineligible projects and activities.** The following program activities are ineligible:

*a. Refinancing of existing debt.* Refinancing of existing debt or new purchases which have been incurred by the borrower more than 60 days prior to approval of the LPP loan by the authority.

*b. Financing personal expenses.* Financing personal or living expenses and working capital to purchase such items as feed, seed, fertilizer, fuel, and feeder livestock.

*c. Down payment funds for contract sale.* Down payment to a contract sale, or in connection with a loan from a nonregulated lender.

**44.5(5) Program parameters.**

*a. Purchase price impact.* Maximum LPP loan amount is the lesser of:

- (1) Thirty percent of the purchase price; or
- (2) \$150,000.

*b. LPP loan terms.* The authority has established the following with respect to LPP loan terms:

(1) The maximum amortization period for the LPP loan is 7 years for depreciable agricultural property. When a participated loan is made for livestock, the length of the LPP loan is restricted to the expected useful life of the animal being purchased.

(2) LPP loan payments on participated real estate loans will be equally amortized for the term of the LPP loan, but shall not exceed a 20-year amortization, including a 10-year term with balloon payment and the balance of the LPP loan paid in full by the end of the tenth year. If utilized in conjunction with federal programs, the amortization will be consistent with federal rules.

(3) The IADD board will set the interest rate on the LPP loan.

*c. LPP loans outstanding.* Loans under the program may be issued more than once, provided that the outstanding LPP loan totals do not exceed \$150,000 to any single borrower.

**44.5(6) LPP loan application procedures.**

*a. Financial statement.* Lenders may use their own form of financial statement and other forms deemed necessary and appropriate to document the eligibility of the borrower and the borrower's ability to make principal and interest payments. A copy of the borrower's most current financial statement (generally prepared one month preceding application submission), the prior two years' financial statements, and a projected after-closing financial statement must be submitted with the application.

If the borrower or the borrower's spouse is involved in a business, partnership, limited liability company, or corporation, either related or unrelated to the borrower's farming operation, a financial statement from this entity must also be submitted with the application.

*b. Income statement.* A copy of the borrower's prior three years' federal income tax returns (if available) shall be submitted.

*c. Background letter.* The application will also include a background letter on the LPP eligible applicant documenting to the satisfaction of the authority sufficient training, experience and access to capital.

*d. Credit evaluation.* The lender will submit a credit evaluation of the project for which an LPP loan is sought. The lender will evaluate the borrower's net worth and ability to pay principal and interest and certify the sufficiency of security for the participated loan. The authority will review the application

and make its own credit evaluation prior to issuance of an LPP loan. Such evaluation will center on whether:

(1) The borrower adequately demonstrates the ability to service the debt requirements of the participated loan based on cash flow, net worth, down payment, and collateral pledged for the participated loan.

(2) The borrower provides sufficient collateral to adequately secure the participated loan and keep the participated loan collateralized throughout its term.

(3) The lender certifies that all of the borrower's debts will be current at the time the participated loan is closed.

(4) The applicant is a low-income farmer who cannot obtain financing to purchase agricultural property without the assistance of an LPP loan with the authority.

(5) The lender certifies that no other private or state credit is available or can be obtained in a timely manner.

*e. Processing LPP loan applications.* Applications for the program will be taken and processed by the authority on a first-come, first-served basis. The authority reserves the right to change the program or terminate the approval of LPP loans under the program at any time. Grounds for termination/suspension of the program would include, but not be limited to, reaching the maximum allowable limit for total outstanding LPP loans as established by the authority or changing the program by order of the Iowa general assembly or by rules promulgated by the authority.

*f. Security for participated loans and use of security documents.* The lender shall take any security, cosignatures, guarantees or sureties that are deemed necessary for any participated loan. Any guarantee of repayment or pledge of additional collateral required by the lender to secure the participated loan shall secure the entire participated loan.

*g. Recording documents and fees.* Any recording or filing fees or transfer taxes associated with the participated loan will be paid by the borrower or lender and not the authority. Also, the authority will have no responsibility with respect to the preparation, execution, or filing of any declaration of value or groundwater hazard statements.

**44.5(7) Loan administration procedures.**

*a. Lender's responsibilities.* The lender is responsible for servicing the participated loan following accepted standards of loan servicing and transferring LPP loan payments to the authority.

(1) At the request of IADD, the lender shall:

1. On an annual basis, provide the authority with copies of a current financial statement or a current tax return, or both.

2. Provide copies of insurance to the authority with the lender named as loss payee. Lender will apply payments to the participated loan on a pro-rata basis.

(2) The lender shall not, without prior consent of the authority:

1. Make or consent to any substantial alterations in the terms of any participated loan instrument;

2. Make or consent to releases of security or collateral unless replaced with collateral of equal value on the participated loan;

3. Use the collateral purchased with funds from the participated loan as security for any other loan without prior written consent of the authority;

4. Accelerate the maturity of the participated loan;

5. Sue upon any participated loan instrument;

6. Waive any claim against any borrower, cosignor, guarantor, obligor, or standby creditor arising out of any instruments.

*b. Payment due dates.* Payment due dates for the LPP loan will be the same as for the lender's share of the loan.

*c. Prepayment penalty.* There is no penalty for early repayment of principal or interest.

*d. Repayment proceeds and collateral.* Without limitation, the repayment of proceeds and collateral shall include rights of setoff and counterclaim, which the lender or the authority jointly or severally may at any time recover on any participated loan.

*e. Subsequent loans.* Any loan or advance made by a lender to a borrower subsequent to obtaining an LPP loan under the program and secured by collateral or security pledged for the participated loan will be subordinate to the participated loan.

*f. Events of loan default.*

(1) Default will occur when the participated loan payment is 30 days past due. Notice to cure will be sent to the borrower with a copy sent to the authority; and the lender will take appropriate steps to cure the default through mediation, liquidation, or foreclosure if needed.

(2) After a participated loan is in default for a period of 30 days, the lender shall file with the authority monthly reports regarding the status of the participated loan.

(3) The authority may, anytime a participated loan is in default, purchase the unpaid portion of the participated loan from the lender including the note, security agreements, additional guarantees, and other documents. The authority would become the servicer of the participated loan in such case.

*g. Applying principal and interest payments.* Lenders shall receive all payments of principal and interest. All payments made prior to liquidation or foreclosure shall be made on a pro-rata basis. All accrued interest must be paid to zero at least annually on the anniversary date of the note.

*h. Application of proceeds of loan liquidation.* Application of proceeds of loan liquidation will be determined after a written liquidation plan is approved by the authority or the authority's loan committee. All amounts recovered upon liquidation or foreclosure will be applied first to the unpaid balance of the lender's portion and then to the unpaid portion of the LPP loan's portion. All funds received from liquidation or foreclosure procedures shall be applied in the following order of priority:

First Priority: To the payment of the outstanding principal of and accrued interest on the lender's portion of the participated loan;

Second Priority: To the payment of the outstanding principal of and accrued interest on the authority's LPP loan;

Third Priority: To the payment on a pro-rata basis of all reasonable and necessary expenses incurred by the lender or the authority in connection with such liquidation or foreclosure procedures.

**44.5(8) Right to audit.** The authority shall have, at any time, the right to audit records of the lender and the borrower relating to any participated loan made under the program.

## **265—44.6(175) Beginning farmer tax credit program.**

**44.6(1) General provisions.**

*a. Term.* The term of the credit shall be equal to the term of the agricultural assets transfer agreement, except that any unused credit may be carried forward for a period of five years if unused in the tax year the credits are earned. Credits may not be carried back to past tax years.

*b. Fees.* The authority may charge reasonable and necessary fees to defray the costs of this program.

*c. Expiration of lease.* The BFTC eligible applicant will continue to be eligible for the term of the lease. Upon expiration of the lease, both the taxpayer and BFTC eligible applicant must reapply to continue the tax credit.

**44.6(2) Application procedures.**

*a.* The authority shall prepare and make available appropriate forms to be used in making application for the tax credit, including forms for both the taxpayer and the BFTC eligible applicant.

*b.* Each application shall include, but not be limited to, the following:

(1) Taxpayer information: name and address, e-mail address if available, social security number, length of the lease, type of lease, and location of the agricultural asset to be leased. In addition, the application shall have attached to it a copy of the lease agreement between the parties.

(2) BFTC eligible applicant information: name and address, e-mail address if available, social security number, and location of the asset to be leased. In addition, the application shall have attached to it a copy of the BFTC eligible applicant's most recent financial statement (generally prepared one month preceding application submission). The application will also include a background letter on the BFTC eligible applicant documenting to the satisfaction of the authority sufficient training, experience

and access to capital. This letter may be submitted by one or more of the following: the BFTC eligible applicant, the taxpayer or another third party.

*c.* Complete applications shall be processed in the order they are received by the authority.

**44.6(3) Execution of an agricultural assets transfer agreement.** In addition to the requirements set forth above, both the taxpayer and the BFTC eligible applicant shall execute an agricultural assets transfer agreement. This form shall be in a format from the Iowa Bar Association or other commonly accepted form and signed by all parties.

**44.6(4) Procedures following tax credit approval.** Either the BFTC eligible applicant or the taxpayer shall immediately notify the authority of any material changes in the agricultural assets transfer agreement. The authority shall act upon these changes pursuant to Iowa Code section 175.37. Material changes cannot result in an increase in the original tax credit amount approved. Death of a party to the lease, divorce, or sale of the property will be considered eligible material changes. Sale of the property will be considered only if the original lease terms remain in effect and the asset purchaser is determined to be eligible for the program.

## **265—44.7(16) Beginning farmer custom farming tax credit program.**

**44.7(1) General provisions.**

*a. Term.* The term of the credit shall not exceed one year, except that any unused credit may be carried forward for a period of five years if unused in the tax year the credits are earned. Credits may not be carried back to past tax years.

*b. Fees.* The authority may charge reasonable and necessary fees to defray the costs of this program.

*c. Expiration of custom hire contract.* The BFCF eligible applicant will continue to be eligible during the year of the custom farming contract. Upon expiration of the contract, both the taxpayer and BFCF eligible applicant must reapply to qualify for subsequent tax credits.

**44.7(2) Application procedures.**

*a.* The authority shall prepare and make available appropriate forms to be used in making application for the tax credit, including forms for both the taxpayer and the BFCF eligible applicant.

*b.* Each application shall include, but not be limited to, the following:

(1) Taxpayer information: name and address, e-mail address if available, social security number, and description and location of the custom hire work completed. In addition, the application shall have attached to it a copy of the custom hire contract between the parties.

(2) BFCF eligible applicant information: name and address, e-mail address if available, social security number, and location of where custom hire work was completed. In addition, the application shall have attached to it a copy of the BFCF eligible applicant's most recent financial statement (generally prepared one month preceding application submission). The application will also include a background letter on the BFCF eligible applicant documenting to the satisfaction of the authority sufficient training, experience and access to capital. This letter may be submitted by one or more of the following: the BFCF eligible applicant, the taxpayer or another third party.

*c.* Complete applications shall be processed in the order they are received by the authority.

**44.7(3) Execution of custom farming contract.** In addition to the requirements set forth above, both the taxpayer and the BFCF eligible applicant shall execute a custom farming contract. This form shall be in a format provided by the authority or other commonly accepted forms and signed by all parties.

**44.7(4) Calculation of custom hire tax credit.** The taxpayer and BFCF eligible applicant will submit a completed application to the authority, including a list of all custom work completed by the BFCF eligible applicant. The application will also include verification of all payments made to the BFCF eligible applicant for work completed.

**44.7(5) Procedures following tax credit approval.** Either the BFCF eligible applicant or the taxpayer shall immediately notify the authority of any material changes in the custom hire contract. The authority shall act upon these changes pursuant to Iowa Code section 175.38. Material changes cannot result in

an increase in the original tax credit amount approved. Death of a party to the contract, divorce, or sale of the property will be considered eligible material changes.

These rules are intended to implement Iowa Code chapter 175 and 2013 Iowa Acts, House File 607.

ITEM 2. Rescind **25—Chapter 1 to Chapter 11.**

[Filed Emergency 9/26/13, effective 9/26/13]

[Published 10/16/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/16/13.