



# 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.

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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 2012

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. 21 '11*</b>	Jan. 11 '12	Jan. 31 '12	Feb. 15 '12	Feb. 17 '12	Mar. 7 '12	Apr. 11 '12	July 9 '12
Jan. 6	Jan. 25	Feb. 14	Feb. 29	Mar. 2	Mar. 21	Apr. 25	July 23
Jan. 20	Feb. 8	Feb. 28	Mar. 14	Mar. 16	Apr. 4	May 9	Aug. 6
Feb. 3	Feb. 22	Mar. 13	Mar. 28	Mar. 30	Apr. 18	May 23	Aug. 20
Feb. 17	Mar. 7	Mar. 27	Apr. 11	Apr. 13	May 2	June 6	Sep. 3
Mar. 2	Mar. 21	Apr. 10	Apr. 25	Apr. 27	May 16	June 20	Sep. 17
Mar. 16	Apr. 4	Apr. 24	May 9	May 11	May 30	July 4	Oct. 1
Mar. 30	Apr. 18	May 8	May 23	<b>***May 23***</b>	June 13	July 18	Oct. 15
Apr. 13	May 2	May 22	June 6	June 8	June 27	Aug. 1	Oct. 29
Apr. 27	May 16	June 5	June 20	<b>***June 20***</b>	July 11	Aug. 15	Nov. 12
May 11	May 30	June 19	July 4	July 6	July 25	Aug. 29	Nov. 26
<b>***May 23***</b>	June 13	July 3	July 18	July 20	Aug. 8	Sep. 12	Dec. 10
June 8	June 27	July 17	Aug. 1	Aug. 3	Aug. 22	Sep. 26	Dec. 24
<b>***June 20***</b>	July 11	July 31	Aug. 15	Aug. 17	Sep. 5	Oct. 10	Jan. 7 '13
July 6	July 25	Aug. 14	Aug. 29	<b>***Aug. 29***</b>	Sep. 19	Oct. 24	Jan. 21 '13
July 20	Aug. 8	Aug. 28	Sep. 12	Sep. 14	Oct. 3	Nov. 7	Feb. 4 '13
Aug. 3	Aug. 22	Sep. 11	Sep. 26	Sep. 28	Oct. 17	Nov. 21	Feb. 18 '13
Aug. 17	Sep. 5	Sep. 25	Oct. 10	Oct. 12	Oct. 31	Dec. 5	Mar. 4 '13
<b>***Aug. 29***</b>	Sep. 19	Oct. 9	Oct. 24	<b>***Oct. 24***</b>	Nov. 14	Dec. 19	Mar. 18 '13
Sep. 14	Oct. 3	Oct. 23	Nov. 7	<b>***Nov. 7***</b>	Nov. 28	Jan. 2 '13	Apr. 1 '13
Sep. 28	Oct. 17	Nov. 6	Nov. 21	<b>***Nov. 21***</b>	Dec. 12	Jan. 16 '13	Apr. 15 '13
Oct. 12	Oct. 31	Nov. 20	Dec. 5	<b>***Dec. 5***</b>	Dec. 26	Jan. 30 '13	Apr. 29 '13
<b>***Oct. 24***</b>	Nov. 14	Dec. 4	Dec. 19	<b>***Dec. 19***</b>	Jan. 9 '13	Feb. 13 '13	May 13 '13
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<b>***Nov. 21***</b>	Dec. 12	Jan. 1 '13	Jan. 16 '13	Jan. 18 '13	Feb. 6 '13	Mar. 13 '13	June 10 '13
<b>***Dec. 5***</b>	Dec. 26	Jan. 15 '13	Jan. 30 '13	Feb. 1 '13	Feb. 20 '13	Mar. 27 '13	June 24 '13
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### PRINTING SCHEDULE FOR IAB

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18	Friday, February 17, 2012	March 7, 2012
19	Friday, March 2, 2012	March 21, 2012
20	Friday, March 16, 2012	April 4, 2012

**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\*\*\***

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**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Water quality certification, 61.2(2)"g" IAB 2/8/12 <b>ARC 9998B</b>	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	March 13, 2012 1 p.m.
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Hazardous waste, rescind chs 140, 141, 148, 150, 151 IAB 2/8/12 <b>ARC 9994B</b>	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	March 6, 2012 1 p.m.
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**PUBLIC SAFETY DEPARTMENT[661]**

Identification cards for former peace officers of the department, ch 93 IAB 2/8/12 <b>ARC 9988B</b>	First Floor Conference Room Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	April 3, 2012 9:30 a.m.
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The following list will be updated as changes occur.

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

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

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**ARC 9992B****AGING, DEPARTMENT ON[17]****Notice of Termination**

Pursuant to the authority of Iowa Code sections 231.23 and 17A.3, the Iowa Department on Aging hereby terminates the rule making initiated by its Notice of Intended Action to amend Chapter 4, "Department Planning Responsibilities," Iowa Administrative Code, published in the Iowa Administrative Bulletin as **ARC 9864B** on November 30, 2011. The amendments were also Adopted and Filed Emergency as **ARC 9863B** and published on the same date.

The Iowa Department on Aging did not receive any public comments within the designated comment period. The Department finds no further need to proceed with rule making for **ARC 9864B**.

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

**CIVIL REPARATIONS TRUST FUND**

Pursuant to Iowa Administrative Code 361—subrule 12.2(1), the Executive Council gives Notice that the Civil Reparations Trust Fund balance as of December 31, 2011, is approximately \$3,454.00. Money in the Civil Reparations Trust Fund is available for use for indigent civil litigation programs or insurance assistance programs. Application forms are available in the office of the State Treasurer by contacting GeorgAnna Madsen, Executive Secretary, State Capitol Room 114, Des Moines, Iowa 50319; telephone (515)281-5368. Applications must be filed on the thirtieth day after the date of publication of this Notice in the Iowa Administrative Bulletin, or on the thirtieth day after the date affixed to the Notice sent by first-class mail, whichever is later. Any person/company that would like to receive future notices should make request in writing to the above-mentioned contact. Rules regarding the Civil Reparations Trust Fund can be found at 361 IAC Chapter 12.

**ARC 9998B****ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 61, "Water Quality Standards," Iowa Administrative Code.

The proposed amendment will provide water quality certification pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. Section 1341) for U.S. Army Corps of Engineers' Nationwide Permits (NWPs) and the associated conditions and definitions.

Section 404 of the Clean Water Act (CWA) requires a permit from the Corps of Engineers (Corps) for the discharge of dredged or fill materials into the nation's waters. Section 401 of the CWA requires that before the Corps can issue a Section 404 permit, the state water quality agency must certify that the proposed activity will not violate state water quality standards.

Section 404 authorizes the Corps to issue general permits on a state, regional or nationwide basis for categories of activities where such activities will have minimal adverse effects. The Corps has used its general permit authority to issue a number of general permits on a nationwide basis (i.e., NWPs). General permits, including NWPs, can be issued for a period not exceeding five years, and a state water quality agency must provide Section 401 certification for a Section 404 general permit before the general

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

permit is valid for that particular state. The Commission previously provided Section 401 certification for the existing NWP and four regional permits. These permits are referenced in paragraph 61.2(2)“g.”

The Corps issued a notice of intent to reissue the existing NWP, General Conditions and definitions with some modifications. The Corps will allow one NWP to expire and not be reissued. This NWP was never used in Iowa. The Corps will issue two new NWP and two new general conditions. The Rock Island District deleted a Regional Condition to be used within the state of Iowa that has been incorporated into the NWP at the Corps Headquarters level. This amendment would provide Section 401 certification for the modified and new NWP, conditions and definitions.

Any interested person may file written comments on the proposed amendment on or before March 13, 2012. Written comments or questions regarding the proposed amendment or the Corps' NWP should be directed to Christine Schwake, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319-0034; telephone (515)281-6615; fax (515)281-8895; E-mail [christine.schwake@dnr.iowa.gov](mailto:christine.schwake@dnr.iowa.gov).

Oral or written comments will also be accepted at a public hearing to be held on March 13, 2012, at 1 p.m. in the Fifth Floor West Conference Room of the Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa.

The rule making and related documents were submitted to the Governor's Office on November 10, 2011. The Department was notified on November 16, 2011, that the rule had been cleared after revision.

After analysis and review of this rule making, there should be a positive impact on jobs. This amendment is intended to have a positive impact on small businesses. The Iowa certification of the NWP will reduce the regulatory burden on permit applicants by allowing these businesses to avoid individual certifications for their projects. The adoption of this amendment will allow projects to proceed more rapidly and should therefore allow more projects to be undertaken and completed, thus boosting economic activity. If the DNR delays this rule making to await the finalization of the federal rules, there will be a period in which businesses will need to obtain individual certification of their projects by the state, which will cause delay in project implementation.

This amendment is intended to implement Iowa Code chapter 455B, division III, part 1.

The following amendment is proposed.

Amend paragraph **61.2(2)“g”** as follows:

g. This policy shall be applied in conjunction with water quality certification review pursuant to Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567—Chapters 70, 71, and 72, the activity will be considered consistent with this policy. Other activities not otherwise exempted will be subject to 567—Chapters 70, 71, and 72 and this policy. United States Army Corps of Engineers (Corps) nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50, 51, and 52 as well as Corps regional permits 7, 27, 33, and 34 as promulgated ~~February 16, 2011~~ date to be determined upon filing, are certified pursuant to Section 401 of the Clean Water Act subject to the following Corps regional conditions and the state water quality conditions:

(1) Side slopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if not armored.

(2) Nationwide permits with mitigation may require recording of the nationwide permit and pertinent drawings with the registrar of deeds or other appropriate official charged with the responsibility for maintaining records of title to, or interest in, real property and may also require the permittee to provide proof of that recording to the Corps.

(3) Mitigation shall be scheduled prior to, or concurrent with, the discharge of dredged or fill material into waters of the United States.

~~(4) For discharges of dredged or fill material resulting in the permanent loss of more than 1/10 acre of waters of the United States (including jurisdictional wetlands), a compensatory mitigation plan to offset those losses will be required. In addition, a preconstruction notice to the Corps of Engineers in accordance with general condition 27 will be required.~~

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

~~(5)~~ (4) For newly constructed channels through areas that are unvegetated, native grass filter strips, or a riparian buffer with native trees or shrubs a minimum of 35 feet wide from the top of the bank must be planted along both sides of the new channel. A survival rate of 80 percent of desirable species shall be achieved within three years of establishment of the buffer strip.

~~(6)~~ (5) For single-family residences authorized under nationwide permit 29, the permanent loss of waters of the United States (including jurisdictional wetlands) must not exceed 1/4 acre.

~~(7)~~ (6) For nationwide permit 46, the discharge of dredged or fill material into ditches that would sever the jurisdiction of an upstream water of the United States from a downstream water of the United States is not allowed.

~~(8)~~ (7) For projects that impact an outstanding national resource water, outstanding Iowa water, fens, bogs, seeps, or sedge meadows, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).

~~(9)~~ (8) For nationwide permits when the Corps' district engineer has issued a waiver to allow the permittee to exceed the limits of the nationwide permit, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition). Written verification by the Corps or 401 certification by the state is required for activities covered by these permits as required by the nationwide permit or the Corps, and the activities are allowed subject to the terms and conditions of the nationwide and regional permits. The department will maintain and periodically update a guidance document listing special waters of concern. This document will be provided to the Corps for use in determining whether preconstruction notices should be provided to the department and other interested parties prior to taking action on applications for projects that would normally be covered by a nationwide or regional permit and not require preconstruction notice under nationwide permit conditions.

**ARC 9994B****ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 455B.105(3), the Environmental Protection Commission hereby proposes to rescind Chapter 140, “Scope of Title—Definitions—Forms—Rules of Practice,” Chapter 141, “Hazardous Waste,” Chapter 148, “Registry of Hazardous Waste or Hazardous Substance Disposal Sites,” Chapter 150, “Location and Construction of Hazardous Waste Treatment, Storage and Disposal Facilities,” and Chapter 151, “Criteria for Siting Hazardous Waste Management Facilities,” Iowa Administrative Code.

Chapter 140 and Chapter 141 were intended to implement Iowa Code sections 455B.411 to 455B.421. Sections 3 and 10 of 2011 Iowa Acts, Senate File 299, signed into law on March 30, 2011, repealed Iowa Code section 455B.411, subsections (5) through (11), and sections 455B.412 to 455B.421. Therefore, these chapters are unnecessary and can be rescinded.

The primary function of Chapter 148 is to establish the procedures for adding new sites to the Registry of Hazardous Waste or Hazardous Disposal Sites. Pursuant to section 5 of 2011 Iowa Acts, Senate File 299, no new sites may be placed on the Registry after July 1, 2011. Therefore, Chapter 148 is no longer needed in regard to the procedure for placing new sites on the Registry. The provisions contained in rule 567—148.6(455B) relating to changes to sites on the Registry are duplicative of Iowa Code sections 455B.427, 455B.429, and 455B.430 and therefore are unnecessary and can be rescinded. The provisions in rule 567—148.7(455B) related to the submission of an annual report to the General Assembly and

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

Governor are duplicative of Iowa Code section 455B.427 and therefore are unnecessary and can be rescinded.

The Iowa Department of Natural Resources proposed and supported the revisions to the statutory authority for 567—Chapter 148 because Iowa has enacted Iowa Code chapter 455I, “Uniform Environmental Covenants Act,” in 2005. Iowa Code chapter 455I provides an alternate, preferred method for regulating contaminated sites in Iowa.

Chapter 150 addresses hazardous waste sites and facilities. 2011 Iowa Acts, Senate File 299, repealed the authority for these facilities (Iowa Code sections 455B.441 to 455B.455). Thus, this chapter is unnecessary and can be rescinded.

Chapter 151 establishes criteria for the siting of hazardous waste management facilities. 2011 Iowa Acts, Senate File 299, repealed the site licensing authority (Iowa Code section 455B.443), so there is no situation where the siting criteria will be applicable.

Any interested persons may submit written comments on the proposed rescissions on or before March 6, 2012. Written comments should be sent to the Iowa Department of Natural Resources, Attn: Angie Clark, 502 E. 9th Street, Des Moines, Iowa 50319; fax (515)281-8895; or e-mail [angie.clark@dnr.iowa.gov](mailto:angie.clark@dnr.iowa.gov).

A public hearing will be held at 1 p.m. on March 6, 2012, in the Fifth Floor Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rescissions.

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

The proposed rescissions have no impact on private sector or public sector employment in the state of Iowa. The complete Jobs Impact Statement prepared by the Department is available from the Department upon request.

This amendment is intended to implement 2011 Iowa Acts, Senate File 299.

The following amendment is proposed.

Rescind and reserve **567—Chapter 140, Chapter 141, Chapter 148, Chapter 150 and Chapter 151.**

**ARC 0004C**

## **IOWA FINANCE AUTHORITY[265]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.5(1)“m,” the Iowa Finance Authority proposes to amend Chapter 39, “HOME Partnership Program,” Iowa Administrative Code.

The purpose of this amendment is to revise paragraph “a” of subrule 39.4(1) to reflect more accurately the manner in which the HOME Partnership Program has been administered in the past.

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

The Authority will receive written comments on the proposed amendment until 4:30 p.m. on February 28, 2012. Comments may be addressed to Carla Pope, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Carla Pope at (515)725-4901 or E-mailed to [carla.pope@iowa.gov](mailto:carla.pope@iowa.gov).

IOWA FINANCE AUTHORITY[265](cont'd)

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

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 0003C**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

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

This amendment is intended to implement Iowa Code section 16.5(1)“m” and 42 U.S.C. Section 12701, et seq.

## **ARC 9995B**

### **PUBLIC HEALTH DEPARTMENT[641]**

#### **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 135.11, the Iowa Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 8, “Iowa Care for Yourself (IA CFY) Program,” and to rescind Chapter 37, “Breast and Cervical Cancer Early Detection Program,” Iowa Administrative Code.

Recognizing the value of screening and early detection of breast and cervical cancer, Congress passed the Breast and Cervical Cancer Mortality Prevention Act of 1990 and in 1993 authorized additional preventive health services to participants of the National Breast and Cervical Cancer Early Detection Program (NBCCEDP). The Breast and Cervical Cancer Early Detection Program (BCCEDP) provides screening for breast and cervical cancer. In addition, the Well-Integrated Screening and Evaluation for Women Across the Nation Program (WISEWOMAN) provides preventative screening for cardiovascular disease. Cardiovascular-related lifestyle interventions, tailored to each woman’s cardiovascular screening results and her readiness to make lifestyle behavior changes, are also offered to participants. These two programs are funded through cooperative agreements with the Department of Health and Human Services, Centers for Disease Control and Prevention (CDC). Iowa first received CDC funding in 1993 for the BCCEDP and began providing early detection services in 1995. Iowa received funding for WISEWOMAN as a research study in 2001 and started providing limited services in 2003. The current framework of services as a standard program was implemented in 2008.

The proposed rules in new Chapter 8 allow the services offered through the BCCEDP and WISEWOMAN to be offered in Iowa under one program, the Iowa Care for Yourself (IA CFY) Program. The purposes of the IA CFY Program are to provide breast and cervical cancer screening and diagnostic services and cardiovascular screening and intervention services to underserved women, to provide public and professional development, and to support community partnerships enhancing statewide breast and cervical cancer and cardiovascular disease control activities.

Chapter 8 covers agencies designated by contracting county boards of health to provide community-based IA CFY Program services and to receive funds from the Department for that purpose. The designated agencies facilitate the essential screening and diagnostic services consistent with CDC and IA CFY Program guidelines.

Interested persons may make written comments or suggestions on the proposed amendments on or before February 28, 2012. Such written comments should be directed to Jill Myers Geadelmann, Bureau of Chronic Disease Prevention and Management, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075; fax (515) 242-6384. E-mail may be sent to [jill.myers-geadelmann@idph.iowa.gov](mailto:jill.myers-geadelmann@idph.iowa.gov).

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

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

These amendments are intended to implement Iowa Code sections 135.11(1) and 135.39 and 42 U.S.C. Section 300k, as amended.

The following amendments are proposed.

ITEM 1. Adopt the following new 641—Chapter 8:

CHAPTER 8  
IOWA CARE FOR YOURSELF (IA CFY) PROGRAM

**641—8.1(135) Definitions.** For purposes of this chapter, the following definitions apply:

*“Abnormal screen”* means a suspicion of breast or cervical cancer or laboratory values of total cholesterol or blood glucose and average blood pressure reading in the range defined by the CDC according to National Heart, Lung and Blood Institute guidelines.

1. A suspicion of breast cancer includes clinical breast examination findings of: palpable breast mass, breast dimpling, nipple retraction, bloody nipple discharge, palpable lymph nodes around clavicle or axilla, nipple erythema and scaliness, a mammography result of breast imaging reporting and data systems (BI-RADS) category 4 (suspicious abnormality suggesting need for biopsy) or category 5 (highly suggestive of malignancy) (ICD-9 793.8), breast biopsy result of ductal cancer in situ, lobular cancer in situ (ICD-9 233.0), or breast or lymph node (or other) biopsy result of breast cancer.

2. Suspicion of cervical cancer is a Pap test result of atypical squamous cells cannot exclude high-grade squamous intraepithelial lesions (ASC-H) (ICD-9 795.02), atypical glandular cells (AGC) (ICD-9 795.00), low-grade squamous intraepithelial lesions (LSIL) (ICD-9 622.11 or 795.03), or high-grade squamous intraepithelial lesions (HSIL) (ICD-9 622.12 or 795.04), leukoplakia of the cervix (ICD-9 622.2), or cervical biopsy result of cervical intraepithelial neoplasia II or III (ICD-9 622.10, 622.11, 622.12, 795.03, or 795.04), or cancer in situ (ICD-9 233.1).

3. Abnormal total cholesterol means laboratory values of total cholesterol or blood glucose (HbA1c if diagnosed diabetic) and average blood pressure reading in the range defined by the CDC according to National Heart, Lung and Blood Institute guidelines.

*“ACR”* or *“American College of Radiology”* means one of the Food and Drug Administration-recognized accreditation bodies for minimum quality standards for personnel, equipment, and record keeping in facilities that provide mammography.

*“Advanced registered nurse practitioner”* means an individual licensed to practice under 655—Chapter 7.

*“Alert value”* means laboratory values of total cholesterol or blood glucose and average blood pressure reading in the range defined by the CDC according to National Heart, Lung and Blood Institute guidelines.

*“BCCPTA”* or *“Breast and Cervical Cancer Prevention and Treatment Act of 2000”* means a federal law that provides each state with the option of extending Medicaid eligibility to women who were diagnosed with breast or cervical cancer through the National Breast and Cervical Cancer Early Detection Program.

*“BCCT option of Medicaid”* or *“breast and cervical cancer treatment option of Medicaid”* means the optional program of medical aid designed for women who are unable to afford regular medical service and are diagnosed with breast or cervical cancer through the National Breast and Cervical Cancer Early Detection Program or through funds from Susan G. Komen for the Cure. The BCCT option of Medicaid is financed by federal and state payment sources and is authorized by Title XIX of the Social Security Act.

*“Benign”* means a noncancerous condition that does not spread to other parts of the body.

*“Biopsy”* means the removal of a sample or an entire abnormality for microscopic examination to diagnose a problem. Examples of a sampling would be a core biopsy or incisional biopsy; an example of entire removal would be an excisional biopsy.

*“BI-RADS”* or *“breast imaging reporting and data systems”* means a standardized reporting system for mammography reports.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

“*Blood pressure*” means the pressure or tension of the blood within the systemic arteries, maintained by the contraction of the left ventricle, the resistance of the arterioles and capillaries, the elasticity of the arterial walls, as well as the viscosity and volume of the blood; expressed as relative to the ambient atmospheric pressure.

“*BMI*” or “*body-mass index*” means a number calculated from a person’s weight and height. BMI provides a reliable indicator of body fatness for most people and is used to screen for weight categories that may lead to health problems.

“*Breast ultrasound*” means the use of high-energy sound waves that are bounced off internal tissues and make echoes to produce a pictorial representation of the internal structure of the breast.

“*Cancer*” means a malignant tumor of potentially unlimited growth of new cells that expand locally by invasion and systemically by metastasis.

“*Carcinoma in situ*” means cell changes in which malignant cells are localized and may press against adjoining tissue but have not penetrated or spread beyond their site of origin.

“*Cardiologist*” means a physician who specializes in the study of the heart and its action and diseases.

“*Case management*” means the IA CFY program component that involves establishing, brokering, and sustaining a system of available clinical and essential support services for all women enrolled in the program.

“*CBE*” or “*clinical breast examination*” means complete examination of a woman’s breast and axilla with palpation by a health care provider, including examination of the breast in both the upright and supine positions.

“*CDC*” means the Centers for Disease Control and Prevention of the U.S. Department of Health and Human Services.

“*Cholesterol*” means a waxy, fat-like substance made in the liver and other cells and found in certain foods, such as foods from animals, for example, dairy products, eggs and meat. Types of cholesterol are as follows:

1. Low density lipoprotein or LDL, also called “bad” cholesterol. LDL can cause buildup of plaque on the walls of arteries. The more LDL there is in the blood, the greater the risk of heart disease.
2. High density lipoprotein or HDL, also called “good” cholesterol. HDL helps the body get rid of bad cholesterol in the blood. If levels of HDL are low, risk of heart disease increases.
3. Very low density lipoprotein or VLDL. VLDL is similar to LDL cholesterol in that it contains mostly fat and not much protein.

“*CLIA*” or “*Clinical Laboratory Improvement Act of 1988*” means the law which established minimum quality standards for personnel and quality assurance methods that monitor patient test management and assess quality control, proficiency testing, and personnel handling of laboratory and pathology specimens.

“*CLIA-waived tests*” means simple laboratory examinations and procedures that are cleared by the federal government for home use; that employ methodologies that are so simple and accurate that erroneous results would be negligible; or that pose no reasonable risk of harm to the patient if the test is performed incorrectly.

“*Colposcopy*” means a procedure that allows close examination of the surface of the cervix with a high-powered microscope.

“*Community referral*” means the act, action or instance of directing a participant to a community resource.

“*Community resource*” means a source of information, service or expertise that is available within the community.

“*Cooperative agreement*” means a signed contract between the department and another party, for example, a health care provider. This contract allows the department to pay the health care provider for providing services to IA CFY program participants.

“*Creditable coverage*” means any insurance that pays for medical bills incurred for the screening, diagnosis, or treatment of breast and cervical cancer. Creditable coverage as described by the Health Insurance Portability and Accountability Act of 1996 includes, but is not limited to, group health plans or

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

health insurance coverage consisting of medical care under any hospital or medical service policy, health maintenance organization, Medicare Part A or B, Medicaid, armed forces insurance, or state health risk pool. A woman who has creditable coverage shall not be eligible for coverage under the breast and cervical cancer treatment option of Medicaid.

“*Creditable coverage circumstances*” means those instances in which a woman has creditable coverage but is not actually covered for treatment of breast or cervical cancer.

1. When there is a preexisting-condition exclusion or when the annual or lifetime limit on benefits has been exhausted, a woman is not considered to have creditable coverage for this treatment.

2. If the woman has limited coverage, such as a high deductible, limited drug coverage, or a limited number of outpatient visits, she is still considered to have creditable coverage and is not eligible for coverage under the breast and cervical cancer treatment option of Medicaid.

3. If the woman has a policy with a limited scope of coverage, such as only dental, vision, or long-term care, or has a policy that covers only a specific disease or illness, she is not considered to have creditable coverage unless the policy provides coverage for breast and cervical cancer treatment.

4. For the purposes of this program, eligibility for Indian Health Services or tribal health care is not considered creditable coverage (according to P.L. 107-121, the Native American Breast and Cervical Cancer Treatment Technical Amendment Act of 2001).

“*Cytology*” means the scientific study of cells.

“*Cytopathology*” means the scientific study of cells in disease.

“*Cytotechnologist*” means a medical technician trained in the identification of cells and cellular abnormalities.

“*Department*” means the Iowa department of public health.

“*Diagnostic mammography*” means a radiological examination performed for appropriate clinical indications, such as breast mass(es), other breast signs or symptoms (spontaneous nipple discharge, skin changes), or special cases, such as a history of breast cancer with breast conservation or augmented breasts.

“*FDA*” or “*Food and Drug Administration*” means the federal governmental body which certifies that a mammography facility meets minimum quality standards for personnel, equipment, and record keeping.

“*Follow-up*” means the IA CFY program component that involves a system for seeking information about or reviewing an abnormal condition, rescreening, or recall for annual visits.

“*Glucose*” means a simple sugar that is an important carbohydrate in biology. Cells use glucose as a source of energy and a metabolic intermediate.

“*Gynecologist*” means a physician who specializes in diseases of the reproductive organs in women.

“*HbA1c*” or “*glycosylated hemoglobin*” means a clinical laboratory test for the purposes of monitoring blood glucose control of a participant diagnosed with diabetes.

“*Health care provider*” means any physician, advanced registered nurse practitioner, or physician assistant who is licensed by the state of Iowa and provides care to IA CFY program-enrolled women.

“*Heart disease*” means a broad term used to describe a range of diseases that affect the heart and, in some cases, blood vessels. The term is often used interchangeably with “cardiovascular disease,” which generally refers to conditions that involve narrowed or blocked blood vessels that can lead to a heart attack, chest pain (angina) or stroke.

“*Heart disease risk factors*” means identifiable factors that make some people more susceptible than others to heart disease. Heart disease risk factors include:

1. Being overweight.
2. Lack of physical activity.
3. High blood pressure.
4. High blood cholesterol.
5. Diabetes.
6. Cigarette smoking.

Risk factors that cannot be changed are age and family history. The more heart disease risk factors a person has increases the person’s chance of developing heart disease.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

*“IA BCCEDP”* or *“Iowa breast and cervical cancer early detection program”* means a comprehensive breast and cervical cancer screening program established and funded under Title XV of the federal Public Health Service Act and administered by the Iowa department of public health, with the delegated responsibility of implementation and evaluation from the CDC, Division of Cancer Prevention and Control.

*“IA CFY program”* or *“Iowa care for yourself program”* means an integrated comprehensive breast and cervical cancer screening program and cardiovascular risk factor screening and intervention program administered by the Iowa department of public health.

*“IA WISEWOMAN”* or *“Iowa well-integrated screening and evaluation for women across the nation”* means a cardiovascular-related risk factor screening and intervention program to provide standard preventive screening services, including blood pressure measurements, cholesterol testing, and lifestyle interventions that target poor nutrition, physical inactivity, and tobacco use. The program is authorized by the federal government and administered by the CDC to help reduce deaths and disability from heart disease and stroke.

*“ICD-9”* or *“International Classification of Disease, 9th edition”* means a standardized classification of diseases, injuries, and reasons of death, by cause and anatomic localization, which is systematically put into a number of up to six digits and which allows clinicians, statisticians, politicians, health planners and others to speak a common language, both in the United States and internationally.

*“Infrastructure”* means the basic framework of sufficient staff and adequate support systems to plan, implement, and evaluate the components of the IA CFY program.

*“In need of treatment”* means that a medical or surgical intervention is required because of an abnormal finding of breast or cervical cancer or precancer that was determined as a result of a screening or diagnostic procedure for breast or cervical cancer/precancer under the NBCCEDP.

*“Intervention”* means services that promote a heart-healthy diet and physical activity and that are based on screening results, which include blood pressure, cholesterol, glucose, weight, height, personal medical history, family medical history, and health behavior and readiness-to-change assessments.

*“MATF”* or *“medical advisory task force”* means an advisory board that may be utilized by the IA CFY program to offer knowledge and experience as related to the fields of expertise of the members of the task force. Duties of the MATF may include, but are not limited to, the following:

1. Reviewing and making recommendations for clinical service expansion.
2. Reviewing program-developed clinical protocols.
3. Providing recommendations related to other clinical and participant-related issues.
4. Providing input related to quality assurance issues.
5. Reviewing program screening and diagnostic data.

*“MDEs”* or *“minimum data elements”* means a set of standardized data elements used to collect demographic and clinical information on women whose screening or diagnosis was paid for with NBCCEDP funds. MDEs were developed by the CDC, Division of Cancer Prevention and Control, to ensure that consistent and complete information is collected on women whose screening or diagnosis was paid for with NBCCEDP funding.

*“Medicaid”* means the program of medical aid designed for those unable to afford regular medical service, financed by federal and state payment sources, and authorized by Title XIX of the Social Security Act.

*“Medicare”* means the program of federal payment source for health benefits, especially for the aged, which is authorized by Title XVIII of the Social Security Act.

*“NBCCEDP”* or *“National Breast and Cervical Cancer Early Detection Program”* means a program established with the passage of the Breast and Cervical Cancer Mortality Prevention Act of 1990 (Public Law 101-354). The law authorizes the CDC to establish a program of grants to states, tribes, and territories for the purpose of increasing the early detection of breast and cervical cancer, particularly among low-income, uninsured, and underserved women.

*“Oncologist”* means a physician who is a specialist in treating or studying the physical, chemical, and biologic properties and features of neoplasms, including causation, pathogenesis, and treatment.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

“*Outreach*” means the IA CFY program component that involves recruiting targeted populations or women who never or rarely utilize preventive health services.

“*Pap test*” means the Papanicolaou screening test that collects cells from the cervix for examination under a microscope. The Pap test can detect abnormal cells or precancerous cells before cancer develops.

“*Pathologist*” means a physician who is a specialist in identifying diseases by studying cells and tissues under a microscope.

“*Physician*” means an individual licensed to practice under Iowa Code chapter 148.

“*Physician assistant*” means an individual licensed to practice under Iowa Code chapter 148C.

“*Precancerous*” means a condition that may become, or is likely to become, cancer.

“*Program and fiscal management*” means the IA CFY program component that includes planning, organizing, directing, coordinating, managing, budgeting for, and evaluating program activities.

“*Quitline Iowa*” means a toll-free, statewide smoking cessation telephone counseling hotline through which trained counselors provide caller assistance in making an individualized tobacco use quit plan and provide ongoing support through optional follow-up calls.

“*Radiologist*” means a physician who specializes in creating and interpreting pictures of areas inside the body. The pictures are produced with X-rays, sound waves, or other types of energy.

“*Rarely or never been screened*” means, as defined for the NBCCEDP, that a woman has not had cervical cancer screening within the last five years or has never been screened for cervical cancer.

“*Recruitment*” means the IA CFY program component that involves enrolling targeted populations or women for preventive health services.

“*Referral*” means the IA CFY program component that involves directing women with abnormal screening results to appropriate resources for follow-up action.

“*Screening mammography*” means the use of X-ray of the breasts of asymptomatic women in an attempt to detect abnormal lesions of the breast when they are small, nonpalpable, and confined to the breast.

“*Service delivery*” means providing, either directly or through contractual arrangements, comprehensive breast and cervical cancer screening and heart disease and stroke risk factor screening, diagnosis, and treatment services through tracking of screening intervals, timeliness of diagnosis, and timeliness of treatment of women.

“*Surgeon*” means a physician who treats disease, injury, or deformity by physical operation or manipulation.

“*Surveillance*” means the IA CFY program component that involves the systematic collection, analysis, and interpretation of health data.

“*Susan G. Komen for the Cure*” means an international organization with a network of volunteers working through local affiliates and Komen Race for the Cure® events to eradicate breast cancer as a life-threatening disease by advancing research, education, screening, and treatment.

“*TBS*” or “*the Bethesda system*” means a system that was developed to provide uniform diagnostic terminology for reporting cervical or vaginal cytologic findings to facilitate communication between the laboratory and the clinician.

“*Triglycerides*” means a type of fat that is carried in the blood by very low density lipoproteins. Excess calories, alcohol, or sugar in the body are converted into triglycerides and stored in fat cells throughout the body.

“*WISEWOMAN*” or “*Well-Integrated Screening and Evaluation for Women Across the Nation*” means a national program that offers blood pressure, diabetes, and cholesterol risk factor screening, lifestyle intervention, and referral services in an effort to prevent cardiovascular disease.

**641—8.2(135) Components of the Iowa care for yourself (IA CFY) program.** The IA CFY program shall include the following key components:

**8.2(1)** Program and fiscal management shall be conducted by ensuring strategic planning, implementation, coordination, integration, and evaluation of all programmatic activities and administrative systems, as well as the development of key communication channels and oversight

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

mechanisms to aid in these processes. Program management shall ensure that infrastructure adequately supports service delivery.

**8.2(2)** Service delivery of specific and appropriate clinical procedures to detect breast and cervical abnormalities and heart disease or stroke risk factors for women enrolled in the IA CFY program shall be directly provided or provided through contractual arrangements.

*a.* The IA CFY program shall cover breast and cervical cancer screening and diagnostic services including, but not limited to, the following when those services are provided by a participating health care provider who has a cooperative agreement with the IA CFY program. Payment shall be based on Medicare Part B participating-provider rates as released annually at the beginning of each calendar year.

(1) Physical examinations that include two recorded blood pressures in addition to one or more of the following screening services: CBE, pelvic examination, or Pap test;

(2) Height and weight measurements, when provided in conjunction with one or more of the screening services listed in subparagraph 8.2(2) “*a*”(1) above;

(3) Mammography (screening and diagnostic);

(4) Breast ultrasound, when used as an adjunct to mammography;

(5) Fine-needle aspiration of breast cysts;

(6) Breast biopsies, excisional and nonexcisional (physician charges only; hospital charges are not covered);

(7) Colposcopy of the cervix, with or without biopsy;

(8) Surgical consultations for diagnosis of breast and cervical cancer;

(9) Pathology charges for breast and cervical biopsies;

(10) Anesthesia for breast biopsies (health care provider charges only; hospital charges and supplies are not covered).

*b.* Breast and cervical cancer-related services not covered by the IA CFY program include, but are not limited to, the following:

(1) Services not related to breast or cervical cancer screening or diagnosis;

(2) Treatment procedures and services;

(3) Services provided by nonparticipating providers;

(4) Hospital charges for breast biopsies and anesthesia;

(5) Inpatient services.

*c.* The IA CFY program shall cover cardiovascular disease-related services for those participants enrolled in the IA CFY program for whom at least one screening service was paid for using federal funds. Cardiovascular disease-related services shall include, but not be limited to, the following when those services are provided by a participating health care provider who has a cooperative agreement with the IA CFY program. Payment shall be based on Medicare Part B participating-provider rates as released annually at the beginning of each calendar year.

(1) Physical examinations that include two recorded blood pressures;

(2) Height and weight measurements;

(3) Fasting lipid panel that includes total cholesterol, HDL cholesterol, LDL cholesterol, triglycerides; and

(4) Diabetes screening:

1. For a nondiagnosed diabetic, fasting blood glucose; and

2. For a diagnosed diabetic, glycosylated hemoglobin (HbA1c).

*d.* Cardiovascular disease-related services not covered by the IA CFY program include, but are not limited to, the following:

(1) A follow-up diagnostic visit to a health care provider if one or more screening values are in the CDC-defined abnormal value range;

(2) Repeat laboratory testing;

(3) Any additional testing;

(4) Medication; and

(5) Treatment.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

*e.* IA CFY program intervention shall be conducted as a component of the program for all women eligible and enrolled to receive IA CFY program services.

*f.* A health care provider who has a cooperative agreement with the IA CFY program shall be subject to the following:

(1) The health care provider agrees that reimbursement of procedures and services provided shall not exceed the amount that would be paid under Medicare Part B participating-provider rates as released annually at the beginning of each calendar year.

(2) A mammography health care provider shall ensure that the provider's facility has current FDA certification and ACR or state of Iowa accreditation and is a Medicare and Medicaid-approved facility utilizing BI-RADS and following ACR guidelines for mammography report content.

(3) A board-certified radiologist must be immediately available to determine selection of views and readings when a diagnostic mammogram is performed.

(4) The health care provider shall submit obtained cytology and pathology specimens to a CLIA-certified laboratory for processing. The laboratory shall provide cytological reading and analysis of cervical and vaginal Pap tests by certified/registered cytotechnologists. Cytology (Pap) tests shall be reported using current TBS terminology. The laboratory shall provide board-certified pathologists or experienced certified cytotechnologists to rescreen all analyses and readings of cervical and breast biopsies.

(5) The health care provider shall practice according to the current standards of medical care for breast and cervical cancer early detection, diagnosis, and treatment.

(6) Service delivery may be provided in a variety of settings. Service delivery must, however, include:

1. Providing screening services for specific geographic areas;
2. Providing a point of contact for scheduling appointments;
3. Providing age and income eligibility screening;
4. Providing breast and cervical cancer screening and heart disease and stroke screening to eligible women;
5. Providing referral and follow-up for women who have alert-value screening results;
6. Providing the required reporting system for screening and follow-up activities;
7. Providing population-based education, outreach, and recruitment activities;
8. Providing IA CFY program cardiovascular intervention as a component of the program for all women eligible for and enrolled to receive IA CFY program services; and
9. Submitting data within 60 days of service date to establish screening documentation.

(7) The health care provider shall ensure compliance with this chapter and other terms and conditions included in the cooperative agreement.

**8.2(3)** Referral, tracking, and follow-up utilizing a data system to monitor each enrolled woman's receipt of screening/rescreening, diagnostic, and treatment procedures shall be conducted by the IA CFY program and contracted county board of health designated agency staff.

*a.* The enrolled woman shall be notified by contracted county board of health designated agency staff of the results of the service, whether the results are normal, benign, or abnormal.

*b.* The data system shall provide tracking of appropriate and timely clinical services following an abnormal test result or diagnosis of cancer.

*c.* If the enrolled woman has an abnormal Pap test or breast screening or an alert-value heart disease risk factor, the health care provider shall provide to the woman a comprehensive referral directing her to appropriate additional diagnostic or treatment services.

*d.* The comprehensive referral shall be written. Follow-up shall be conducted to determine whether services were timely, completed, or met.

**8.2(4)** The IA CFY program and contracted county board of health designated agency staff shall provide case management and shall assist participants whose cancer was diagnosed through the program in obtaining needed treatment services.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**8.2(5)** IA CFY program staff shall use quality assurance and improvement techniques including use of established standards, systems, policies and procedures to monitor, assess and identify practical methods for improvement of the program and its components.

*a.* Quality assurance tools shall include utilizing FDA and ACR minimum standards for mammography facilities and CLIA minimum standards for cytopathology and pathology laboratories.

*b.* Quality assurance measures shall contribute to the identification of corrective actions to be taken to remedy problems found as a result of investigating quality of care.

**8.2(6)** Professional development shall be provided by the IA CFY program and contracted county board of health designated agency staff through a variety of channels and activities that enable professionals to perform their jobs competently, identify needs and resources, and contribute to ensuring that health care delivery systems provide positive clinical outcomes.

**8.2(7)** Using a variety of methods and strategies to reach priority populations, the IA CFY program and contracted county board of health designated agency staff shall provide population-based public education and recruitment that involve the systematic design and delivery of clear and consistent messages about breast and cervical cancer and the benefits of early detection. Outreach activities should focus on women who have never or rarely been screened and should work toward the removal of barriers to care (i.e., the need for child care, respite care, interpreter services and transportation) through collaborative activities with other community organizations.

**8.2(8)** The IA CFY program may develop coalitions and partnerships to bring together groups and individuals that establish a reciprocal agreement for sharing resources and responsibilities to achieve the common goal of reducing breast and cervical cancer mortality and heart disease and stroke mortality.

**8.2(9)** The IA CFY program shall conduct surveillance utilizing continuous, proactive, timely and systematic collection, analysis, interpretation and dissemination of breast and cervical cancer screening and heart disease and stroke risk factor behaviors and incidence, prevalence, survival, and mortality rates. Epidemiological studies shall be conducted utilizing MDEs and other data sources to establish trends of disease, diagnosis, treatment, and research needs. Program planning, implementation, and evaluation shall be based on the epidemiological evidence.

**8.2(10)** Evaluation of the program shall be conducted through systematic documentation of the operations and outcomes of the program, compared to a set of explicit or implicit standards or objectives.

**641—8.3(135) Participant eligibility criteria.** An applicant for the IA CFY program must satisfy the criteria outlined in this rule. If an applicant does not meet these criteria, the applicant shall be provided information by contracted county board of health designated agency staff regarding IowaCare, free care, or sliding-fee clinics available in the area in which the applicant lives.

**8.3(1) Age.** An applicant for the IA CFY program must satisfy only one of these criteria.

*a.* Women 50 through 64 years of age, the program's priority population, shall receive annual breast and cervical (if appropriate) cancer screening.

*b.* Women 40 through 64 years of age shall receive cardiovascular risk factor screening in addition to breast and cervical cancer screening services.

*c.* Women 40 through 49 years of age shall receive annual breast and cervical (if appropriate) cancer screening.

*d.* Women under 40 years of age, if symptomatic for breast cancer, shall receive breast and cervical cancer screening services based upon funding availability.

*e.* Women 65 years of age and older shall be eligible to receive annual breast and cervical (if appropriate) cancer screening if they do not have Medicare Part B coverage.

**8.3(2) Income.**

*a.* IA CFY program income guidelines are based upon 250 percent of the federal poverty level, which is set annually by CMS. New IA CFY program income guidelines will be adjusted following any change in CMS guidelines.

*b.* Self-declaration of income may be accepted.

*c.* Eligibility shall be based on net income for the household.

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*d.* Assets shall not affect income status and shall not be counted when eligibility under the IA CFY program is determined.

**8.3(3) Insurance.**

*a.* The IA CFY program shall determine a woman to be uninsured if the woman does not have health insurance coverage.

*b.* The IA CFY program shall determine a woman to be underinsured if the woman has health insurance with unreasonably high copayments, deductibles, or coinsurance or the insurance does not cover IA CFY program-covered services.

*c.* Women who have Medicaid or Medicare Part B are not eligible. EXCEPTIONS: IowaCare, Medicaid with spenddown, Iowa family planning network.

**8.3(4) Residency.**

*a.* A woman must be a resident of Iowa or of a state that shall enroll a woman in the BCCT option of Medicaid if the woman is screened or diagnosed by the IA CFY program.

*b.* A woman who is a resident of a state that does not accept women into the BCCT option of Medicaid and who chooses to continue to receive services in the IA CFY program must be informed that she may not be able to have her treatment paid for by the BCCT option of Medicaid if she does not receive services in her state of residence.

*c.* Proof and length of residency in Iowa are not required.

**8.3(5) Ineligible.** The IA CFY program does not provide coverage for:

*a.* Men.

*b.* Women with Medicare Part B coverage.

*c.* Women 39 years of age and younger unless they have symptoms of breast cancer.

**641—8.4(135) Participant application procedures for IA CFY program services.****8.4(1) Enrollment.** After a woman is determined eligible for services:

*a.* The woman must complete, sign, and return a consent and release form to the IA CFY program. The date on the signed form shall be the participant's enrollment date.

*b.* Upon enrollment, the participant must select an IA CFY program health care provider and is eligible for services for 12 months from the enrollment date, subject to restrictions in program coverage as provided in rule 641—8.5(135).

*c.* If a participant is unable to access a particular health care provider due to unavailability of appointments or if a participant requests to change to another health care provider, designated agency staff shall assist the participant in choosing another IA CFY program health care provider who is available in the participant's area.

**8.4(2) Reenrollment.**

*a.* A participant's continued eligibility for program coverage shall be determined annually.

*b.* No more than 45 days prior to the end of the 12-month coverage period, the IA CFY program shall contact the participant to see if she wishes to reenroll in the program.

*c.* If a participant wishes to reenroll, she must complete, sign and return a consent and release form before receiving any further services.

**8.4(3) Termination of enrollment.** The IA CFY program shall terminate a participant's enrollment if the participant:

*a.* Requests termination from the program;

*b.* No longer meets the criteria set forth in rule 641—8.3(135);

*c.* Does not return a signed IA CFY program consent and release form; or

*d.* Refuses to receive screening and diagnostic services through an IA CFY program health care provider.

**641—8.5(135) Priority for program expenditures.**

**8.5(1)** In the event the IA CFY program director determines that there are inadequate funds to meet participants' needs, either attributable to a reduction in federal funding from the CDC or to a

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projected enrollment of women in excess of anticipated enrollment, the program director may restrict new applicants' participation in the IA CFY program as follows:

- a. First priority shall be given to women 50 through 64 years of age.
- b. Second priority shall be given to women 40 through 49 years of age who are symptomatic.
- c. Third priority shall be given to women 40 through 49 years of age who are asymptomatic.
- d. Fourth priority shall be given to women 65 years of age and older who do not have Medicare Part B coverage.

**8.5(2)** In the event that the financial demand abates, the program director shall withdraw the financial shortfall determination, at which time women shall be eligible for program services in accordance with rule 641—8.3(135).

**641—8.6(135) Right to appeal.** If an individual disagrees with or is dissatisfied with program eligibility, the covered-service determination, or the decision of the program, the individual has the right to appeal the decision or action.

**8.6(1)** The appeal shall be in writing and shall be submitted, within ten working days of the decision or action, to the designated agency personnel with whom the individual has been working.

**8.6(2)** The designated agency staff shall contact a state IA CFY program staff person and shall provide the information regarding the appeal to the staff person.

**8.6(3)** State IA CFY program staff shall confer with the bureau chief supervising the IA CFY program and provide a decision to the designated agency staff within five business days. A decision made by state IA CFY program staff shall be delivered by telephone, if possible, to the individual making the appeal and shall be followed by a written notification of the decision. The decision of state IA CFY program staff shall be considered a final agency decision in accordance with Iowa Code chapter 17A.

**641—8.7(135) Verification for the breast or cervical cancer treatment (BCCT) option of Medicaid.** The Iowa department of public health and the department of human services have coordinated to develop procedures for women to access Medicaid coverage for treatment of breast or cervical cancer.

**8.7(1)** Before referring a woman to her county of residence's local office of the department of human services, a contracted county board of health designated agency staff member shall document the following regarding the woman:

a. The woman is currently enrolled in the IA CFY program. To be considered enrolled in the program, the woman must meet program age guidelines, have at least one of the basic screening services (Pap test, screening mammogram, or CBE) or diagnostic procedures paid for by the IA CFY program or with Susan G. Komen for the Cure funds, and be in need of treatment for breast or cervical cancer or precancerous conditions; or

b. The woman was enrolled in NBCCEDP and has moved to Iowa. To be considered enrolled in NBCCEDP, the woman must meet the Iowa program age guidelines, have at least one of the basic screening services (Pap test, screening mammogram, or CBE) or a diagnostic procedure paid for by the NBCCEDP or with Susan G. Komen for the Cure funds, and be in need of treatment for breast or cervical cancer or precancerous conditions; and

c. The woman has creditable coverage circumstances or has no creditable coverage for breast or cervical cancer treatment.

**8.7(2)** The BCCT option of Medicaid is administered by the Iowa department of human services under 441 Iowa Administrative Code Chapter 75, "Conditions of Eligibility."

These rules are intended to implement Iowa Code section 135.11.

ITEM 2. Rescind and reserve **641—Chapter 37.**

**ARC 9997B****PUBLIC HEALTH DEPARTMENT[641]****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 2011 Iowa Code Supplement section 135.11, the Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 10, “Iowa Get Screened: Colorectal Cancer Program,” Iowa Administrative Code.

The Iowa Get Screened (IGS): Colorectal Cancer Program is funded through a cooperative agreement with the U.S. Department of Health and Human Services, Centers for Disease Control and Prevention (CDC) under the Colorectal Cancer Control Program (CRCCP).

The purpose of the IGS program within available financial resources is to provide colorectal cancer screening and diagnostic services to underserved individuals aged 50 to 64 years; to provide public education and professional development; to support community partnerships; to enhance statewide cancer control activities; to increase individual awareness; to increase screening rates; to encourage policy changes that will increase screening; and to enhance infrastructure for monitoring colorectal screening activities.

The proposed rules allow agencies designated by contracting local boards of health and Federally Qualified Health Centers to provide community-based IGS program services and to receive funds from the Department for that purpose.

Under the IGS program, designated agencies shall facilitate essential screening and diagnostic services consistent with CDC recommendations. These guidelines are implemented and supported with the Medical Advisory Board’s oversight. The program is intended to increase awareness of colorectal cancer through education in the community and to coordinate the provision of colorectal cancer screening and follow-up services to a target population. The aim of the IGS program is to increase colorectal cancer screenings to 80 percent for all eligible Iowans 50 to 64 years of age and to reduce the incidence and mortality of colorectal cancer.

Any interested person may make written comments or suggestions on the proposed rules on or before February 28, 2012. Such written comments should be directed to Jill Myers Gadelmann, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-6384 or by e-mail [jill.myers-gadelmann@idph.iowa.gov](mailto:jill.myers-gadelmann@idph.iowa.gov).

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

These rules are intended to implement Iowa Code sections 135.11(1) and 135.39 and 42 U.S.C. Section 241(a), as amended.

The following amendment is proposed.

Adopt the following **new** 641—Chapter 10:

**CHAPTER 10****IOWA GET SCREENED: COLORECTAL CANCER PROGRAM**

**641—10.1(135) Purpose.** The Iowa get screened (IGS): colorectal cancer program was established in 2009 through a cooperative agreement with the Centers for Disease Control and Prevention and is administered by the department. The goal of the IGS program is to reduce the incidence, mortality and prevalence of colorectal cancer in Iowa by increasing the number of men and women who receive colorectal cancer screenings. Through the program, fecal immunochemical tests (FITs) and colonoscopies will be provided to eligible Iowans. Along with providing screenings, the program

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also facilitates supportive services and referral for diagnosis and treatment to Iowans with abnormal screening results. Iowans who are eligible to enter the program must be 50 to 64 years of age, be underinsured or uninsured, have incomes of up to 250 percent of the federal poverty level (FPL) and have an average or increased risk for developing colorectal cancer.

**641—10.2(135) Definitions.** For purposes of this chapter, the following definitions apply:

*“Advanced registered nurse practitioner”* means an individual licensed to practice under 655—Chapter 7.

*“Case management”* means establishing, brokering and sustaining a system of available clinical and essential support services for all individuals enrolled in the program.

*“Colon”* means large intestine or large bowel.

*“Colonoscope”* means a thin, flexible tube that takes pictures of the colon and rectum during a colonoscopy.

*“Colonoscopist”* means a licensed provider who administers a colonoscopy.

*“Colonoscopy”* means a visual examination of the inner surface of the colon by means of a colonoscope.

*“Colorectal cancer,” “colon cancer”* or *“CRC”* means cancer that starts in the colon or the rectum.

*“Colorectal cancer data elements”* or *“CRCDE”* means a set of standardized data elements developed by the Centers for Disease Control and Prevention, Division of Cancer Prevention and Control, to ensure that consistent and complete information is collected on participants whose screening or diagnosis was paid for through the IGS program with federal funding.

*“Department”* means the Iowa department of public health.

*“Double-contrast barium enema”* means an X-ray examination of the entire large intestine (colon) and rectum in which barium and air are introduced gradually into the colon by a rectal tube.

*“Eligibility criteria”* means a set of questions that a potential participant is asked to ensure the participant meets program qualifying standards including targeted age, income guidelines, level of risk for colorectal cancer and screening determination guidelines. Qualifying standards are outlined in the CDC’s Colorectal Control Cancer Program Policies and Procedures and are based on recommendations from the United States Preventive Services Task Force (USPSTF).

*“Endoscopist”* means a physician who is licensed to perform a visual inspection of any cavity of the body by means of an endoscope.

*“Familial adenomatous polyposis”* or *“FAP”* means an inherited colorectal cancer syndrome and accounts for 1 percent of all cases of colorectal cancer. “Familial” means FAP runs in families; “adenomatous” means the type of polyps detected in the colon and small intestine that may become cancerous; and “polyposis” means the condition of having multiple colon polyps. The gene for FAP is on the long arm of chromosome 5 and is called the APC gene.

*“Family history”* means that a person’s close relatives (parents, siblings or children) have had colorectal cancer and, therefore, the person is somewhat more likely to develop that type of cancer, especially if the family member developed the cancer at a young age. If many family members have had colorectal cancer, the chances that the person will develop colorectal cancer increase even more.

*“Fecal immunochemical test”* or *“FIT”* means the preferred screening method for the IGS program to test for hemoglobin in the feces, a possible sign of colorectal cancer.

*“Federally qualified health center”* or *“FQHC,”* referred to in Iowa as a community health center or “CHC,” means a federally funded nonprofit health center or clinic that serves medically underserved areas and populations. Federally qualified health centers provide primary care services regardless of ability to pay. Services shall be provided on a sliding fee scale based on ability to pay. The IGS program utilizes community health centers to provide services to target populations.

*“Final diagnosis”* means the process of identifying or determining the nature and cause of a disease or injury through evaluation of patient history, examination and review of laboratory data.

*“Health care provider”* means any physician, advanced registered nurse practitioner, or physician assistant who is licensed by the state of Iowa and provides care to IGS-enrolled participants.

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*“Hereditary nonpolyposis colorectal cancer”* or *“HNPCC”* means an inherited colorectal cancer syndrome and accounts for 5 percent of all cases of colorectal cancer. “Hereditary” means HNPCC is inherited or can be passed from parent to child; “nonpolyposis” contrasts HNPCC to the inherited condition FAP where hundreds to thousands of polyps develop in the colon; “colorectal cancer” is the most frequent cancer that develops in these families. Patients with HNPCC have an 80 percent chance of developing colorectal cancer.

*“Informed consent”* means the participant has signed the IGS informed consent and release of medical information form and therefore voluntarily agrees to participate and receive colorectal services and appropriate follow-up through the IGS program. Consent for services can be canceled at any time by the participant.

*“In-reach”* means the method that will be used in the local program to recruit participants. In-reach targets existing clients through the Iowa care for yourself program and federally qualified health centers.

*“Iowa care for yourself program”* or *“IA CFY program”* means a program that provides breast and cervical cancer screening, diagnostics and cardiovascular-related intervention services to low-income, underinsured or uninsured women 40 to 64 years of age. The IA CFY program integrates program services, as possible, with the IGS program. Some IA CFY program participants have been enrolled through in-reach activities into the IGS program.

*“Iowa get screened: colorectal cancer program”* or *“IGS program”* means the state program funded through the federal Colorectal Cancer Control Program (CRCCP). This program requires policy and systems change, public education and awareness and limited screening activities. The IGS program has been made possible in Iowa through a cooperative agreement awarded to the department through the competitive bid grants procurement process by the United States Department of Health and Human Services, Division of the Centers for Disease Control and Prevention.

*“Large intestine”* means the last part of the digestive tract. The large intestine is divided into sections including the ascending which begins at the cecum on the right side, the transverse which is the horizontal section, and the descending which is on the left side and includes the sigmoid and the rectum. The primary function of the large intestine is the absorption of water and the formation and collection of feces.

*“Local program”* means the entity or facility in which IGS services are being offered through a contractual agreement with the department.

*“Local program coordinator”* means the individual within a local program who is providing services to a participant.

*“Medical advisory board”* or *“MAB”* means the body that provides oversight of the quality of screening services delivered through the IGS program.

*“Oncologist”* means a specialist physician who treats or studies the physical, chemical and biologic properties and features of a neoplasm, including causation, pathogenesis and treatment.

*“Participant”* means an individual enrolled in the IGS program to receive colorectal cancer screening services in accordance with the United States Preventive Services Task Force (USPSTF) recommendations.

*“Pathologist”* means a specialist physician who identifies diseases by studying cells and tissues under a microscope.

*“Patient navigator”* means the individual who identifies and coordinates resources for a participant with a screening diagnosis of colorectal cancer who may require physical, emotional, financial or other support through the cancer journey. Navigation services are provided through a cooperative agreement with the American Cancer Society.

*“Physician”* means an individual licensed to practice under Iowa Code chapter 148.

*“Physician assistant”* means an individual licensed to practice under Iowa Code chapter 148C.

*“Polyp”* means a growth from a mucous membrane commonly found in organs such as the rectum, the uterus and the nose. Certain types of polyps, such as adenomas, may develop into cancer.

*“Precancerous”* means a condition that may become or is likely to become cancer.

*“Primary care provider”* means a health care provider who provides definitive care to a patient at the point of first contact and takes continuing responsibility for providing the patient’s care.

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“*Provider agreement*” means a signed cooperative agreement between the department and another party, for example, a health care provider.

“*Radiologist*” means a specialist physician trained in creating and interpreting pictures of areas inside the body. The pictures are produced with X-rays, sound waves or other types of energy.

“*Rectum*” means the last part of the large intestine where stool is stored prior to evacuation through the anus (external opening of the digestive system).

“*Referral*” means directing program participants with abnormal screening results to appropriate resources for follow-up action.

“*Screening*” means the search for disease, such as cancer or precancerous polyps in people without symptoms.

“*Secondary complication*” means an additional problem that arises following a procedure, treatment or illness.

“*Surveillance*” means a periodic colonoscopy as recommended by a physician on a case-by-case basis for participants with a prior history of adenoma(s) or colorectal cancer in accordance with USPSTF recommendations which prescribe surveillance in two-, three-, five- or seven-year intervals. The purpose of surveillance is to rescreen and remove polyps that were missed on the initial colonoscopy or that developed in the interval since the previous colonoscopy.

“*Underinsured*” means an individual with income at 250 percent of the federal poverty guideline or lower with health insurance that has unreasonably high copayments, deductibles or coinsurance.

“*United States Preventive Services Task Force*” or “*USPSTF*” means an independent panel of nonfederal health care experts that evaluates the latest scientific evidence on clinical preventive services and then sets recommendations for preventive services including colorectal cancer screening. These recommendations by USPSTF are the guidelines that are followed for recommended colorectal cancer screening by the IGS program.

**641—10.3(135) Components of the Iowa get screened (IGS): colorectal cancer program.** The program shall include the following key components:

**10.3(1)** Program and fiscal management shall be conducted by ensuring strategic planning, implementation, coordination, integration and evaluation of all programmatic activities and administrative systems, as well as the development of key communication channels and oversight mechanisms to aid in these processes. Program management shall ensure that infrastructure adequately supports service delivery.

**10.3(2)** Service delivery to screen for colorectal cancer for participants enrolled in the IGS program shall be provided by local program coordinators and enrolled health care providers through contractual arrangements.

*a.* The IGS program provides reimbursement for the following screening tests, procedures, preparations and tissue analyses when those services are provided by a participating health care provider who has a provider agreement with the IGS program. Payment is based on Medicare Part B participating provider rates (Title XIX).

- (1) Fecal immunochemical tests annually;
- (2) Colonoscopy every 10 years from initial screen or as prescribed by a physician for surveillance in accordance with USPSTF recommendations;
- (3) Biopsy/polypectomy during a colonoscopy;
- (4) Bowel preparation;
- (5) Moderate sedation for colonoscopy;
- (6) One office visit related to IGS program-covered colorectal cancer tests;
- (7) One office visit related to colorectal cancer follow-up diagnostic test results;
- (8) Total colon examination with either colonoscopy (preferred) or double contrast barium enema if medically prescribed by doctor;
- (9) Pathology services.

*b.* The IGS program does not provide reimbursement for the following:

- (1) Screening tests requested at intervals sooner than recommended by the USPSTF;

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- (2) CT colonography (or virtual colonoscopy) as a primary screening test;
- (3) Computed tomography scans (CT or CAT scans) requested for staging or other purposes;
- (4) Surgery or surgical staging, unless specifically required and approved by the IGS program's MAB to provide a histological diagnosis of cancer;
- (5) Any treatment related to the diagnosis of colorectal cancer;
- (6) Any care or services for complications that result from screening or diagnostic tests provided by the IGS program;
- (7) Medical evaluation of symptoms that make individuals at high risk for CRC;
- (8) Diagnostic services for participants who had an initial positive screening test performed outside of the program;
- (9) Management and testing (e.g., surveillance colonoscopies and medical therapy) for medical conditions, including inflammatory bowel disease, ulcerative colitis or Crohn's disease;
- (10) Genetic testing for participants who present with a history suggestive of a hereditary nonpolyposis colorectal cancer (HNPCC) or familial adenomatous polyposis (FAP);
- (11) Use of propofol as anesthesia during endoscopy, unless specifically required and approved by the IGS program's MAB in cases where the participant cannot be sedated with standard moderate sedation; and
- (12) Treatment for colorectal cancer.

c. A local program that has a signed contract with the IGS program shall be responsible for the following:

- (1) Recruitment of participants;
- (2) Eligibility determination;
- (3) Enrollment;
- (4) Patient support services;
- (5) Tracking of follow-up care;
- (6) Documentation and data reporting; and
- (7) Recall of participants who remain eligible for continued services.

d. Local program coordinators must use a case management services approach throughout the screening process to ensure that all participants:

- (1) Receive program information and colorectal cancer educational materials;
- (2) Are assisted, according to each participant's need, to reduce barriers to screening including, for example, fears, cultural beliefs, language, transportation, understanding of information, and insurance enrollment;
- (3) Receive guidance throughout the screening, diagnostic and treatment processes;
- (4) Understand colorectal cancer screening procedures and health care provider recommendations;
- (5) Receive appropriate services according to diagnosis including follow-up; and
- (6) Have the opportunity to get questions answered throughout the process.

e. A health care provider that has a provider agreement with the department shall be subject to the following provisions:

- (1) The health care provider agrees that reimbursement of procedures and services provided shall not exceed the amount that would be paid under Medicare Part B participating provider rates of Title XVIII of the Social Security Act.

- (2) The health care provider shall provide the participant and local program coordinator timely colorectal screening results and follow-up recommendations.

- (3) The gastrointestinal health care provider shall submit pathology specimens to a Clinical Laboratory Improvement Amendments (CLIA)-certified laboratory for processing.

- (4) The health care provider shall practice according to the current standards of medical care for colorectal cancer early detection, diagnosis and treatment.

- (5) The health care provider or entity shall submit universal claim forms, originals of the HCFA 1500 or the UB 92, for reimbursement of IGS program-covered services in accordance with the provider agreement.

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(6) The health care provider may deliver services in a variety of settings. Service delivery shall include:

1. Working with local coordinators as they refer IGS program participants to provide follow-up or initial colorectal cancer screening services;
2. Providing a point of contact for program communication with the department to relay information that may include updating data, follow-up information and final diagnosis;
3. Providing screening services for a specific geographic area; and
4. Providing referral and follow-up for participants with abnormal screening results.

(7) The health care provider shall ensure compliance with this chapter and other terms and conditions included in the provider agreement or contract.

**10.3(3)** IGS program and contracted local program staff shall conduct referral, tracking and follow-up utilizing a Web-based data system to monitor each enrolled participant's receipt of screening, rescreening and diagnostic procedures.

*a.* The enrolled participant shall be notified within 30 days of the screening service by contracted local program staff or the enrolled health care provider of the results of the service, whether the results are normal, benign or abnormal.

*b.* The contracted local program shall use the IGS program data system to enter appropriate and timely clinical services, including screening and diagnostic test results, follow-up, and completion of screening services.

*c.* If the enrolled participant has an abnormal colorectal screening test, the health care provider or local coordinator shall provide to the participant a comprehensive referral directing the participant to appropriate additional diagnostic or treatment services. When the results of a FIT screen are positive, the local coordinator shall work with the participant and enrolled health care provider to schedule a colonoscopy.

*d.* The local program coordinator shall follow-up with the provider to obtain results if not provided in a timely manner.

*e.* IGS program staff shall follow-up with the local program coordinator if results have not been entered in the IGS data system in a timely manner.

**10.3(4)** If treatment services are needed, the participant's health care provider may perform a consultation in order to educate the participant about treatment options. If more than two office visits are warranted for a participant throughout the screening cycle, subsequent office visits must be authorized by IGS program staff.

**10.3(5)** IGS program staff shall use quality assurance and process improvement techniques including use of established standards, systems, policies and procedures to monitor, assess and identify practical methods for improvement of the IGS program and its components. Quality assurance and process improvement are integral components of the IGS program and contribute to program success. As part of the vision, to reduce morbidity and mortality from colorectal cancer, high-quality, timely participant services are essential. IGS program requirements and monitoring activities shall include:

*a.* Professional licensure and accreditation. Health facilities and health care providers must be currently licensed or accredited to practice in the state of Iowa.

*b.* Reporting standards. Radiological, laboratory and pathology and other results must be reported according to national standards.

*c.* Standards for adequacy of follow-up. Data reports shall track appropriate and timely short-term, diagnostic and rescreening services.

*d.* A case management services approach. Local program staff shall follow the participants through the colorectal cancer screening process from the first contact to final diagnosis and as needed for referral to treatment and patient navigation services. Local program staff shall be responsible for documenting these activities as described in paragraph 10.3(2) "d."

*e.* Accurate data collection and documentation.

(1) Colorectal cancer data elements (CRCDEs) are reported to CDC semiannually by the department.

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(2) Site visits are conducted at local program sites to provide technical assistance, give feedback on program performance, evaluate case management process and if needed conduct a walkthrough of current services to provide feedback.

*f.* Evaluation. Workplans shall be reviewed and surveys conducted in the community and with program partners. Reports on progress and face-to-face meetings shall be conducted routinely and on an as-needed basis to assess how the IGS program is meeting CDC program objectives.

*g.* Process improvement and systems change activities.

*h.* Adherence to CDC policies and guidelines.

*i.* Approval and utilization of additions to the local program allowable procedures list.

**10.3(6)** Professional development shall be provided by the IGS program and contracted local program staff through a variety of channels including educational activities that enable professionals to perform their jobs competently, to identify needs and resources, and to ensure that health care delivery systems provide appropriate clinical outcomes for colorectal cancer screening services.

**10.3(7)** The IGS program and contracted local program staff shall provide in-reach education and recruitment that involve the systematic design and delivery of clear and consistent messages about colorectal cancer (CRC) and the benefits of early detection using a variety of methods and strategies. In-reach activities shall focus on men and women who have never or rarely been screened for CRC and shall work toward the removal of barriers to care (e.g., by providing respite care, interpreter services and transportation) through collaborative activities with other community organizations. In-reach shall be targeted toward the participants already being served through the IA CFY program and patients at FQHCs. Public education and outreach activities for community awareness of CRC are supported and mandatory for the project.

**10.3(8)** The IGS program may develop coalitions and partnerships to establish a common agreement for sharing resources and responsibilities to achieve the common goal of reducing colorectal cancer mortality.

**10.3(9)** The IGS program shall conduct surveillance utilizing continuous, proactive, timely and systematic collection, analysis, interpretation and dissemination of colorectal cancer screening prevalence, survival and mortality rates. Studies shall be conducted utilizing minimum data elements and other data sources to establish trends of disease, diagnosis, treatment, and research needs. IGS program planning, implementation and evaluation shall be based on the data.

**10.3(10)** Evaluation by the IGS program evaluator shall be conducted through documentation of services, operation processes at the state and local program levels and outcomes of the IGS program. The evaluation shall include face-to-face interviews with state and local IGS program staff involved in IGS program delivery. IGS program evaluation shall include suggestions to help IGS and local program staff meet the recommendations as set in the CRCCP program manual. Recommendations shall then be incorporated into the program workplan by the state staff.

**641—10.4(135) Medical advisory board.** The medical advisory board or MAB is made up of a diverse group of professionals (e.g., primary care providers, nurses, endoscopists, oncologists, pathologists, radiologists, coordinators, patient navigators and the IGS program evaluator) who offer their expertise on issues including enrollment, screening, diagnosis and treatment.

**10.4(1)** The MAB provides oversight of the quality of screening services delivered. MAB members may participate in other IGS program activities including colorectal cancer awareness month activities and education projects.

**10.4(2)** The primary role of the MAB is to:

*a.* Assist in the establishment of IGS program eligibility and service delivery criteria (e.g., defining underinsured, establishing guidelines for diagnostic testing, surveillance intervals, etc.);

*b.* Monitor quality of screening, rescreening, diagnostic and surveillance services;

*c.* Assist with identification of resources for treatment and referral of individuals who are ineligible for the program;

*d.* Provide direction on IGS program policy development and data collection; and

*e.* Approve additions to the IGS program allowable procedures list, as needed.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**641—10.5(135) Participant eligibility criteria.** An applicant for the IGS program must satisfy the criteria outlined in this rule. If an applicant does not meet these criteria, the applicant shall be provided information by contracted local program staff regarding IowaCare, free care or sliding-fee clinics available in the area in which the applicant lives.

**10.5(1) Age.** Individuals 50 through 64 years of age shall be the target population to receive colorectal cancer screening.

**10.5(2) Income.**

*a.* The IGS program income guidelines are based upon 250 percent of the federal poverty level (FPL), which is set annually by the Centers for Medicare and Medicaid Services (CMS). New IGS program income guidelines will be adjusted following any change in CMS guidelines.

*b.* Self-declaration of income may be accepted.

*c.* Eligibility shall be based on net income for the household.

*d.* Assets shall not affect income status and shall not be counted when eligibility under the IGS program is determined.

**10.5(3) Insurance.**

*a.* The IGS program shall determine individuals to be uninsured if they do not have health insurance coverage.

*b.* The IGS program shall determine individuals to be underinsured if they have health insurance with unreasonably high copayments, deductibles or coinsurance or the insurance does not cover the IGS program's covered services.

*c.* Individuals who have Medicaid or Medicare Part B are not eligible. Individuals who have IowaCare, Medicaid with spend down, or Iowa family planning network may be eligible.

**10.5(4) Residency.**

*a.* Individuals must reside in the state of Iowa.

*b.* Individuals shall have an established address and contact information as needed for program staff to provide screening results, rescreens, and follow-up services.

**10.5(5) Risk level.** Individuals with an average or increased risk for developing colorectal cancer as defined by the recommendations of the USPSTF may qualify for IGS program services.

**10.5(6) Ineligible.** The IGS program does not provide coverage for:

*a.* Individuals with Medicare Part B coverage.

*b.* Individuals 49 years of age and younger.

*c.* Individuals 65 years of age and older.

*d.* Individuals who do not have a primary care provider.

*e.* Individuals at high risk for developing colorectal cancer. Individuals at high risk include:

(1) A genetic diagnosis of familial adenomatous polyposis (FAP) or hereditary nonpolyposis colorectal cancer (HNPCC),

(2) A clinical diagnosis or suspicion of FAP or HNPCC, or

(3) A history of inflammatory bowel disease (ulcerative colitis or Crohn's disease).

*f.* Individuals experiencing the following gastrointestinal symptoms:

(1) Rectal bleeding, bloody diarrhea, or very dark blood in the stool within the past six months;

(2) Prolonged change in bowel habits;

(3) Persistent/ongoing abdominal pain;

(4) Recurring symptoms of bowel obstruction; or

(5) Significant unintentional weight loss.

**641—10.6(135) Participant application procedures for IGS program services.**

**10.6(1) Enrollment.** After an individual is determined eligible for services and agrees to participate in the IGS program, the following provisions shall apply:

*a.* A prospective participant must complete the Informed Consent and Release of Medical Information form and submit it to the local program coordinator in order to become enrolled in the

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

program and be considered a program participant. The date on the signed form shall be the participant's enrollment date.

*b.* Upon enrollment, the participant shall be eligible for services for 12 months beginning from the date of enrollment, subject to restrictions in funding and program coverage as provided in subrules 10.6(2) and 10.6(3).

**10.6(2) Reenrollment.**

*a.* A participant's continued eligibility for IGS program coverage shall be determined annually.

*b.* The IGS local program coordinator shall reenroll the participant in the program no more than 30 days prior to the end of the 12-month coverage period in accordance with USPSTF guidelines or a physician's recommendation.

*c.* When a participant reenrolls, the participant must complete, sign and return the consent and release form to the local program coordinator before receiving any further services.

**10.6(3) Termination of enrollment.** The IGS program shall terminate a participant's enrollment if the participant:

*a.* Requests termination from the program;

*b.* No longer meets the criteria set forth in rule 641—10.5(135);

*c.* Does not return a signed IGS program consent and release form; or

*d.* Refuses to receive screening and diagnostic services through an IGS program health care provider.

**641—10.7(135) Priority for program expenditures.**

**10.7(1)** In the event the IGS program director certifies that there are inadequate funds to meet participants' needs, either attributable to a reduction in federal funding from the CDC or to a projected enrollment of participants in excess of anticipated enrollment, the program director may restrict new applicants' participation in the IGS program. First priority shall be given to individuals who have never been screened for CRC.

**10.7(2)** In the event that the financial demand abates, the program director shall withdraw the financial shortfall certification, at which time the individual shall be eligible for program services in accordance with rule 641—10.5(135).

**641—10.8(135) Right to appeal.** If an individual disagrees with or is dissatisfied with IGS program eligibility, the covered-service determination or the decision of the IGS program, the individual has the right to appeal the decision or action.

**10.8(1)** The appeal shall be in writing and shall be submitted within ten working days of the decision or action to the local program staff with whom the individual has been working.

**10.8(2)** The local program staff shall contact an IGS program staff person with the information regarding the appeal within three business days.

**10.8(3)** IGS program staff shall confer with the bureau chief for the IGS program at the department and provide a decision to the local program staff within five business days. A decision made by IGS program staff shall be delivered by telephone, if possible, to the individual making the appeal and shall be followed by a written notification of the decision. The decision of IGS program staff shall be considered a final agency decision in accordance with Iowa Code chapter 17A.

**641—10.9(135) Colorectal cancer treatment.** The IGS program does not pay for colorectal cancer treatment services. A participant will be assisted with enrolling in the IowaCare program, in the event treatment services are needed. If a participant needs treatment, the local program coordinator will refer the participant to an American Cancer Society patient navigator to identify and coordinate resources for the participant who may require physical, emotional, financial or other support through the cancer journey. The patient navigator and IGS program staff will work together to assist a participant needing treatment. It is an expectation of the cooperative agreement that a participant gets help obtaining treatment services free or at an affordable cost based on the participant's annual income and ability to pay for the services.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

These rules are intended to implement Iowa Code chapter 135.

**ARC 0002C**

**PUBLIC HEALTH DEPARTMENT[641]**

**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 147A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 131, “Emergency Medical Services Provider Education/Training/Certification,” Iowa Administrative Code.

The rules in Chapter 131 describe the standards for the education, training, and certification of emergency medical providers and establish a standard of conduct for training programs, students, and providers. This proposed amendment incorporates modifications to the emergency medical care provider scope of practice recommended by the EMS Advisory Council.

Any interested person may make written comments or suggestions on the proposed amendment on or before February 28, 2012. Such written comments should be directed to Joseph Ferrell, Bureau of EMS, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [joseph.ferrell@idph.iowa.gov](mailto:joseph.ferrell@idph.iowa.gov).

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

This amendment is intended to implement Iowa Code chapter 147A.

The following amendment is proposed.

Amend paragraph **131.3(3)“b”** as follows:

*b.* Scope of Practice for Iowa EMS Providers (~~January 2011~~ July 2011) is hereby incorporated and adopted by reference for emergency medical care providers. For any differences that may occur between the Scope of Practice adopted by reference and these administrative rules, the administrative rules shall prevail.

**ARC 0001C**

**PUBLIC HEALTH DEPARTMENT[641]**

**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 147A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 132, “Emergency Medical Service—Service Program Authorization,” Iowa Administrative Code.

The rules in Chapter 132 describe the standards for the authorization of EMS services. These proposed amendments incorporate the Scope of Practice approved by the EMS Advisory Council in July 2011, allow critical care paramedics to operate in the prehospital environment, add definitions for the new provider levels and allow service authorization at the new levels.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Any interested person may make written comments or suggestions on the proposed amendments on or before February 28, 2012. Such written comments should be directed to Joseph Ferrell, Bureau of EMS, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [joseph.ferrell@idph.iowa.gov](mailto:joseph.ferrell@idph.iowa.gov).

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

These amendments are intended to implement Iowa Code chapter 147A.

The following amendments are proposed.

ITEM 1. Amend rule **641—132.1(147A)**, definitions of “Critical care paramedic (CCP),” “Critical care transport (CCT),” “Emergency medical care provider,” “Endorsement” and “Paramedic (EMT-P),” as follows:

*“Critical care paramedic (~~CCP~~)” or “CCP”* means a currently certified paramedic specialist or paramedic who has successfully completed a critical care course of instruction approved by the department and has received endorsement from the department as a critical care paramedic.

*“Critical care transport (~~CCT~~)” or “CCT”* means specialty care patient transportation, when medically necessary, for a critically ill or injured patient needing critical care paramedic (~~CCP~~) skills, ~~between medical care facilities, and~~ provided by an authorized ambulance service that is approved by the department to provide critical care transportation and staffed by one or more critical care paramedics or other health care professional in an appropriate specialty area.

*“Emergency medical care provider”* means an individual who has been trained to provide emergency and nonemergency medical care at the first responder, ~~EMT-basic, EMT-intermediate, EMT-paramedic, paramedic specialist~~ EMR, EMT, AEMT paramedic or other certification levels recognized by the department before ~~1984~~ 2011 and who has been issued a certificate by the department.

*“Endorsement”* means ~~providing approval in an area related to emergency medical care including, but not limited to, CCP and emergency medical services~~ an approval granted by the department authorizing an individual to serve as an EMS-I, EMS-E or CCP.

*“Paramedic (~~EMT-P~~)”* means an ~~emergency medical technician-paramedic~~ individual who has successfully completed a course of study based on the United States Department of Transportation’s Paramedic Instructional Guidelines (January 2009), has passed the NREMT practical and cognitive examinations for the paramedic, and is currently certified by the department as a paramedic.

ITEM 2. Adopt the following **new** definitions in rule **641—132.1(147A)**:

*“Advanced emergency medical technician” or “AEMT”* means an individual who has successfully completed a course of study based on the United States Department of Transportation’s Advanced Emergency Medical Technician Instructional Guidelines (January 2009), has passed the National Registry of Emergency Medical Technicians (NREMT) practical and cognitive examinations for the AEMT, and is currently certified by the department as an AEMT.

*“Emergency medical responder” or “EMR”* means an individual who has successfully completed a course of study based on the United States Department of Transportation’s Emergency Medical Responder Instructional Guidelines (January 2009), has passed the NREMT practical and cognitive examinations for the EMR, and is currently certified by the department as an EMR.

*“Emergency medical technician” or “EMT”* means an individual who has successfully completed a course of study based on the United States Department of Transportation’s Emergency Medical Technician Instructional Guidelines (January 2009), has passed the NREMT practical and cognitive examinations for the EMT, and is currently certified by the department as an EMT.

*“Emergency medical technician-paramedic” or “EMT-P”* means an individual who has successfully completed the United States Department of Transportation’s EMT-Intermediate (1999) or the 1985 or earlier DOT EMT-P curriculum, has passed the department’s approved written and practical examinations, and is currently certified by the department as an EMT-P.

ITEM 3. Amend paragraph **132.2(4)“b”** as follows:

b. Scope of Practice for Iowa EMS Providers (~~April 2009~~ July 2011) is incorporated and adopted by reference for EMS providers. For any differences that may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 4. Amend paragraph **132.8(1)“a”** as follows:

a. Apply for authorization at one of the following levels:

(1) EMT-B/EMT.

(2) EMT-I.

(3) AEMT.

~~(3)~~ (4) EMT-P.

~~(4)~~ (5) PS/Paramedic.

ITEM 5. Amend subparagraph **132.8(1)“c”(1)** as follows:

(1) One currently certified EMT-B or EMT.

ITEM 6. Amend paragraph **132.8(2)“a”** as follows:

a. Apply for authorization at one of the following levels:

~~(1) Rescinded IAB 2/9/11, effective 3/16/11.~~

~~(2)~~ (1) First responder/EMR.

~~(3)~~ (2) EMT-B/EMT.

~~(4)~~ (3) EMT-I.

(4) AEMT.

(5) EMT-P.

(6) PS/Paramedic.

ITEM 7. Amend paragraph **132.9(6)“d”** as follows:

d. Only supervising physicians or physician designees shall provide on-line medical direction.

However, a A physician assistant, registered nurse or EMT emergency medical care provider (of equal or higher level) may relay orders to emergency medical care personnel, without modification, from a supervising physician. A physician designee may not deviate from approved protocols.

ITEM 8. Amend rule 641—132.15(147A), catchwords, as follows:

**641—132.15(147A) Transport options for fully authorized EMT-P, PS, and paramedic service programs.**

ITEM 9. Amend subrule 132.15(1), introductory paragraph, as follows:

**132.15(1)** Upon responding to an emergency call, ambulance or nontransport EMT-P, PS, and paramedic level services may make a determination at the scene as to whether emergency medical transportation or nonemergency transportation is needed. The determination shall be made by a an EMT-P, paramedic or paramedic specialist and shall be based upon the nonemergency transportation protocol approved by the service program’s medical director. When applying this protocol, the following criteria, as a minimum, shall be used to determine the appropriate transport option:

**ARC 9988B**

**PUBLIC SAFETY DEPARTMENT[661]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 17A.3, the Department of Public Safety hereby gives Notice of Intended Action to adopt new Chapter 93, “Identification Cards for Former Peace Officers of the Iowa Department of Public Safety,” Iowa Administrative Code.

The federal Law Enforcement Officers Safety Act of 2004 and the subsequent Law Enforcement Officers Safety Act Improvements Act of 2010 have been codified as Sections 926B and 926C of United

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

States Code, Title 18, which establish the authority of active law enforcement officers and former law enforcement officers who retired or separated in good standing to carry a concealed firearm in any state without having to obtain a permit to do so from any state or any political subdivision of any state. The rules proposed herein establish procedures related to required identification and firearms qualifications of former and retired peace officers of the Iowa Department of Public Safety which stem from the federal law.

Any interested person may make written or oral comments regarding these proposed rules. There will be a public hearing at 9:30 a.m. on April 3, 2012, in the First Floor Public Conference Room, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa, to accept oral comments. Persons who speak at the public hearing are also encouraged, although not required, to submit their comments in writing. Persons who wish to speak at the public hearing are encouraged to notify the Agency Rules Administrator by e-mail at [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us) or telephone at (515)725-6185 at least one day prior to the hearing.

Written comments may be submitted until 4:30 p.m. on April 2, 2012, by mail to Agency Rules Administrator, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319; by e-mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us); or by fax to (515)725-6195; or may be submitted at the public hearing.

No fiscal impact is anticipated.

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

Rules of the Department of Public Safety are subject to waiver under the provisions of rule 661—10.222(17A,80). Requests for waivers should be filed in accordance with that rule.

These rules are intended to implement 18 U.S.C. §926C.

The following amendment is proposed.

Adopt the following **new** 661—Chapter 93:

CHAPTER 93  
IDENTIFICATION CARDS FOR FORMER PEACE OFFICERS  
OF THE IOWA DEPARTMENT OF PUBLIC SAFETY

**661—93.1(18USC926C) General provisions.** It is the policy of the Iowa department of public safety to provide any qualified former peace officer member of the department with a permanent card that identifies the holder as a qualified former law enforcement officer upon separation from employment as a peace officer with the department. These rules provide a procedure for a qualified former member of the department to apply for a new or duplicate former peace officer identification (ID) card after the person is no longer employed by the department as a peace officer, to complete required annual firearms qualification under auspices of the department and receive a card certifying that such required annual firearms qualification has been completed, and to appeal decisions of the department not to issue a former peace officer identification card or an annual firearms qualification card.

**661—93.2(18USC926C) Definitions.** The following definitions apply to rules in this chapter:

“*Commissioner*” means the commissioner of the Iowa department of public safety.

“*Department*” means the Iowa department of public safety.

“*Duplicate*” means a former peace officer identification card issued to replace a lost or destroyed original identification card.

“*Former peace officer identification (ID) card*” means a photographic identification card issued by the department to a qualified former law enforcement officer with the department.

“*Qualified former law enforcement officer*” means a person who:

1. Retired or separated in good standing from service with the department as a law enforcement officer; and
2. Was not officially found by a qualified medical professional employed by the department to be unqualified for reasons relating to mental health; and
3. Did not enter into an agreement with the department in which the officer acknowledged that the officer was not qualified for reasons relating to mental health; and

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

4. Before such retirement or separation, was authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law and had statutory powers of arrest; and

5. Met one of the following two requirements:

- Before such retirement or separation, was regularly employed as a law enforcement officer for an aggregate of 10 years or more; or

- Retired from service with the department, after completing any applicable probationary period of such service, due to an accidental disability, as determined by the board of directors of the Iowa department of public safety peace officers' retirement, accident, and disability system, pursuant to Iowa Code section 97A.6 and rule 661—401.1(97A).

**661—93.3(18USC926C) Application for former peace officer ID card.**

**93.3(1)** A qualified former law enforcement officer of the department of public safety may apply for a former peace officer identification card prior to retirement or any time after such retirement becomes effective.

**93.3(2)** Application shall be made on a form available from the office of the commissioner.

**93.3(3)** The completed application form may be submitted to the Iowa Department of Public Safety, Office of the Commissioner, 215 East 7th Street, Des Moines, Iowa 50319.

**93.3(4)** Upon receipt of a completed application, the department shall verify that the applicant met the requirements for issuance of a former peace officer identification card at the time of separation from employment with the department.

**93.3(5)** If the applicant met all of the requirements for a qualified former law enforcement officer at the time of separation from employment as a peace officer with the department, the application shall be approved, unless the commissioner is aware of information that would disqualify the applicant which arose from conduct or circumstances which occurred after the time of separation. Issuance of a former peace officer identification card by the department implies no warranty of the continuing eligibility of the former peace officer to carry a concealed weapon pursuant to 18 U.S.C. §926C.

**93.3(6)** If the applicant did not meet all of the requirements for a qualified former law enforcement officer at the time of separation from employment as a peace officer with the department or if the commissioner is aware of information that would disqualify the applicant based on conduct or circumstances which occurred after separation from the department, then the application shall be denied and the applicant shall be notified of the denial.

**93.3(7)** The commissioner shall notify an approved applicant and shall provide instructions for completion of the issuance process. Such instructions may include a requirement for the applicant to be present at a time and location designated by the department to be photographed for the identification card.

**93.3(8)** Issuance of an initial former peace officer identification card shall be at no charge to the qualified former law enforcement officer.

**93.3(9)** If a qualified former peace officer of the department loses an identification card, or if a card is damaged, a replacement may be issued. The former officer shall notify the office of the commissioner of the loss or damage and may apply for a replacement card. A nonrefundable fee of \$5, to defray expenses of the department, shall be charged for each application for a replacement former peace officer ID card. The fee is payable to the Iowa Department of Public Safety by personal check or money order. If loss of or damage to the former peace officer identification card occurred in an area subject to a formal disaster emergency declaration issued by the governor pursuant to Iowa Code section 29.6 and is attributable to the conditions which led to the disaster emergency declaration, no charge shall apply.

**661—93.4(18USC926C) Annual firearms qualification—certification card.**

**93.4(1)** Qualified former law enforcement officers with the department of public safety may participate in annual firearms qualification offered by the department and, upon successful completion of the annual firearms qualification, receive proof thereof from the department. A card certifying successful completion of the annual qualification and specifying the date of the qualification shall

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

be issued by the firearms instructor conducting the qualification on behalf of the department to each qualified former law enforcement officer who has successfully completed the qualification. A card certifying successful completion of the qualification shall be issued by department personnel only to a qualified former law enforcement officer with the department who successfully completes the annual firearms qualification under the auspices of the department. Participation in annual firearms qualification offered by the department is restricted to qualified former law enforcement officers with the department who are residents of the state of Iowa at the time of the qualification.

NOTE: Any qualified former law enforcement officer with the department may participate in annual firearms qualification offered by a certified firearms instructor other than under the auspices of the department. A card to certify proof of successful completion of annual firearms qualification may be issued only by the firearms instructor who conducts the qualification.

**93.4(2)** Annual firearms qualification shall be offered periodically and at various locations in the state to qualified retired and former officers of the department who reside in Iowa. All qualified former law enforcement officers with the department who have provided a current active e-mail address to the department shall be notified by e-mail when firearms qualification or firearms familiarization training is being offered to current peace officer members of the department of public safety. While the department will make a good-faith effort to notify all qualified and former peace officer members of the department who reside in Iowa of the availability of such training, it is the responsibility of each qualified former peace officer member of the department to inquire about such training if the qualified former peace officer wishes to use the qualification or training to obtain the annual certification of firearms qualification required under 18 U.S.C. §926C.

**93.4(3)** A qualified former law enforcement officer with the department who resides in Iowa shall be offered the opportunity to participate in annual firearms qualification at no cost to the qualified former officer, except that any former officer of the department who participates in annual firearms qualification offered under the auspices of the department shall supply any firearm, ammunition, or equipment required to be used in the qualification.

**93.4(4)** A qualified former law enforcement officer with the department residing in Iowa who plans to participate in firearms qualification or firearms familiarization training offered by the department should inquire via e-mail to the department prior to the qualification or training as to what information and material the qualified former peace officer is required to provide at the training, and the department will provide notification of this information via return e-mail. An application form for an annual firearms qualification shall be provided electronically to the qualified former peace officer member as an attachment to the e-mail. The qualified former peace officer member shall complete the application form and submit it to the instructor prior to the start of the qualification or training.

**93.4(5)** An instructor supervising annual qualification or training on behalf of the department shall refuse to admit a former law enforcement officer with the department to the qualification session or training if the former law enforcement officer with the department is not a resident of the state of Iowa at the time of qualification or the instructor knows that the former law enforcement officer with the department does not meet the requirements for possession of a firearm under state or federal law or is otherwise unable to meet the requirements to be a qualified former law enforcement officer under the provisions of 18 U.S.C. §926C. An instructor may refuse to admit any qualified former law enforcement officer with the department to an annual firearms qualification if, in the judgment of the instructor, participation in the session by the qualified former law enforcement officer would be unsafe.

**93.4(6)** If the qualified former law enforcement officer with the department satisfies the requirements for annual firearms qualification, the instructor shall complete and issue to the qualified former law enforcement officer an annual firearms qualification certification card on a form provided by the department. If the former law enforcement officer with the department fails to attain a qualifying score, the instructor shall so notify the former law enforcement officer with the department.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

**661—93.5(17A) Appeals.** Any action taken by the department that adversely affects the applicant may be appealed through the process delineated in 661—Chapter 10.

These rules are intended to implement 18 U.S.C. §926C.

**ARC 0005C**

## **REVENUE DEPARTMENT[701]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 40, “Determination of Net Income,” Iowa Administrative Code.

These amendments make changes to rule 701—40.38(422) related to the exclusion of certain capital gains income from Iowa individual income tax. The amendments remove obsolete provisions, clarify existing provisions, and incorporate additional provisions related to the capital gains that are eligible for the exclusion.

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

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

The Department has determined that the proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than March 12, 2012, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before February 28, 2012. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by February 28, 2012.

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

These amendments are intended to implement Iowa Code section 422.7.

The following amendments are proposed.

ITEM 1. Rescind rule 701—40.38(422), introductory paragraph, and adopt the following **new** introductory paragraph in lieu thereof:

**701—40.38(422) Capital gain deduction or exclusion for certain types of net capital gains.** For tax years beginning on or after January 1, 1998, net capital gains from the sale of the assets of a business described in subrules 40.38(2) to 40.38(8) are excluded in the computation of net income for qualified

## REVENUE DEPARTMENT[701](cont'd)

individual taxpayers. This includes net capital gains from the sales of real property, sales of assets of a business entity, sales of certain livestock of a business, sales of timber, liquidation of assets of certain corporations, and certain stock sales which are treated as acquisition of assets of a corporation. "Net capital gains" means capital gains net of capital losses because Iowa's starting point for computing net income is federal adjusted gross income. A business includes any activity engaged in by a person or caused to be engaged in by a person with the object of gain, benefit, or advantage, either direct or indirect. Subrule 40.38(1) describes the criteria for material participation which are required for the exclusion of certain capital gains related to the sale of real property and the sale of assets of business entities. Subrule 40.38(9) describes situations in which the capital gain deduction otherwise allowed is not allowed for purposes of computation of a net operating loss or for computation of the taxable income for a tax year to which a net operating loss is carried.

ITEM 2. Amend subrule 40.38(1) as follows:

~~**40.38(1)** Net capital gains from sales or exchanges of real property, tangible personal property, or other assets of a business owned by the taxpayer for a minimum of ten years and in which the taxpayer has materially participated for a minimum of ten years. Net capital gains from the sales or exchanges of real property, tangible personal property, or other assets from a business the taxpayer has owned for ten years and in which the taxpayer materially participated as defined in Section 469(h) of the Internal Revenue Code for ten years qualify for the capital gain deduction. In the case of installment sales of real property, tangible personal property, or other assets of a business, where the selling price of the business assets is paid to the seller in one or more years after the year in which the sales transaction occurred, all installments received on or after January 1, 1990, qualify for the capital gains deduction, assuming the taxpayers had met the ownership and material participation requirements at the time the sales transactions occurred. *Herbert Clausen and Sylvia Clausen v. the Iowa Department of Revenue and Finance*, Law No. 32313, Crawford County District Court, May 24, 1995. For example, if a taxpayer received an installment payment in 1996 from the sale of the taxpayer's farmland in 1988, the installment received in 1996 would qualify for the 45 percent capital gain deduction if the taxpayer had owned the farmland at least ten years at the time of the sale and the taxpayer had materially participated in the farm business for a minimum of ten years at the time of the sale. The following terms and definitions clarify which sales and exchanges of assets of a business qualify for the capital gain deduction authorized in rule 701—40.38(422).~~

~~*a.* Business. A business includes any activity engaged in by a person with the object of gain, benefit, or advantage, either direct or indirect. In addition, a business for purposes of the capital gains deduction in rule 701—40.38(422) must have been owned by the taxpayer for at least ten years and the taxpayer must have materially participated in the business for at least ten years.~~

~~*b.* Assets of a business. Those assets of a business which may qualify for capital gain treatment under rule 701—40.38(422) if the assets are sold or exchanged under the conditions described in this rule are real property, tangible personal property, or other assets of a business which were held by the business more than one year at the time the assets were sold or exchanged. However, for purposes of this subrule, tangible personal property of a business does not include cattle or horses described in subrule 40.38(2), other livestock described in subrule 40.38(3), or timber which is described in subrule 40.38(4).~~

~~*e.* Material participation in a business if the taxpayer has been involved in the operation of the business on a regular, continuous, and substantial basis for ten or more years at the time assets of the business are sold or exchanged. If the taxpayer has regular, continuous and substantial involvement in the operations of a business which meets the criteria for material participation in an activity under Section 469(h) of the Internal Revenue Code and the Treasury rules federal tax regulations for material participation in 26 CFR §1.469-5 and §1.469-5T, for the ten years or more immediately before prior to the date of the sale or exchange of the assets of a business, the taxpayer shall be considered to have satisfied the material participation requirement for this subrule. In determining whether or not a particular taxpayer has material participation in a business, participation of the taxpayer's spouse in a business must also be taken into account. The spouse's participation in the business must be taken into account even if the spouse does not file a joint state return with the taxpayer, or if the spouse has no ownership interest~~

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in the business. ~~The activities of other family members, employees, or consultants are not attributed to the taxpayer to determine material participation. A taxpayer is most likely to have material participation in a business if that business is the taxpayer's principal business. However, it is possible for a taxpayer to have had material participation in more than one business in a tax year for purposes of this subrule.~~

a. Work done in connection with an activity shall not be treated as participation in the activity if such work is not of a type that is customarily done by an owner and one of the principal purposes for the performance of such work is to avoid the disallowance of any loss or credit from such activity.

b. Work done in an activity by an individual in the individual's capacity as an investor is not considered to be material participation in the business or activity unless the investor is directly involved in the day-to-day management or operations of the activity or business.

c. A taxpayer is most likely to have material participation in a business if that business is the taxpayer's principal business. However, for purposes of this subrule, it is possible for a taxpayer to have had material participation in more than one business in a tax year.

d. A highly relevant factor in material participation in a business is how regularly the taxpayer is present at the place where the principal operations of a business are ~~carried on~~ conducted. In addition, a taxpayer is likely to have material participation in a business if the taxpayer performs all functions of the business. The fact that the taxpayer utilizes employees or contracts for services to perform daily functions in a business will not prevent the taxpayer from qualifying as materially participating in the business, but the services will not be attributed to the taxpayer.

e. Generally, an individual will be considered as materially participating in a tax year if the taxpayer satisfies or meets any of the following tests:

1. (1) The individual participates in the business for more than 500 hours in the taxable year.

EXAMPLE. Joe and Sam Smith are brothers who formed a computer software business in ~~1981~~ 2001 in Altoona, Iowa. In ~~1991~~ 2011, Joe spent approximately 550 hours selling software for the business and Sam spent about 600 hours developing new software programs for the business. Both Joe and Sam would be considered to have materially participated in the computer software business in ~~1991~~ 2011.

2. (2) The ~~individuals'~~ individual's participation in the business constitutes substantially all of the participation of all individuals in the business for the tax year.

EXAMPLE. Roger McKee is a teacher in a small town in southwest Iowa. He owns a truck with a snowplow blade. He contracts with some of his neighbors to plow driveways. He maintains and drives the truck. In the winter of ~~1991~~ 2011, there was little snow so Mr. McKee spent only 20 hours in ~~1991~~ 2011 ~~in~~ clearing driveways. Roger McKee is deemed to have materially participated in the snowplowing business in ~~1991~~ 2011.

3. (3) The individual participates in the business for more than 100 hours in the tax year, and no other individual spends more time in the business activity than the taxpayer.

4. (4) The individual participates in two or more businesses, excluding rental businesses, in the tax year and participates for more than 500 hours in all of the businesses and more than 100 hours in each of the businesses, and the participation is not material participation within the meaning of one of the tests in subparagraphs 40.38(1) "e"(1) to (3) and (5) to (7). Thus, the taxpayer is regarded as materially participating in each of the ~~business activities~~ businesses.

EXAMPLE. Frank Evans is a full-time CPA. He owns a restaurant and a record store. In ~~1992~~ 2011, Mr. Evans spent 400 hours ~~in~~ working at the restaurant and 150 hours at the record store and other individuals spent more time in the business activity than he did. Mr. Evans is treated as a material participant in each of the businesses in ~~1992~~ 2011.

5. (5) An individual who has materially participated (by meeting any of the tests in numbered paragraphs "1" through "4" above determined with regard to subparagraphs 40.38(1) "e"(1) to (4)) in a business for five of the past ten years will be deemed a material participant in the current year.

EXAMPLE. Joe Bernard is the co-owner of a plumbing business. He retired in ~~1988~~ 2008 after 35 years in the business. Since Joe's retirement, he has retained his interest in the business. Joe is considered to be materially participating in the business for the years through ~~1993~~ 2013 or for the five years after the year of retirement. Thus, if the plumbing business is sold before the end of ~~1993~~ 2013, the sale will

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qualify for the Iowa capital gain deduction on Joe's ~~1993~~ 2013 Iowa return because he was considered to be a material participant in the business according to the federal rules for material participation.

~~6.~~ (6) An individual who has materially participated in a personal service activity for at least three years will be treated as a material participant for life. A personal service activity involves the performance of personal services in the fields of health, law, engineering, architecture, accounting, actuarial science, performing arts, consulting or any other trade or business in which capital is not a material income-producing factor.

EXAMPLE. Gerald Williams is a retired attorney, but he retains an interest in the law firm he was involved in for over 40 years. Because the law firm is a personal ~~services~~ service activity, Mr. Williams is considered to be a material participant in the law firm even after his retirement from the firm.

~~7.~~ (7) An individual who participates in the business activity for more than 100 hours may be treated as materially participating in the activity if, based on all the facts and circumstances, the individual participates on a regular, continuous, and substantial basis. Management activities of a taxpayer are not considered for purposes of determining if there was material participation if either of the following applies: any person other than the taxpayer is compensated for management services, or any person provides more hours of management services than the taxpayer.

f. The following paragraphs provide clarification regarding the facts and circumstances test in subparagraph 40.38(1)"e"(7):

(1) ~~●~~ A retired or disabled farmer is treated as materially participating in a farming activity for the current year if the farmer materially participated in the activity for five of the last eight years before the farmer's retirement or disability. That is, the farmer must have been subject to self-employment tax in five of the eight years before retirement or disability and had to have been either actively farming so the income was reported on Schedule F or materially participating in a crop-share activity for five of ~~those eight last~~ the last eight years prior to retirement or disability. The farmer must be receiving old-age benefits under Title II of the Social Security Act to be considered a retired farmer.

EXAMPLE. Fred Smith was 80 years old in ~~1991~~ 2011 when he sold 200 acres of farmland he had owned since 1951. Mr. Smith retired in ~~1981~~ 2001 when he began receiving old-age benefits under Title II of the Social Security Act. In the last eight years before retirement, Mr. Smith was paying self-employment tax on his farm income which was reported on Schedule F for each of those eight years. In the years before he sold the farmland, Mr. Smith was leasing the farmland on a cash-rent basis, whereby Mr. Smith would not be considered to be materially participating in the farming activity. Because Mr. Smith had material participation in the farmland in the eight years before retirement, Mr. Smith was considered to have met the material participation requirement, so the capital gain qualified for the Iowa capital gain deduction.

(2) ~~●~~ A surviving spouse of a farmer is treated as materially participating in the farming activity for the current tax year if the farmer met the material participation requirements at the time of death and the spouse actively participates in the farming business activity. That is, the spouse participates in the making of management decisions relating to the farming activity or arranges for others to provide services (such as repairs, plowing, and planting). However, if the surviving spouse was retired at the time of the farmer's death and the deceased spouse materially participated in the farming activity for five of the last eight years prior to the deceased spouse's retirement, then the surviving spouse is deemed to be materially participating, even if the surviving spouse did not actively participate in the farming activity. See IRS Technical Service Memorandum 200911009, March 13, 2009.

~~●~~ Management activities of a taxpayer are not considered for purposes of determining if there was material participation if either of the following apply: Anybody other than the taxpayer is compensated for management services; or somebody provides more hours of management services than the taxpayer.

~~Material participation by individuals in specific types of activities. The following are individuals in specific types of activities that may have unique problems or circumstances related to material participation in a business:~~

~~4.~~ (3) Limited partners of a limited partnership. The limited partners will not be treated as materially participating in any activity of a limited partnership except in a situation where the limited partner would be treated as materially participating under the material participation tests in ~~paragraphs~~

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~~“1,” “5” and “6”~~ subparagraphs 40.38(1) “~~e~~”(1), (5) and (6) above as if the taxpayer were not a limited partner for the tax year.

~~2. Work not customarily done by owners. Work done in connection with an activity shall not be treated as participation in the activity if both of the following apply:~~

~~Such work is not of a type that is customarily done by an owner of such activity; and~~

~~One of the principal purposes for the performance of such work is to avoid the disallowance of any loss or credit from such activity.~~

~~3. Participation in a business by an investor. Work done by an individual in the individual’s capacity as an investor in an activity is not considered to be material participation in the business or activity unless the investor is directly involved in the day-to-day management or operations of the activity or business.~~

~~4. (4) Cash farm lease. A farmer who rents farmland on a cash basis will not generally be considered to be materially participating in the farming activity. The burden is on the landlord to show there was material participation in the cash-rent farm activity.~~

~~5. (5) Farm landlord involved in crop-share arrangement. A farm landlord is subject to self-employment tax on net income from a crop-share arrangement with a tenant. The landlord is considered to be materially participating with the tenant in the crop-share activity if the landlord meets one of the four following tests:~~

~~TEST 1. The landlord does any three of the following: (1) Pay Pays or be is obligated to pay for at least half the direct costs of producing the crop; (2) Furnish Furnishes at least half the tools, equipment, and livestock used in producing the crop; (3) Consult Consults with the tenant; and (4) Inspect Inspects the production activities periodically.~~

~~TEST 2. The landlord regularly and frequently makes, or takes part in making, management decisions substantially contributing to or affecting the success of the enterprise.~~

~~TEST 3. The landlord worked 100 hours or more spread over a period of five weeks or more in activities connected with crop production.~~

~~TEST 4. The landlord has done tasks or performed duties which, considered in their total effect, show that the landlord was materially and significantly involved in the production of the farm commodities.~~

~~6. (6) Conservation reserve payments (CRP). Farmers entering into long-term contracts providing for less intensive use of highly erodible or other specified cropland can receive compensation for conversion of such land in the form of an “annualized rental payment.” Although the CRP payments are referred to as “rental payments,” the payments are considered to be receipts from farm operations and not rental payments from real estate.~~

~~If an individual is receiving CRP payments and is not considered to be retired from farming, the CRP payments are subject to self-employment tax. If individuals actively manage farmland placed in the CRP program by directly participating in seeding, mowing, and planting the farmland or by overseeing these activities and the individual is paying self-employment tax, the owner will be considered to have had material participation in the farming activity.~~

~~7. (7) Rental activities or businesses. For purposes of subrules 40.38(1) and ~~40.38(7)~~ 40.38(2), the general rule is that a taxpayer ~~who actively participates in a rental activity or business which would be considered to have been material participation in another business or activity would be deemed to~~ may have had material participation in the rental activity unless covered by a specific exception in this subrule (for example, the exceptions for farm rental activities in ~~numbered paragraphs “4,” “5,” and “6”~~ immediately above subparagraphs 40.38(1) “f”(4), (5) and (6)). Rental activity or rental business is as the term is used in Section 469(c) of the Internal Revenue Code.~~

~~EXAMPLE. Ryan Stanley is an attorney who has owned two duplex units since ~~1994~~ 1998 and has received rental income from these duplexes since ~~1994~~ 1998. Mr. Stanley is responsible for the maintenance of the duplexes and may hire other individuals to perform repairs and other upkeep on the duplexes. However, no person spends more time in maintaining the duplexes than Mr. Stanley, and Mr. Stanley spends more than 100 hours per year in maintaining the duplexes. The duplexes are sold in ~~2004~~ 2011, resulting in a capital gain. Mr. Stanley can claim the capital gain deduction on the ~~2004~~ 2011 Iowa return since he met the material participation requirements for this rental activity.~~

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(8) Like-kind exchanges and involuntary conversions. Material participation can be tacked on in cases of replacement property acquired under a like-kind exchange under Section 1031 of the Internal Revenue Code or an involuntary conversion under Section 1033 of the Internal Revenue Code.

EXAMPLE. Dustin James owned Farm A, and he materially participated in the operation of Farm A for 10 years. Mr. James executed a like-kind exchange for Farm B, and he materially participated in the operation of this farm for 4 years until he retired. Mr. James sold Farm B 2 years after he retired. Although he only materially participated in the operation of Farm B for 4 of the last 8 years before he retired, the operation of Farm A can be tacked on for purposes of the material participation test. Mr. James meets the material participation test since he participated in farming activity for the last 14 years before he retired.

(9) Record-keeping requirements. Detailed records should be kept by the taxpayer, on as close to a daily basis as possible, to verify that the material participation test has been met because the burden is on the taxpayer to demonstrate that the material participation test has been met. However, material participation can be established by any other reasonable means, such as approximating the number of hours based on appointment books, calendars, or narrative summaries.

ITEM 3. Rescind subrules 40.38(2) to 40.38(9) and adopt the following **new** subrules in lieu thereof:

**40.38(2) Net capital gains from the sale of real property used in a business.** Net capital gains from the sale of real property used in a business are excluded from net income on the Iowa return of the owner of a business to the extent that the owner had held the real property in the business for ten or more years and had materially participated in the business for at least ten years. For purposes of this provision, material participation is defined in Section 469(h) of the Internal Revenue Code and described in detail in subrule 40.38(1). It is not required that the property be located in Iowa for the owner to qualify for the deduction.

*a.* Meaning of the term “held” for purposes of this rule. For capital gains reported for tax years ending prior to January 1, 2006, the term “held” is defined as “owned.” *James and Linda Bell*, Decision of the Administrative Law Judge, Docket No. 01DORF013, January 15, 2002, and *David V. and Julie K. Gorsche v. Iowa State Board of Tax Review*, Case No. CVCV 8379, Polk County District Court, May 5, 2011. Therefore, the property held by the taxpayer must have been owned by the taxpayer for ten or more years to meet the time held requirement for the capital gain deduction for tax years ending prior to January 1, 2006. For capital gains reported for tax years ending on or after January 1, 2006, the term “held” is determined using the holding period provisions set forth in Section 1223 of the Internal Revenue Code and the federal regulations adopted pursuant to Section 1223. Therefore, as long as the holding period used to compute the capital gain is ten years or more, the time held requirement for the capital gain deduction will be met for tax years ending on or after January 1, 2006.

*b.* Sale to a lineal descendant. For purposes of taxation of capital gains from the sale of real property of a business by a taxpayer, there is no waiver of the ten-year material participation requirement when the property is sold to a lineal descendant of the taxpayer as there is for capital gains from sales of businesses described in subrule 40.38(3).

*c.* In situations in which real property was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gain from the sale of the real property flows through to the owners of the business entity for federal income tax purposes, the owners may exclude the capital gain from their net incomes if the real property was held for ten or more years and the owners had materially participated in the business for ten years prior to the date of sale of the real property, irrespective of whether the type of business entity changed during the ten-year period prior to the date of sale. That is, if the owner of the business had held and materially participated in the business in the entire ten-year period before the sale, the fact that the business changed from one type of entity to another during the period does not disqualify the owner from excluding capital gains from the sale of real estate owned by the business during that whole ten-year period.

*d.* Installments received in the tax year from installment sales of businesses are eligible for the exclusion of capital gains from net income if all relevant criteria were met at the time of the installment

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sale. *Herbert Clausen and Sylvia Clausen v. Iowa Department of Revenue and Finance*, Law No. 32313, Crawford County District Court, May 24, 1995. For example, if a taxpayer received an installment payment in 2011 from the sale of a business that occurred in 2007, the installment received in 2011 would qualify for the exclusion if the taxpayer had held the business for ten years and had materially participated in the business for a minimum of ten or more years at the time of the sale in 2007.

e. Capital gains from the sale of real property by a C corporation do not qualify for the capital gain deduction except under the specific circumstances of a liquidation described in subrule 40.38(7).

f. Capital gains from the sale of real property held for ten or more years for speculation but not used in a business do not qualify for the capital gain deduction.

g. The following noninclusive examples illustrate how this subrule applies:

EXAMPLE 1. ABC Company, an S corporation, owned 1,000 acres of land. John Doe is the sole shareholder of ABC Company and had materially participated in ABC Company and held ABC Company for more than ten years at the time that 500 acres of the land were sold for a capital gain of \$100,000 in 2011. The capital gain recognized in 2011 by ABC Company and which passed to John Doe as the shareholder of ABC Company is exempt from Iowa income tax because Mr. Doe met the material participation and time held requirements.

EXAMPLE 2. John Smith and Sam Smith both owned 50 percent of the stock in Smith and Company, which was an S corporation that held 1,000 acres of farmland. Sam Smith had managed all the farming operations for the corporation from the time the corporation was formed in 1990. John Smith was an attorney who lived and practiced law in Denver, Colorado. John Smith was the father of Sam Smith. In 2011, Smith and Company sold 200 acres of the farmland for a \$50,000 gain. \$25,000 of the gain passed through to John Smith and \$25,000 of the capital gain passed through to Sam Smith. The farmland was sold to Jerry Smith, who was another son of John Smith. Both John Smith and Sam Smith had owned the corporation for at least ten years at the time the land was sold, but only Sam Smith had materially participated in the corporation for the last ten years. Sam Smith could exclude the \$25,000 capital gain from the land sale because he had met the time held and material participation requirements. John Smith could not exclude the \$25,000 capital gain since, although he had met the time held requirement, he did not meet the material participation requirement. Although the land sold by the corporation was sold to John Smith's son, a lineal descendant of John Smith, the capital gain John Smith realized from the land sale does not qualify for exemption for state income tax purposes. There is no waiver of the ten-year material participation requirement for a taxpayer's sale of real estate from a business to a lineal descendant of the taxpayer as is described for the sale of business assets in subrule 40.38(3).

EXAMPLE 3. Jerry Jones had owned and had materially participated in a farming business for 15 years and raised row crops in the business. There were 500 acres of land in the farming business; 300 acres had been held for 15 years, and 200 acres had been held for 5 years. If Mr. Jones sold the 200 acres of land that had been held only 5 years, any capital gain from the sale of this land would not be excludable since the land was part of the farming business but had been held for less than 10 years. If the 300 acres of land that had been held for 15 years had been sold, the capital gain from that sale would qualify for exclusion.

EXAMPLE 4. John Pike owned a farming business for more than ten years. In this business, Mr. Pike farmed a neighbor's land on a crop-share basis throughout the period. Mr. Pike bought 80 acres of land in 2004 and farmed that land until the land was sold in 2011 for a capital gain of \$20,000. The capital gain was taxable on Mr. Pike's Iowa return since the farmland had been held for less than ten years although the business had been operated by Mr. Pike for more than ten years.

EXAMPLE 5. Joe and John Perry were brothers in a partnership for six years which owned 80 acres of land. The brothers dissolved the partnership in 2005, formed an S corporation, and included the land in the assets of the S corporation. The land was sold in 2011 to Brian Perry, who was the grandson of John Perry. The Perry brothers realized from the land sale a capital gain of \$15,000, which was divided equally between the brothers. Joe Perry was able to exclude the capital gain he had received from the sale as he had held the land and had materially participated in the business for at least ten years at the time the land was sold. John Perry was unable to exclude the capital gain because, although he had owned the land for ten years, he had not materially participated in the business for ten years when the land was

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sold. The fact that the land was sold to a lineal descendant of John Perry is not relevant because the sale involved only real property held in a business and not the sale of all, or substantially all, of the tangible personal property and intangible property of the business.

EXAMPLE 6. Todd Myers had a farming business which he had owned and in which he had materially participated for 20 years. There were two tracts of farmland in the farming business. In 2011, he sold one tract of farmland in the farming business that he had held for more than 10 years for a \$50,000 capital gain. The farmland was sold to a person who was not a lineal descendant. During the same year, Mr. Myers had \$30,000 in long-term capital losses from sales of stock. In this situation, on Mr. Myers' 2011 Iowa return, the capital gains would not be applied against the capital losses. Because the capital losses are unrelated to the farming business, Mr. Myers does not have to reduce the Iowa capital gain deduction by the capital losses from the sales of stock.

EXAMPLE 7. Jim Casey had owned farmland in Greene County, Iowa, since 1987, and had materially participated in the farming business. In 1998, Mr. Casey entered into a like-kind exchange under Section 1031 of the Internal Revenue Code for farmland located in Carroll County, Iowa. Mr. Casey continued to materially participate in the farming business in Carroll County. The farmland in Carroll County was sold in 2005, resulting in a capital gain. For federal tax purposes, the holding period for the capital gain starts in 1987 under Section 1223 of the Internal Revenue Code. Because Mr. Casey held the farmland in Carroll County for less than ten years, based on Iowa law at the time of the sale, the capital gain from the sale does not qualify for the Iowa capital gain deduction. The deduction is not allowed even though the holding period for federal tax purposes is longer than ten years because the capital gain was reported for a tax year ending prior to January 1, 2006. If the farmland was sold in 2006, the gain would qualify for the capital gain deduction since the capital gain would have been reported for a tax year ending on or after January 1, 2006.

EXAMPLE 8. Jane and Ralph Murphy, a married couple, owned farmland in Iowa since 1975. Ralph died in 1994 and, under his will, Jane acquired a life interest in the farm. The farmland was managed by their son Joseph after Ralph's death. Jane died in 1998, and Joseph continued to materially participate and manage the farm operation. Joseph sold the farmland in 2006 and reported a capital gain. For federal tax purposes under Section 1223 of the Internal Revenue Code, the holding period for the capital gain starts in 1994, when Ralph died. Because the holding period for the capital gain was ten years or more under Section 1223 of the Internal Revenue Code, Joseph is entitled to the capital gain deduction under Iowa law since he materially participated for ten or more years and the capital gain was reported for a tax year ending on or after January 1, 2006.

**40.38(3)** *Net capital gains from the sale of assets of a business by an individual who had held the business for ten or more years and had materially participated in the business for ten or more years.* Net capital gains from the sale of the assets of a business are excluded from an individual's net income to the extent that the individual had held the business for ten or more years and had materially participated in the business for ten or more years. In addition to the time held and material participation qualifications for the capital gain deduction, the owner of the business must have sold substantially all of the tangible personal property or the service of the business in order for the capital gains to be excluded from taxation.

*a.* For purposes of this subrule, the phrase "substantially all of the tangible personal property or the service of the business" means that the sale of the assets of a business during the tax year must represent at least 90 percent of the fair market value of all of the tangible personal property and service of the business on the date of sale of the business assets. Thus, if the fair market value of a business's tangible personal property and service was \$400,000, the business must sell tangible personal property and service of the business that had a fair market value of 90 percent of the total value of those assets to achieve the 90 percent or more standard. However, this does not mean that the amount raised from the sale of the assets must be \$360,000 in order for the 90 percent standard to be met, only that the assets involved in the sale of the business must represent 90 percent of the total value of the business assets.

*b.* If the 90 percent of assets test is met, capital gains from other assets of the business can also be excluded. Some of these assets include, but are not limited to, stock of another corporation, bonds, including municipal bonds, and interests in other businesses. If the 90 percent test has been met, all of the individual assets of the business do not have to have been held for ten or more years on the date

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of sale for the capital gains from the sale of these assets to be excluded in computing the taxpayer's net income. This statement is made with the assumption that the taxpayer has owned the business and materially participated in the business for ten or more years prior to the sale of the assets of the business.

c. In most instances, the sale of merchandise or inventory of a business will not result in capital gains for the seller of a business, so the proceeds from the sale of these items would not be excluded from taxation.

d. For the purposes of this subrule, the term "service of the business" means intangible assets used in the business or for the production of business income which, if sold for a gain, would result in a capital gain for federal income tax purposes. Intangible assets that are used in the business or for the production of income include, but are not limited to, the following items: (1) goodwill, (2) going concern value, (3) information base, (4) patent, copyright, formula, design, or similar item, (5) client lists, and (6) any franchise, trademark, or trade name. The type of business that owns the intangible asset is immaterial, whether the business is a manufacturing business, a retail business, or a service business, such as a law firm or an accounting firm.

e. When the business held by the taxpayer for a minimum of ten years is sold to an individual or individuals who are all lineal descendants of the taxpayer, the taxpayer is not required to have materially participated in the business for ten years prior to the sale of the business in order for the capital gain to be excluded in the computation of net income. The term "lineal descendant" means children of the taxpayer, including legally adopted children and biological children, stepchildren, grandchildren, great-grandchildren, and any other lineal descendants of the taxpayer.

f. In situations in which substantially all of the tangible personal property or the service of the business was sold by a partnership, subchapter S corporation, limited liability company, estate, or trust and the capital gains from the sale of the assets flow through to the owners of the business entity for federal income tax purposes, the owners can exclude the capital gains from their net incomes if the owners had held the business for ten or more years and had materially participated in the business for ten years prior to the date of sale of the tangible personal property or service, irrespective of whether the type of business entity changed during the ten-year period prior to the sale. The criteria for material participation in a business may be found in subrule 40.38(1).

g. Installments received in the tax year from installment sales of businesses are eligible for the exclusion if all relevant criteria were met at the time of the installment sale. *Herbert Clausen and Sylvia Clausen v. Iowa Department of Revenue and Finance*, Law No. 32313, Crawford County District Court, May 24, 1995. For example, if a taxpayer received an installment payment in 2011 from the sale of a business that occurred in 2007, the installment received in 2011 would qualify for the exclusion if, at the time of the sale in 2007, the taxpayer had held the business for ten or more years and had materially participated in the business for a minimum of ten years.

h. Sale of capital stock of a corporation to a lineal descendant or to another individual does not constitute the sale of a business for purposes of the capital gain deduction, whether the corporation is a C corporation or an S corporation.

i. Capital gains from the sale of an ownership interest in a partnership, limited liability company or other entity are not eligible for the capital gain deduction. *Ranniger v. Iowa Department of Revenue and Finance*, Iowa Supreme Court, No. 11, 06-0761, March 21, 2008.

j. The sale of one activity of a business or one distinct part of a business may not constitute the sale of a business for purposes of this rule unless the activity or distinct part is a separate business entity such as a partnership or sole proprietorship which is owned by the business or unless the activity or distinct part of a business represents the sale of at least 90 percent of the fair market value of the tangible personal property or service of the business.

In order to determine whether the sale of the business assets constitutes the sale of a business for purposes of excluding capital gains recognized from the sale, refer to 701—subrule 54.2(1) relating to a unitary business. If activities or locations comprise a unitary business, then 90 percent or more of that unitary business must be sold to meet the requirement for capital gains from the sale to be excluded from taxation. If the activity or location constitutes a separate, distinct, nonunitary business, then 90 percent of the assets of that location or activity must be sold to qualify for the exclusion of the capital gain.

## REVENUE DEPARTMENT[701](cont'd)

The burden of proof is on the taxpayer to show that a sale of assets of a business meets the 90 percent standard.

*k.* The following noninclusive examples illustrate how this subrule applies:

EXAMPLE 1. Joe Rich is the sole owner of Eagle Company, which is an S corporation. In 2011, Mr. Rich sold all the stock of Eagle Company to his son, Mark Rich, and recognized a \$100,000 gain on the sale of the stock. This capital gain would be taxable on Joe Rich's 2011 Iowa return since the sale of stock of a corporation did not constitute the sale of the tangible personal property and service of a business.

EXAMPLE 2. Randall Insurance Agency, a sole proprietorship, is owned solely by Peter Randall. In 2011, Peter Randall received capital gains from the sale of all tangible assets of the insurance agency. In addition, Mr. Randall had capital gains from the sale of client lists and goodwill to the new owners of the business. Since Mr. Randall had held the insurance agency for more than ten years and had materially participated in the insurance agency for more than ten years at the time of the sale of the tangible property and intangible property of the business, Mr. Randall can exclude the capital gains from the sale of the tangible assets and the intangible assets in computing net income on his 2011 Iowa return.

EXAMPLE 3. Joe Brown owned and materially participated in a sole proprietorship for more than ten years. During the 2011 tax year, Mr. Brown sold two delivery trucks and had capital gains from the sale of the trucks. At the time of sale, the trucks were valued at \$30,000, which was about 10 percent of the fair market value of the tangible personal property of the business. Mr. Brown could not exclude the capital gains from the sale of the trucks on his 2011 Iowa return as the sale of those assets did not involve the sale of substantially all of the tangible personal property and service of Mr. Brown's business.

EXAMPLE 4. Rich Bennet owned a restaurant and a gift shop that were in the same building and were part of a sole proprietorship owned only by Mr. Bennet, who had held and materially participated in both business activities for over ten years. Mr. Bennet sold the gift shop in 2011 for \$100,000 and had a capital gain of \$40,000 from the sale. The total fair market value of all tangible personal property and intangible assets in the proprietorship at the time the gift shop was sold was \$250,000. Mr. Bennet could not exclude the capital gain on his 2011 Iowa return because he had not sold at least 90 percent of the tangible and intangible assets of the business.

EXAMPLE 5. Joe and Ray Johnson were partners in a farm partnership that they had owned for 12 years in 2011 when the assets of the partnership were sold to Ray's son Charles. Joe Johnson had materially participated in the partnership for the whole time that the business was in operation, so he could exclude the capital gain he had received from the sale of the partnership assets. Although Ray Johnson had not materially participated in the farm business, he could exclude the capital gain he received from the sale of the assets of the partnership because the sale of the partnership assets was to his son, a lineal descendant.

EXAMPLE 6. Kevin and Ron Barker owned a partnership which owned a chain of six gas stations in an Iowa city. In 2011, the Barkers sold 100 percent of the property of two of the gas stations and received a capital gain of \$30,000 from the sale. Separate business records were kept for each of the gas stations. Since the partnership was considered to be a unitary business and the Barkers sold less than 90 percent of the fair market value of the business, the Barkers could not exclude the capital gain from the sale of the gas stations from the incomes reported on their 2011 Iowa returns. However, any gain from the sale of the real property may qualify for exclusion, assuming the ten-year time held and material participation qualifications are met.

EXAMPLE 7. Rudy Stern owned a cafe in one Iowa city and a fast-food restaurant in another Iowa city. Mr. Stern had held both businesses and had materially participated in the operation of both businesses for ten years. Each business was operated with a separate manager and kept separate business records. In 2011, Mr. Stern sold all the tangible and intangible assets associated with the cafe and received a capital gain from the sale of the cafe. Mr. Stern can exclude the capital gain from his net income for 2011 because the cafe and fast-food restaurant were considered to be separate and distinct nonunitary businesses.

EXAMPLE 8. Doug Jackson is a shareholder in an S corporation, Jackson Products Corporation. Mr. Jackson has a 75 percent ownership interest in the S corporation, and he has materially participated

REVENUE DEPARTMENT[701](cont'd)

in the operations of the S corporation since its incorporation in 1980. In 2008, Mr. Jackson transferred 10 percent of his ownership interest in the S corporation to Doug Jackson Irrevocable Trust. The income from the irrevocable trust was reported on Mr. Jackson's individual income tax return. In 2011, the assets of Jackson Products Corporation were sold, resulting in a capital gain. Mr. Jackson can claim the capital gain deduction on both his 65 percent ownership held in his name and the 10 percent irrevocable trust ownership since the capital gain from the irrevocable trust flows through to Mr. Jackson's income tax return, and Mr. Jackson retained a 75 percent interest in the S corporation for more than ten years.

**40.38(4)** *Net capital gains from sales of cattle or horses used for certain purposes which were held for 24 months by taxpayers who received more than one-half of their gross incomes from farming or ranching operations.* Net capital gains from the sales of cattle or horses held for 24 months or more for draft, breeding, dairy, or sporting purposes qualify for the capital gain deduction if more than 50 percent of the taxpayer's gross income in the tax year is from farming or ranching operations. Proper records should be kept showing purchase and birth dates of cattle and horses. The absence of records may make it impossible for the owner to show that the owner held a particular animal for the necessary holding period. Whether cattle or horses are held for draft, breeding, dairy, or sporting purposes depends on all the facts and circumstances of each case.

a. Whether cattle or horses sold by the taxpayer after the taxpayer has held them 24 months or more were held for draft, breeding, dairy, or sporting purposes may be determined from federal court cases on such sales and the standards and examples included in 26 CFR §1.1231-2.

b. In situations where the qualifying cattle or horses are sold by the taxpayer to a lineal descendant of the taxpayer, the taxpayer does not need to have had more than 50 percent of gross income in the tax year from farming or ranching activities in order for the capital gain to be excluded.

c. Capital gains from sales of qualifying cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the individual owners for federal income tax purposes, are eligible for the exclusion only in situations in which the individual owners have more than 50 percent of their gross incomes in the tax year from farming or ranching activities, or where the sale of the qualifying cattle or horses was to lineal descendants of the owners reporting the capital gains from the sales of the qualifying cattle or horses.

d. Capital gains from sales of qualifying cattle or horses by a C corporation are not eligible for the capital gain deduction.

e. A taxpayer's gross income from farming or ranching includes amounts the individual has received in the tax year from cultivating the soil or raising or harvesting any agricultural commodities. Gross income from farming or ranching includes the income from the operation of a stock, dairy, poultry, fish, bee, fruit, or truck farm, plantation, ranch, nursery, range, orchard, or oyster bed, as well as income in the form of crop shares received from the use of the taxpayer's land. Gross income from farming or ranching also includes total gains from sales of draft, breeding, dairy, or sporting livestock. In the case of individual income tax returns for the 2011 tax year, gross income from farming or ranching includes the total of the amounts from line 9 or line 50 of Schedule F and line 7 of Form 4835, Farm Rental Income and Expenses, plus the share of partnership income from farming, the share of distributable net taxable income from farming of an estate or trust, and total gains from the sale of livestock held for draft, breeding, dairy, or sporting purposes, as shown on Form 4797, Sale of Business Property. In the case of an individual's returns for tax years beginning after 2011, equivalent lines from returns and supplementary forms would be used to determine a taxpayer's gross income from farming or ranching for those years.

To make the calculation as to whether more than half of the taxpayer's gross income in the tax year is from farming or ranching operations, the gross income from farming or ranching as determined in the previous paragraph is divided by the taxpayer's total gross income. If the resulting percentage is greater than 50 percent, the taxpayer's capital gains from sales of cattle and horses will be considered for the capital gain deduction.

In instances where married taxpayers file a joint return, the gross income from farming or ranching of both spouses will be considered for the purpose of determining whether the taxpayers received more than half of their gross income from farming or ranching. However, in situations where married taxpayers file

## REVENUE DEPARTMENT[701](cont'd)

separate Iowa returns or separately on the combined return form, each spouse must separately determine whether that spouse has more than 50 percent of gross income from farming or ranching operations.

EXAMPLE. Bob Deen had a cattle operation that owned black angus cattle in the operation for breeding purposes. In 2011, Mr. Deen sold 40 head of cattle that had been held for breeding purposes for two years. Mr. Deen's total gross income from farming was \$125,000, but he had a \$10,000 loss from his farming operation. Mr. Deen also had wages of \$25,000 from a job at a local farming cooperative. Because Mr. Deen had more than 50 percent of his gross income in 2011 from farming operations, he could exclude the capital gain from the sale of the breeding cattle. Although Mr. Deen had a loss from his farming activities, he still had more than 50 percent of his gross income in the tax year from those activities.

**40.38(5)** *Net capital gains from sale of breeding livestock, other than cattle or horses, held for 12 or more months by taxpayers who received more than one-half of their gross incomes from farming or ranching operations.* Net capital gains from the sale of breeding livestock, other than cattle or horses, held for 12 or more months from the date of acquisition qualify for the capital gain deduction, if more than one-half of the taxpayer's gross income is from farming or ranching. For the purposes of this subrule, "livestock" has a broad meaning and includes hogs, mules, donkeys, sheep, goats, fur-bearing mammals, and other mammals. Livestock does not include poultry, chickens, turkeys, pigeons, geese, other birds, fish, frogs, or reptiles. If livestock other than cattle or horses is considered to have been held for breeding purposes under the criteria established in 26 CFR §1.1231-2, the livestock will also be deemed to have been breeding livestock for purposes of this subrule. In addition, for the purposes of this subrule livestock does not include cattle and horses held for 24 or more months for draft, breeding, dairy, or sporting purposes which were described in subrule 40.38(4).

*a.* The procedure in subrule 40.38(4) for determining whether more than one-half of a taxpayer's gross income is from farming or ranching operations is also applicable for this subrule.

*b.* In an instance in which a taxpayer sells breeding livestock other than cattle or horses which have been held for 12 or more months, and the sale of the livestock is to a lineal descendant of the taxpayer, the taxpayer is not required to have more than one-half of the gross income in the tax year from farming or ranching operations to be eligible for the capital gain deduction.

*c.* Capital gains from sales of qualifying livestock other than cattle or horses by an S corporation, partnership, or limited liability company, where the capital gains flow through to the owners of the respective business entity for federal income tax purposes, qualify for the capital gain deduction to the extent the owners receiving the capital gains meet the qualifications for the deduction on the basis of having more than one-half of the gross income in the tax year from farming or ranching operations.

*d.* Capital gains from the sale of qualifying livestock other than cattle or horses by a C corporation are not eligible for the capital gain deduction.

**40.38(6)** *Net capital gains from sales of timber held by the taxpayer for more than one year.* Capital gains from qualifying sales of timber held by the taxpayer for more than one year are eligible for the capital gain deduction. In all of the following examples of circumstances where gains from sales of timber qualify for capital gains treatment, it is assumed that the timber sold was held by the owner for more than one year at the time the timber was sold. The owner of the timber can be the owner of the land on which the timber was cut or the holder of a contract to cut the timber. In the case where a taxpayer sells standing timber the taxpayer held for investment, any gain from the sale is a capital gain. Timber includes standing trees usable for lumber, pulpwood, veneer, poles, pilings, cross ties, and other wood products. Timber eligible for the capital gain deduction does not apply to sales of pulpwood cut by a contractor from the tops and limbs of felled trees. Under the general rule, the cutting of timber results in no gain or loss, and it is not until the sale or exchange that gain or loss is realized. But if a taxpayer owned or had a contractual right to cut timber, the taxpayer may make an election to treat the cutting of timber as a sale or exchange in the year the timber is cut. Gain or loss on the cutting of the timber is determined by subtracting the adjusted basis for depletion of the timber from the fair market value of the timber on the first day of the tax year in which the timber is cut. For example, the gain on this type of transaction is computed as follows:

## REVENUE DEPARTMENT[701](cont'd)

Fair market value of timber on January 1, 2011	\$400,000
Adjusted basis for depletion	<u>– \$100,000</u>
Capital gain on cutting of timber	\$300,000

The fair market value shown above of \$400,000 is the basis of the timber. A later sale of the cut timber including treetops and stumps would result in ordinary income for the taxpayer and not a capital gain.

*a.* Evergreen trees, such as those used as Christmas trees, that are more than six years old at the time they are severed from their roots and sold for ornamental purposes, are included in the definition of timber for purposes of this subrule. The term “evergreen trees” is used in its commonly accepted sense and includes pine, spruce, fir, hemlock, cedar, and other coniferous trees. Where customers of the taxpayer cut down the Christmas tree of their choice on the taxpayer’s farm, there is no sale until the tree is cut. However, evergreen trees sold in a live state do not qualify for capital gain treatment.

*b.* Capital gains or losses also are received from sales of timber by a taxpayer who has a contract which gives the taxpayer an economic interest in the timber. The date of disposal of the timber shall be the day the timber is cut, unless payment for the timber is received before the timber is cut. Under this circumstance, the taxpayer may treat the date of the payment as the date of disposal of the timber. Additional information about gains and losses from the sale of timber is included under 26 CFR §1.631-1 and §1.631-2.

*c.* Capital gains from the sale of qualifying timber by an S corporation, partnership, or limited liability company, which flow to the owners of the respective business entity for federal individual income tax purposes, are eligible for the capital gain deduction.

*d.* Capital gains from the sale of timber by a C corporation do not qualify for the capital gain deduction.

**40.38(7)** *Capital gains from the liquidation of assets of corporations which are recognized as sales of assets for federal income tax purposes.* Capital gains realized from liquidations of corporations which are recognized as sales of assets for federal income tax purposes under Section 331 of the Internal Revenue Code may be eligible for the capital gain deduction. To the extent the capital gains are reported by the shareholders of the corporations for federal income tax purposes and the shareholders are individuals, the shareholders are eligible for the capital gain deduction if the shareholders meet the qualifications for time of ownership and time of material participation in the corporation being liquidated. The burden of proof is on the shareholders to show they meet these time of ownership and material participation requirements.

**40.38(8)** *Capital gains from certain stock sales which are treated as acquisitions of assets of the corporation for federal income tax purposes.* Capital gains received by individuals from a sale of stock of a target corporation which is treated as an acquisition of the assets of the corporation under Section 338 of the Internal Revenue Code may be excluded if the individuals receiving the capital gains had held an interest in the target corporation and had materially participated in the corporation for ten years prior to the date of the sale of the corporation. The burden of proof is on the taxpayer to show eligibility to exclude the capital gains from these transactions in the computation of net income for Iowa individual income tax purposes.

**40.38(9)** *Treatment of capital gain deduction for tax years with net operating losses and for tax years to which net operating losses are carried.* The following paragraphs describe the tax treatment of the capital gain deduction in a tax year with a net operating loss and the tax treatment of a capital gain deduction in a tax year to which a net operating loss was carried:

*a.* The capital gain deduction otherwise allowable on a return is not allowed for purposes of computing a net operating loss from the return which can be carried to another tax year and applied against the income for the other tax year.

EXAMPLE. Joe Jones filed a 2011 return showing a net loss of \$12,000. On this return, Mr. Jones claimed a capital gain deduction of \$3,000 from sale of breeding livestock, other than cattle or horses, held for 12 months or more which was considered in computing the loss of \$12,000. However, the \$3,000

REVENUE DEPARTMENT[701](cont'd)

capital gain deduction is not allowed in the computation of the net operating loss deduction for 2011 for purposes of carrying the net operating loss deduction to another tax year. Thus, the net operating loss deduction for 2011 is \$9,000.

*b.* In the case of net operating losses which are carried back to a tax year where the taxpayer has claimed the capital gains deduction, the capital gain deduction is not allowed for purposes of computing the income to which the net operating loss deduction is applied.

EXAMPLE. John Brown had a net operating loss of \$20,000 on the Iowa return he filed for 2011. Mr. Brown elected to carry back the net operating loss to his 2009 Iowa return. The 2009 return showed a taxable income of \$27,000 which included a capital gain deduction of \$3,000. For purposes of computing the income in the carryback year to which the net operating loss would be applied, the income was increased by \$3,000 to disallow the capital gain deduction properly allowed in computing taxable income for the carryback year. Therefore, the net operating loss deduction from 2011 was applied to an income of \$30,000 for the carryback year.

ITEM 4. Rescind subrules **40.38(10)** to **40.38(14)**.

**ARC 9990B**

## **SECRETARY OF STATE[721]**

### **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 47.1 and 17A.3, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 21, “Election Forms and Instructions,” Chapter 22, “Voting Systems,” and Chapter 28, “Voter Registration File (I-Voters) Management,” Iowa Administrative Code.

These proposed amendments are necessary to:

- Expand the ability of all active members of the military serving outside the United States and its territories to return voted ballots electronically,
- Adopt a provisional voter statement by administrative rule as required by Iowa law,
- Adopt procedures for making photocopied ballots on election day as required by Iowa law,
- Establish which ballots provisional voters at satellite voting stations should receive,
- Establish a procedure for voters whose registration status is changed to inactive between the time the absentee ballot is requested and absentee ballots are mailed,
- Establish a procedure by which absentee voters can cure defects in absentee ballots caused by reregistration in another county or precinct after the absentee ballot has been submitted to the commissioner pursuant to Iowa Code section 53.18,
- Establish a method for determining the number of signatures required for the primary election where the method of electing county supervisors has changed from at-large to plan III,
- Establish a procedure for reporting election night results electronically to the state commissioner for primary and general elections, and
- Update the cross-state match voter file procedures to make them compliant with the National Voter Registration Act of 1993.

Any interested person may make written suggestions or comments on these proposed amendments on or before February 28, 2012. Written suggestions or comments should be directed to Sarah Reisetter, Director of Elections, Office of the Secretary of State, First Floor, Lucas State Office Building, Des Moines, Iowa 50319.

SECRETARY OF STATE[721](cont'd)

Persons who want to convey their views orally should contact the Secretary of State's office by telephone at (515)281-0145 or in person at the Secretary of State's office on the first floor of the Lucas State Office Building. Requests for a public hearing must be received by February 28, 2012.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9989B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

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

These amendments are intended to implement Iowa Code chapters 43, 48A, 49, 50 and 53.

**ARC 9999B**

## SECRETARY OF STATE[721]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3, 17A.4, and 9.4, the Secretary of State hereby gives Notice of Intended Action to rescind Chapter 31, “Registration of Postsecondary Schools,” Iowa Administrative Code.

Chapter 31 states that the Secretary of State shall collect a registration fee for each postsecondary school registration filing. In 2004, Iowa Code section 261.2, subsection 7, required postsecondary institutions to file registrations with the Secretary of State. However, the current version of Iowa Code section 261.2, subsection 7, no longer references the Secretary of State's office; instead the “commission,” known as the “College Student Aid Commission,” is the party that collects registration fees under this section. This rule making rescinds Chapter 31 because it is no longer applicable.

Any interested person may make written suggestions or comments on this proposed amendment on or before February 28, 2012. Such written materials should be directed to the Secretary of State's Office, Attn: Doug Struyk, Capitol Building, Des Moines, Iowa 50319; fax (515)242-5952. Persons who wish to convey their views orally should contact the Secretary of State's Office at (515)281-7041 or at the Secretary of State's Office on the first floor of the Lucas State Office Building.

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

This amendment is intended to comply with Iowa Code section 261.2, subsection 7.

The following amendment is proposed.

Rescind and reserve **721—Chapter 31**.

## USURY

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

February 1, 2011 — February 28, 2011	5.25%
March 1, 2011 — March 31, 2011	5.50%
April 1, 2011 — April 30, 2011	5.50%
May 1, 2011 — May 31, 2011	5.50%
June 1, 2011 — June 30, 2011	5.50%
July 1, 2011 — July 31, 2011	5.25%

## USURY(cont'd)

August 1, 2011 — August 31, 2011	5.00%
September 1, 2011 — September 30, 2011	5.00%
October 1, 2011 — October 31, 2011	4.25%
November 1, 2011 — November 30, 2011	4.00%
December 1, 2011 — December 31, 2011	4.25%
January 1, 2012 — January 31, 2012	4.00%
February 1, 2012 — February 29, 2012	4.00%

## ARC 9996B

## HUMAN SERVICES DEPARTMENT[441]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2011 Iowa Acts, House File 649, section 35, subsections 4(a) and 4(b), the Department of Human Services amends Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 92, "IowaCare," Iowa Administrative Code.

These amendments modify the rule on calculation of the maximum Medicaid disproportionate share hospital (DSH) payment to Broadlawns Medical Center. The limit on DSH payments is the amount remaining from the appropriation after service claims have been paid. The appropriation for IowaCare payment to Broadlawns for state fiscal year 2012 increased from \$51 million to \$65 million. The amendment in Item 1 refers to the formula for calculating the limit rather than citing the actual dollar amount of the appropriation. This change will eliminate the need to amend the rule for every appropriation cycle.

The amendments also reflect the creation of a funding pool to allow Broadlawns to be reimbursed up to \$4 million for outpatient prescription drugs and podiatry services provided to IowaCare members. For state fiscal year 2012, Broadlawns increased the amount transferred to Polk County property tax funds by \$4 million. Broadlawns had previously used this amount to provide those noncovered services to IowaCare members residing in Polk County. Due to the increased transfer, those funds are no longer available for providing services. Therefore, the General Assembly appropriated \$4 million from the maximum \$65 million IowaCare funding for Broadlawns to allow the hospital to continue providing these services to IowaCare members. The state plan amendment reflecting this change was approved effective November 1, 2011.

The Council on Human Services adopted these amendments on January 11, 2012.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because these amendments merely implement the specific changes enacted in appropriations legislation.

The Department finds that these amendments confer a benefit by supplementing the funding available for IowaCare services in Polk County. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments do not provide for waivers in specified situations because they benefit those affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

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

These amendments are intended to implement Iowa Code chapter 249J and 2011 Iowa Acts, House File 649, section 35, subsections 4(a) and 4(b).

These amendments became effective on January 19, 2012.

The following amendments are adopted.

ITEM 1. Amend subparagraph **79.1(5)"v"(3)** as follows:

(3) Final disproportionate share adjustment. The department's total year-end disproportionate share obligations to a qualifying hospital will be calculated following completion of the desk review or audit of CMS 2552-96, Hospital and Healthcare Complex Cost Report. The department's total year-end disproportionate share obligation shall not exceed the difference between ~~\$51 million and the actual IowaCare expansion population claims submitted and paid by the Iowa Medicaid enterprise.~~ the following:

1. The annual amount appropriated to the IowaCare account for distribution to publicly owned acute care teaching hospitals located in a county with a population over 350,000; and
2. The actual IowaCare expansion population claims submitted and paid by the Iowa Medicaid enterprise to qualifying hospitals.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Adopt the following **new** subrule 92.8(9):

**92.8(9) Outpatient prescription drugs and podiatry services provided by Broadlawns Medical Center.** Effective November 1, 2011, Broadlawns Medical Center shall be reimbursed for outpatient prescription drugs and podiatry services provided to members of the expansion population. Payment is limited to the amount of funds appropriated for this purpose.

[Filed Emergency 1/19/12, effective 1/19/12]

[Published 2/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/12.

**ARC 0003C**

## **IOWA FINANCE AUTHORITY[265]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.5(1)“m,” the Iowa Finance Authority hereby amends Chapter 39, “HOME Partnership Program,” Iowa Administrative Code.

The purpose of this amendment is to revise paragraph “a” of subrule 39.4(1) to reflect more accurately the manner in which the HOME Partnership Program has been administered in the past.

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.

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to the public interest in that assistance to home buyers is needed immediately, and the normal notice and public participation process would delay implementation of certain assistance and important clarifications of the rule.

The Authority finds that this amendment confers a benefit on low-income home buyers, in that the amendment provides clarity and consistency with prior practices and eases and speeds the administration of an important program benefiting low-income home buyers. This amendment should be implemented as soon as feasible in order to avoid a disruption in the provision of assistance under the program; therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of this amendment is waived.

The Authority adopted this amendment on January 11, 2012.

This amendment is also published herein under Notice of Intended Action as **ARC 0004C** to allow for public comment.

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

This amendment is intended to implement Iowa Code section 16.5(1)“m” and 42 U.S.C. Section 12701, et seq.

This amendment became effective on January 20, 2012.

The following amendment is adopted.

Amend paragraph **39.4(1)“a”** as follows:

a. Assisted units shall be affordable.

(1) and (2) No change.

(3) For home ownership assistance, the initial purchase price for newly constructed units or the after rehabilitation value for rehabilitated units shall not exceed the single family mortgage limits under Section 203(b) of the National Housing Act established in February 2008 ~~for home buyers with purchase agreements fully executed before February 15, 2012. For all home buyers with purchase agreements executed on or after February 15, 2012, the initial purchase price for newly constructed units or the after rehabilitation value for rehabilitated units shall not exceed 95 percent of the HUD after rehabilitation value limits for median sales price by county.~~ Assisted units shall remain affordable through recapture with net proceeds or resale provisions for a specified period: 5 years for projects receiving less than

IOWA FINANCE AUTHORITY[265](cont'd)

\$15,000 in assistance per unit; 10 years for projects receiving \$15,000 to \$40,000 in assistance per unit; and 15 years for projects receiving over \$40,000 in assistance per unit.

[Filed Emergency 1/20/12, effective 1/20/12]

[Published 2/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/12.

**ARC 9989B**

## **SECRETARY OF STATE[721]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 47.1 and 17A.3, the Secretary of State hereby amends Chapter 21, "Election Forms and Instructions," Chapter 22, "Voting Systems," and Chapter 28, "Voter Registration File (I-Voters) Management," Iowa Administrative Code.

These amendments are necessary to:

- Expand the ability of all active members of the military serving outside the United States and its territories to return voted ballots electronically,
- Adopt a provisional voter statement by administrative rule as required by Iowa law,
- Adopt procedures for making photocopied ballots on election day as required by Iowa law,
- Establish which ballots provisional voters at satellite voting stations should receive,
- Establish a procedure for voters whose registration status is changed to inactive between the time the absentee ballot is requested and absentee ballots are mailed,
- Establish a procedure by which absentee voters can cure defects in absentee ballots caused by reregistration in another county or precinct after the absentee ballot has been submitted to the commissioner pursuant to Iowa Code section 53.18,
- Establish a method for determining the number of signatures required for the primary election where the method of electing county supervisors has changed from at-large to plan III,
- Establish a procedure for reporting election night results electronically to the state commissioner for primary and general elections, and
- Update the cross-state match voter file procedures to make them compliant with the National Voter Registration Act of 1993.

Pursuant to Iowa Code section 17A.4(3), the Secretary of State finds that notice and public participation are unnecessary because these amendments are either required by federal law or Iowa law or are necessary to address very technical election administration and voter registration file management issues.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Secretary of State further finds that the normal effective date of these amendments, 35 days after publication, should be waived and these amendments should be made effective upon filing. The normal effective date should be waived because these amendments are necessary components of preparations for the upcoming primary election. In addition, these amendments confer a benefit on the voting public and county commissioners by ensuring that election administration practices are uniform throughout the state.

These amendments are also published herein under Notice of Intended Action as **ARC 9990B** to allow for public comment.

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

These amendments are intended to implement Iowa Code chapters 43, 48A, 49, 50 and 53.

These amendments became effective January 17, 2012.

The following amendments are adopted.

ITEM 1. Amend subrule 21.1(13) as follows:

**21.1(13) Military emergencies.** A voter who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, "Absent Voting by Armed Forces," may return an absentee ballot via electronic transmission only if

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the voter is located in an area designated by the U.S. Department of Defense to be an imminent danger pay area or if the voter is an active member of the army, navy, marine corps, merchant marine, coast guard, air force or Iowa national guard and is located outside the United States or any of its territories. Procedures for the return of absentee ballots by electronic transmission are described in subrule 21.320(4).

ITEM 2. Adopt the following **new** rule 721—21.11(49):

**721—21.11(49) Statement to provisional voter.** Each voter who is required to vote a provisional ballot at the polls on election day shall be given a statement from the precinct election officials which shall be in substantially the following form:

**Statement to Person Casting a Provisional Ballot**  
(To be completed by Precinct Official and given to Voter)

Voter's Name: \_\_\_\_\_

**Reason for Provisional Ballot** (check all that apply):

- Voter did not have proper identification (see "What you need to provide" below)
- Absentee voter with no ballot to surrender
- Voter was challenged by another registered voter

Reason: \_\_\_\_\_

**What you need to provide before your ballot will count:**

- Photo ID that has not expired and contains your name and picture
- One of the following that has not expired: Iowa driver's license, out-of-state driver's license, non-driver ID, U.S. passport, U.S. military ID, ID card issued by an employer, student ID issued by Iowa high school or college
- One of the following showing your name and current address: bank statement, paycheck, utility bill, property tax statement, residential lease, government check, or other government document

Deadline: \_\_\_\_\_ a.m./p.m., \_\_\_\_\_ (date)

Mail or Deliver Evidence to: \_\_\_\_\_, County Auditor

County Auditor Address: \_\_\_\_\_

If proof of ID or residence is required, your provisional ballot may be counted if you bring a copy of the identification listed above to this precinct before the polls close today or to the county auditor at the above address by the deadline indicated above. If your ballot is not counted, you will be notified by mail of the reason why it was not counted.

Your right to vote will be reviewed by the Special Precinct Board. You have the right and are encouraged to make a written statement and submit additional written evidence to the Board supporting your qualifications as a registered voter.

\_\_\_\_\_  
Precinct Election Official's Signature

\_\_\_\_\_  
Date

This rule is intended to implement Iowa Code section 49.81.

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ITEM 3. Adopt the following **new** rule 721—21.22(49):

**721—21.22(49) Photocopied ballot procedures.** If it is necessary for ballots to be photocopied pursuant to Iowa Code section 49.67, the commissioner shall use the “Request for Additional Ballots” form posted on the state commissioner’s Web site to record the request and resolution thereof. The commissioner shall complete the form, including the reason additional ballots are needed; who made the request for additional ballots and what time the request was made; the number of additional ballots produced; the manner of production of the additional ballots, including location of production; and the commissioner’s signature.

This rule is intended to implement Iowa Code section 49.67.

ITEM 4. Adopt the following **new** subrule 21.300(14):

**21.300(14) Provisional voting at satellite absentee voting stations.** If it is necessary for a voter to cast a provisional ballot at a satellite absentee voting station, the voter shall receive the same ballot style as the majority of the voters would receive in the precinct in which the satellite absentee voting station is located.

ITEM 5. Amend subrule 21.301(3) as follows:

**21.301(3) Absentee ballots received from a voter subsequently assigned “inactive” status.**

*a.* The commissioner shall mail an absentee ballot to a voter if a voter’s status is changed to “inactive” between the time the voter requested an absentee ballot and the time the absentee ballots are ready to mail. The commissioner shall also separately notify the voter of the requirement to provide identification before the ballot can be counted pursuant to paragraph 21.301(3) “c.”

*b.* The commissioner shall set aside the absentee ballot of a voter whose status is changed to “inactive” pursuant to Iowa Code section 48A.26, subsection 6, after the voter has submitted the voter’s absentee ballot. ~~The commissioner shall notify the voter, pursuant to Iowa Code section 53.31, informing the voter that the absentee ballot may be counted if the voter personally delivers or mails a copy of the voter’s identification as set forth in Iowa Code section 48A.8 to the commissioner’s office before the absentee and special voters precinct board convenes to count absentee ballots, or reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22. If the commissioner does not receive a copy of the voter’s identification before the absentee and special voters precinct board reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22, the absentee and special voters precinct board shall reject the absentee ballot.~~

*c.* Pursuant to Iowa Code section 53.31, the commissioner shall notify any voter assigned an “inactive” status subsequent to requesting or returning an absentee ballot that the voter’s absentee ballot has been challenged and may be counted only if the voter personally delivers or mails a copy of the voter’s identification as listed in Iowa Code section 48A.8 to the commissioner’s office before the absentee and special voters precinct board convenes to count absentee ballots, or reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22. If the commissioner does not receive a copy of the voter’s identification before the absentee and special voters precinct board reconvenes to consider challenged absentee ballots pursuant to Iowa Code section 50.22, the absentee and special voters precinct board shall reject the absentee ballot.

ITEM 6. Amend paragraph **21.320(4)“a”** as follows:

*a.* Electronic transmission of a voted absentee ballot from the voter to the commissioner is permitted only for UOCAVA voters who are located in an area designated as an imminent danger pay area or for active members of the army, navy, marine corps, merchant marine, coast guard, air force or Iowa national guard who are located outside the United States or any of its territories, as provided in subrule 21.1(13). In addition, the absentee ballot may be returned via electronic transmission only if the voter waives the right to a secret ballot. In addition to signing the affidavit required by Iowa Code section 53.13, the voter shall sign a statement in substantially the following form: “I understand that by returning this ballot by electronic transmission, my voted ballot will not be secret. I hereby waive my right to a secret ballot.”

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ITEM 7. Amend paragraph **21.355(2)“b”** as follows:

*b.* The voter's options for correcting the defect as follows:

(1) ~~Requesting~~ The voter may request a replacement ballot; or

(2) ~~Voting~~ The voter may vote at the polls on election day; or

(3) In the event an absentee ballot becomes defective because a voter reregisters to vote in a new precinct or county after casting an absentee ballot, the voter may correct the defect by reregistering to vote in the precinct in which the absentee ballot was cast, provided the voter can still claim residence for voter registration purposes in the precinct in which the absentee ballot was cast pursuant to Iowa Code sections 48A.5 and 48A.5A. If a voter reregisters after the voter registration deadline listed in Iowa Code section 48A.9 for a particular election, the voter shall be required to follow election day registration procedures as set forth in Iowa Code section 48A.7A, subsection 3.

ITEM 8. Amend rule 721—21.601(43) as follows:

**721—21.601(43) Plan III supervisor district candidate signatures after a change in the number of supervisors or method of election.** After the number of supervisors has been increased or decreased pursuant to Iowa Code section 331.203 or 331.204 or the method of electing supervisors has been changed from plan I or plan II to plan III since the last general election, the signatures for candidates at the next primary and general elections shall be calculated as follows:

**21.601(1) Primary election.** Divide the total number of party votes cast in the county at the previous general election for the office of president or for governor, as applicable, by the number of supervisor districts and multiply the quotient by .02. If the result of the calculation is less than 100, the result shall be the minimum number of signatures required. If the result of the calculation is greater than or equal to 100, the minimum requirement shall be 100 signatures.

**21.601(2) Nominations by petition.** If the effective date of the change in the number of districts or method of election was later than the date specified in Iowa Code section 45.1(6), divide the total number of registered voters in the county on the date specified in Iowa Code section 45.1(6) by the number of supervisor districts and multiply the quotient by .01. If the result of the calculation is less than 150, the result shall be the minimum number of signatures required. If the result of the calculation is greater than or equal to 150, the minimum requirement shall be 150 signatures.

This rule is intended to implement Iowa Code chapters 43 and 45.

ITEM 9. Adopt the following **new** rule 721—22.202(50):

**721—22.202(50) Unique race and candidate ID numbers for election night results reporting.** All tabulating devices programmed for primary and general elections and for special elections conducted pursuant to Iowa Code section 69.14 shall be programmed using the unique race and candidate ID numbers assigned by the state commissioner. The unique race and candidate ID numbers will be provided to the county commissioners with the candidate certification prepared by the state commissioner.

This rule is intended to implement Iowa Code chapter 50.

ITEM 10. Adopt the following **new** rule 721—22.203(50):

**721—22.203(50) Reporting election night results electronically.** For all primary and general elections, the county commissioner shall provide the state commissioner with an electronic results file generated from the county's vote tabulation software system, if any. For special elections conducted pursuant to Iowa Code section 69.14, the county commissioner shall provide election night results in the manner requested by the state commissioner.

This rule is intended to implement Iowa Code chapter 50.

ITEM 11. Amend subrule 28.3(4) as follows:

**28.3(4)** Within 15 days of the receipt of a list produced by the state registrar in accordance with 28.3(3), the county registrar shall review the list of likely duplicate or multiple voter registration records and determine the accuracy of the search results. If the voter is found to be registered to vote in another state more recently than in Iowa ~~and that registration has not been canceled, the voter's Iowa registration~~

SECRETARY OF STATE[721](cont'd)

shall be canceled pursuant to Iowa Code section 48A.30(1) "b.", the commissioner shall make the voter's status "inactive" and the voter shall be mailed a National Voter Registration Act-compliant confirmation notice. The notice shall contain a statement in substantially the following form:

Information received by this office indicates that you are no longer a resident at the address printed on the reverse side of this card. If this information is not correct, and you still live at that address, please complete and mail the attached postage-paid card at least 10 days before the primary or general election, or at least 11 days before any other election at which you wish to vote. If the information is correct and you have moved within the county, you may update your registration by listing your new address on the card and mailing it back. If you have moved outside the county, please contact a local official in your new location for assistance in registering there. If you do not mail in the card, you may be required to show identification before being allowed to vote in [name of county] County, Iowa. If you do not return the card and you do not vote in an election in [name of county] County, Iowa, on or before (date of second general election following the date of the notice), your name will be removed from the list of voters in that county.

[Filed Emergency 1/17/12, effective 1/17/12]

[Published 2/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/12.

**ARC 0008C****ECONOMIC DEVELOPMENT AUTHORITY[261]****Adopted and Filed**

Pursuant to the authority of 2011 Iowa Acts, House File 590, section 7, the Economic Development Authority hereby amends Chapter 47, "Endow Iowa Tax Credits," Iowa Administrative Code.

The amendments update the rules to reflect a statutory increase in the amount of tax credits available and add new language specifying the amount and method for calculating the maximum amount of tax credits available to individual taxpayers.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on September 7, 2011, as **ARC 9748B**. The Authority held a public hearing on September 27, 2011, and accepted comments until the same date. No comments were received. These amendments are identical to those published under Notice of Intended Action.

After analysis and review of this rule making, no adverse impact on jobs has been found. The increased amount of tax credits may positively impact jobs and economic growth for businesses in the state of Iowa.

These amendments are intended to implement Iowa Code sections 15E.301 to 15E.306 as amended by 2011 Iowa Acts, Senate File 302.

These amendments will become effective March 14, 2012.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [47.1 to 47.5] is being omitted. These amendments are identical to those published under Notice as **ARC 9748B**, IAB 9/7/11.

[Filed 1/20/12, effective 3/14/12]

[Published 2/8/12]

[For replacement pages for IAC, see IAC Supplement 2/8/12.]

**ARC 0007C****ECONOMIC DEVELOPMENT AUTHORITY[261]****Adopted and Filed**

Pursuant to the authority of 2011 Iowa Code Supplement section 15.106A, the Economic Development Authority hereby amends Chapter 65, "Brownfield Redevelopment Program," Iowa Administrative Code.

These amendments describe the administration of the brownfield redevelopment program and the redevelopment tax credit program for brownfields and grayfields.

Notice of Intended Action for the amendments was published in the September 7, 2011, Iowa Administrative Bulletin as **ARC 9747B**. The amendments were also Adopted and Filed Emergency and published as **ARC 9746B** on the same date and became effective August 19, 2011. Public comments were received in writing and in person at the hearing that was held September 27, 2011. Comments received were primarily regarding confusion about which rules apply to the two separate programs that the rules are intended to implement.

As a result of those comments, changes have been made to the amendments published under Notice of Intended Action and Adopted and Filed Emergency. Specifically, amendments have been added to rule 261—65.3(15) and rules 261—65.1(15) and 261—65.4(15) to 261—65.8(15) have been amended further in order to clarify which rules apply to each of the two programs. The title of the chapter was also changed to reflect the inclusion of grayfield properties as eligible for tax credits under the redevelopment tax credit program for brownfields and grayfields.

The Economic Development Authority Board adopted these amendments during the December 16, 2011, meeting.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

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

These amendments are intended to implement 2011 Iowa Code Supplement sections 15.291, 15.292, 15.293A and 15.293B.

These amendments will become effective March 14, 2012, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend **261—Chapter 65**, title, as follows:

**BROWNFIELD AND GRAYFIELD REDEVELOPMENT PROGRAM**

ITEM 2. Amend rule 261—65.1(15) as follows:

**261—65.1(15) Purpose.** The brownfield redevelopment program is designed to provide financial and technical assistance for the acquisition, remediation, or redevelopment of brownfield sites. The redevelopment tax credit program for brownfields and grayfields is designed to provide financial assistance for the acquisition, remediation, or redevelopment of brownfield and grayfield sites.

ITEM 3. Amend rule **261—65.2(15)**, definitions of “Acquisition,” “Board” and “Qualifying investment,” as follows:

“*Acquisition*” means the purchase of brownfield or grayfield property.

“*Board*” means the Iowa economic development authority board pursuant to 2011 Iowa Code Supplement section ~~15.103~~ 15.102.

“*Qualifying investment*” means the purchase price, cleanup cost(s), and redevelopment cost(s) costs that are directly related to a qualifying redevelopment project and that are incurred after the project has been registered and approved by the board. “Qualifying investment” only includes the purchase price, the cleanup costs, and the redevelopment costs.

ITEM 4. Rescind the definition of “Department” in rule **261—65.2(15)**.

ITEM 5. Adopt the following new definition in rule **261—65.2(15)**:

“*Authority*” means the economic development authority.

ITEM 6. Amend rule 261—65.3(15) as follows:

**261—65.3(15) Eligible applicants.** To be eligible to apply for program assistance, an applicant must meet the following eligibility requirements:

**65.3(1) Site owner.** A person owning a site is an eligible applicant if the site for which assistance is sought meets the definition of a brownfield or grayfield site. ~~and the~~ The brownfield redevelopment program requires that an applicant has secured a sponsor prior to applying for program assistance. Sponsorship is encouraged but not required for the redevelopment tax credit program for brownfields and grayfields.

**65.3(2) Nonowner of site.** A person who is not an owner of a site is an eligible applicant if the site meets the definition of a brownfield or grayfield site. ~~and the~~ The brownfield redevelopment program requires that an applicant has secured a sponsor prior to applying for program assistance.

**65.3(3) Agreement executed.** Prior to applying for financial assistance under ~~this~~ the brownfield redevelopment program, an applicant who is not an owner of a site shall enter into an agreement with the owner of the brownfield site for which financial assistance is sought. The agreement shall at a minimum include:

- ~~1.~~ a. The total cost for remediating the site.
- ~~2.~~ b. Agreement that the owner shall transfer title of the property to the applicant upon completion of the remediation of the property. Title transfer is not required when the applicant is the owner of the property and no title transfer occurs.
- ~~3.~~ c. Agreement that upon the subsequent sale of the property by the applicant to a person other than the original owner, the original owner shall receive not more than 75 percent of the estimated total cost of the remediation, acquisition or redevelopment.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

ITEM 7. Amend rule 261—65.4(15) as follows:

**261—65.4(15) Eligible forms of assistance and limitations.**

**65.4(1) *Financial assistance.*** Eligible forms of financial assistance ~~under this program~~ include grants, interest-bearing loans, forgivable loans, loan guarantees, tax credits, and other forms of assistance under the brownfield redevelopment program ~~and the redevelopment tax credit program for brownfields and grayfields established in 2011 Iowa Code section~~ Supplement sections 15.292 and 15.293A.

**65.4(2) *Technical Other forms of assistance.*** ~~Technical assistance under this program is available in the form of providing an applicant with assistance in identifying~~ The authority may provide information on alternative forms of assistance for which the applicant may be eligible.

**65.4(3) *Limitation on amount.*** An applicant shall not receive financial assistance of more than 25 percent of the agreed-upon estimated total cost of remediation, acquisition or redevelopment. This limitation does not apply to assistance provided in the form of tax credits pursuant to subrule 65.11(4).

**65.4(4) *Exclusions.*** Program funds shall not be used for the remediation of contaminants being addressed under Iowa's leaking underground storage tank (UST) program. However, a site's being addressed under the UST program does not necessarily exclude that site from being addressed under the Iowa brownfield redevelopment Act if other nonpetroleum contaminants or petroleum substances not addressed under 567—Chapter 135 are present.

ITEM 8. Amend rule 261—65.5(15) as follows:

**261—65.5(15) *Repayment to IDED economic development authority.*** ~~Upon~~ Under the brownfield redevelopment program only, upon the subsequent sale of the property by an applicant to a person other than the original owner, the applicant shall repay the ~~department~~ authority for financial assistance received by the applicant. The repayment shall be in an amount equal to the sales price less the amount paid to the original owner pursuant to the agreement between the applicant and the original owner. The repayment amount shall not exceed the amount of financial assistance ~~received by~~ actually disbursed to the applicant ~~by the authority.~~

ITEM 9. Amend rule 261—65.6(15) as follows:

**261—65.6(15) Application and award procedures.**

**65.6(1)** Subject to availability of funds, applications to the brownfield redevelopment program will be reviewed and rated by ~~IDEED economic development authority~~ staff on an ongoing basis and ~~reviewed quarterly~~ by the advisory council on an annual basis. Brownfield redevelopment funds will be awarded on a competitive basis.

**65.6(2)** Subject to availability of funds, applications to the redevelopment tax credit program for brownfields and grayfields will be reviewed by economic development authority staff and the advisory council on a monthly basis.

**65.6(3)** Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. Recommendations from the advisory council will be submitted to the board. The board may approve, deny or defer an application.

ITEM 10. Amend rule 261—65.7(15) as follows:

**261—65.7(15) Application.**

**65.7(1)** Every application for assistance shall include, ~~but not be limited to,~~ evidence of sponsorship and any other information the authority deems necessary in order to process and review the application. An application shall be considered received by the authority only when the authority deems it to be complete. In addition, applications Applications for assistance ~~other than tax credits~~ shall also include the following information:

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

*a.* A business plan. The business plan should, at a minimum, include a remediation plan, a project contact/applying agency, a project overview (which would include the background of the project area, goals and objectives of the project, and implementation strategy), and a project/remediation budget.

*b.* A statement of purpose describing the intended use of and proposed repayment schedule for any financial assistance received by the applicant.

**65.7(2)** ~~The department authority shall accept applications and determine application eligibility~~ review applications in conjunction with the council and the board. The council shall consider applications in the order complete applications are received and make application recommendations to the board. The board shall approve or deny applications.

**65.7(3)** Upon review of the application for the redevelopment tax credit program for brownfields and grayfields, the authority may register the project under the program. If the authority registers the project, it shall, in conjunction with the council and the board, make a preliminary determination as to the maximum amount of the tax credit for which the investor qualifies. After registering the project, the authority shall issue a letter notifying the investor of successful registration under the program. The letter shall include the maximum amount of tax credit for which the investor has received preliminary approval and shall state that the amount is a preliminary determination only. The preliminary determination is not a contract, contract term, promise, guarantee, assurance, or representation of the actual tax credit the investor will receive or should expect to receive. The preliminary determination is a nonbinding figure, provided purely for the investor's and the authority's information and convenience, based on the authority's existing understanding and estimates related to the project. The amount of tax credit included on a certificate issued pursuant to this subrule shall be contingent upon completion of the requirements of subrules 65.7(4) to 65.7(6) and shall be based solely on completion and compliance with all terms and conditions of the contract pursuant to this rule, rule 261—65.10(15), and 2011 Iowa Code Supplement sections 15.293A and 15.293B.

~~**65.7(3)**~~ **65.7(4)** Approved applicants shall enter into an agreement with the department authority. The agreement for the redevelopment tax credit program for brownfields and grayfields shall specify the requirements necessary in order to receive tax credit and the maximum amount of tax credit available. The agreement for the brownfield redevelopment program shall specify the requirements necessary in order to receive benefits under the program.

**65.7(5)** Upon completion of a registered project under the redevelopment tax credit program for brownfields and grayfields, an audit of the project's qualifying expenses shall be completed by an independent certified public accountant licensed in the state of Iowa and shall be submitted to the authority.

~~**65.7(4)**~~ **65.7(6)** The department shall issue a tax credit certificate upon Upon written notification of project completion from the investor, the authority will review the independent audit, verify the amount of the qualifying investment and issue a redevelopment tax credit certificate to the investor in the amount of the tax credit for which the investor is entitled under its contract with the authority.

ITEM 11. Amend rule 261—65.8(15) as follows:

**261—65.8(15) Application forms.** Application forms for the brownfield redevelopment program and the redevelopment tax credit program for brownfields and grayfields shall be available upon request from ~~IED~~ Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. ~~IED~~ The authority may provide technical assistance as necessary to applicants. IED Authority staff may conduct on-site evaluations of proposed activities.

ITEM 12. Amend subrules 65.10(1), 65.10(2) and 65.10(5) as follows:

**65.10(1)** A contract shall be executed between the recipient and ~~IED~~ the authority. These rules and applicable state laws and regulations shall be part of the contract.

**65.10(2)** The recipient must execute and return the contract to ~~IED~~ the authority within 45 days of transmittal of the final contract from ~~IED~~ the authority. Failure to do so may be cause for the board to terminate the award.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

**65.10(5)** Awards may be conditioned upon ~~IDED's~~ the authority's receipt and approval of an implementation plan for the funded activity.

ITEM 13. Amend subrule 65.11(1) as follows:

**65.11(1) Purpose.** The purpose of the redevelopment tax credit program is to make tax credits available for a redevelopment project investment. The ~~department~~ authority may cooperate with the department of natural resources and local governments in an effort to disseminate information regarding the redevelopment tax credit.

ITEM 14. Amend paragraph **65.11(3)"a"** as follows:

*a. Issuance.* The ~~department~~ authority shall issue a redevelopment tax credit certificate upon completion of the project and submittal of proof of completion by the qualified investor. The tax credit certificate shall contain the qualified investor's name, address, tax identification number, the amount of the credit, the name of the qualifying investor, any other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

ITEM 15. Amend paragraph **65.11(4)"d"** as follows:

*d. Maximum credit total.* For the fiscal year beginning July 1, 2009, the maximum amount of tax credits issued by the ~~department~~ authority shall not exceed \$1 million. For the fiscal year beginning July 1, 2011, and for each subsequent fiscal year, the maximum amount of tax credits issued by the authority shall be an amount determined by the board but not in excess of \$5 million. ~~The department shall not issue tax credits pursuant to this rule in subsequent fiscal years unless authorized pursuant to this subrule.~~

ITEM 16. Amend subrules 65.11(7) to 65.11(10) as follows:

**65.11(7) Project completion.**

*a.* An investment shall be deemed to have been made on the date the qualifying redevelopment project is completed. An investment made prior to January 1, 2009, ~~or after June 30, 2010,~~ shall not qualify for a tax credit under this rule.

*b.* ~~A qualifying redevelopment project not completed within 30 months after board approval shall not be eligible for a tax credit pursuant to this rule. The board has the discretion to allow an additional 12-month extension period to complete a project. A registered project shall be completed within 30 months of the project's approval unless the authority, with the approval of the board, provides additional time to complete the project. A project shall not be provided more than 12 months of additional time. If the registered project is not completed within the time required, the project is not eligible to claim a tax credit.~~

*c.* Failure to comply. If a taxpayer receives a tax credit pursuant to 2011 Iowa Code Supplement section 15.293A but fails to comply with any of the requirements, the taxpayer loses any right to the tax credit. The Iowa department of revenue shall seek recovery of the value of the credit the qualified investor received.

**65.11(8) Tax credit carryover.** If the maximum amount of tax credits available has not been issued at the end of the fiscal year, the remaining tax credit amount may be carried over to a subsequent fiscal year or the ~~department~~ authority may prorate the remaining credit amount among other eligible applicants.

**65.11(9) Department Authority registration and authorization.** The ~~department~~ authority shall develop a system for registration and authorization of tax credits. The ~~department~~ authority shall control distribution of all tax credits distributed to investors, including developing and maintaining a list of tax credit applicants from year to year to ensure that if the maximum aggregate amount of tax credits is reached in one year, an applicant can be given priority consideration for a tax credit in an ensuing year.

**65.11(10) Other financial assistance considerations.** If a qualified investor has also applied to the ~~department~~ authority, the board, or any other agency of state government for additional financial assistance, the ~~department~~ authority, the board, or the agency of state government shall not consider the receipt of a tax credit issued pursuant to this rule when considering the application for additional financial assistance.

## ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

ITEM 17. Amend rule 261—65.12(15) as follows:

**261—65.12(15) Council Review, approval, and repayment requirements of redevelopment tax credit.**

**65.12(1)** A qualified investor seeking to claim a tax credit pursuant to 2011 Iowa Code Supplement sections 15.293A and 15.293B shall apply to the ~~council~~, authority, and applications shall be reviewed by the council as established in 2011 Iowa Code Supplement section 15.294. The council shall recommend to the board the tax credit amount available for each qualifying redevelopment project.

**65.12(2)** A qualified investor shall provide ~~to the authority, the council with~~ and the board all of the following:

*a.* Information showing the total costs of the qualifying redevelopment project, including the costs of land acquisition, cleanup, and redevelopment.

*b.* Information about the financing sources of the investment which is directly related to the qualifying redevelopment project for which the taxpayer is seeking approval for a tax credit, as provided in 2011 Iowa Code Supplement section 15.293A.

ITEM 18. Amend **261—Chapter 65**, implementation sentence, as follows:

These rules are intended to implement 2011 Iowa Code Supplement sections 15.291 to 15.295.

[Filed 1/20/12, effective 3/14/12]

[Published 2/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/12.

**ARC 0009C**

**ECONOMIC DEVELOPMENT AUTHORITY[261]**

**Adopted and Filed**

Pursuant to the authority of 2011 Iowa Acts, House File 590, section 7, the Economic Development Authority hereby adopts Chapter 115, "Tax Credits for Investments in Qualifying Businesses and Community-Based Seed Capital Funds," and Chapter 116, "Tax Credits for Investments in Certified Innovation Funds," Iowa Administrative Code.

Chapter 115 incorporates changes to Iowa Code provisions that provide tax credits for investments in qualifying businesses and community-based seed capital funds. Previously, these credits were administered by the Iowa Capital Investment Board. The Legislature, in 2011 Iowa Acts, Senate File 517, transferred the administration of these credits to the Authority and authorized the Authority to allocate \$2 million in tax credits from the Authority's maximum aggregate tax credit limit in Iowa Code section 15.119 for these tax credits.

Chapter 116 provides rules for the administration of innovation fund investment tax credits. These credits were created by the Legislature in 2011 Iowa Acts, Senate File 517, and the Authority was authorized to allocate \$8 million of the maximum aggregate tax credit limit in Iowa Code section 15.119 for purposes of the credits.

The rules are intended to work in conjunction with the Department of Revenue's Adopted and Filed rules published in the Iowa Administrative Bulletin on January 11, 2012, as **ARC 9966B**.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 16, 2011, as **ARC 9845B**. The Authority held a public hearing on December 6, 2011, to receive comments on these rules. Representatives from the Technology Association of Iowa commented on the equity investment requirements and the application deadlines for the program. Additionally, written comments were received from members of the Iowa Taxpayers Association, the Iowa Innovation Corporation, and others. In response, the Authority has revised the rules for Chapters 115 and 116 to include definitions of "equity." The Authority has also removed the requirement in subrule 116.3(3) that an innovation fund reinvest profits to fund further investments. In addition, the Authority has changed the word "may" to "will" in the portion of subrules 115.6(4) and 116.5(2) governing the carrying forward of tax credits in

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excess of the annual aggregate limitation. Finally, the deadlines for the application process in Chapter 115 have been changed.

The Economic Development Authority Board adopted these rules on January 20, 2012.

After analysis and review of this rule making, no adverse impact on jobs has been found. This rule making implements economic development policy in the state by means of a collaboration between government and the private sector. The collaboration allows the Economic Development Authority and the Iowa Innovation Corporation to further economic development policy. This rule making allows Iowa to create a business environment which is competitive with other states in order to ensure job growth and retention.

The rules will become effective on March 14, 2012.

These rules are intended to implement Iowa Code chapter 15E, division V, and 2011 Iowa Acts, Senate File 517.

The following rules are adopted.

ITEM 1. Adopt the following new 261—Chapter 115:

CHAPTER 115  
TAX CREDITS FOR INVESTMENTS IN QUALIFYING BUSINESSES AND  
COMMUNITY-BASED SEED CAPITAL FUNDS

**261—115.1(84GA,SF517) Tax credits for investments in qualifying businesses and community-based seed capital funds.** Tax credits for investments in qualifying businesses and community-based seed capital funds may be claimed as provided in this rule.

**115.1(1) *Tax credits allowed only after a certain date.*** A taxpayer may claim a tax credit under this rule for equity investments in certain qualifying businesses or community-based seed capital funds. Only equity investments made on or after January 1, 2011, qualify for a tax credit under this rule. Equity investments made before that date must be claimed under 123—Chapter 2.

**115.1(2) *Investments in qualifying businesses.***

*a.* A taxpayer may claim a tax credit under this subrule for a portion of the taxpayer's equity investment in a qualifying business if that investment was made on or after January 1, 2011.

*b.* The tax credit may be claimed against the taxpayer's tax liability for any of the following taxes:

- (1) The personal net income tax imposed under Iowa Code chapter 422, division II.
- (2) The business tax on corporations imposed under Iowa Code chapter 422, division III.
- (3) The franchise tax on financial institutions imposed under Iowa Code chapter 422, division V.
- (4) The tax on the gross premiums of insurance companies imposed under Iowa Code chapter 432.
- (5) The tax on moneys and credits imposed under Iowa Code section 533.329.

**115.1(3) *Investments in community-based seed capital funds.***

*a.* A taxpayer may claim a tax credit under this subrule for a portion of the taxpayer's equity investment in a community-based seed capital fund if that investment was made on or after January 1, 2011.

*b.* The tax credit may be claimed against the taxpayer's tax liability for any of the following taxes:

- (1) The personal net income tax imposed under Iowa Code chapter 422, division II.
- (2) The business tax on corporations imposed under Iowa Code chapter 422, division III.
- (3) The franchise tax on financial institutions imposed under Iowa Code chapter 422, division V.
- (4) The tax on gross premiums of insurance companies imposed under Iowa Code chapter 432.
- (5) The tax on moneys and credits imposed under Iowa Code section 533.329.

**115.1(4) *Amount of tax credit that may be claimed by taxpayer.***

*a.* The amount of tax credit available to a taxpayer under this rule is equal to 20 percent of the taxpayer's equity investment in either a qualifying business or community-based seed capital fund.

*b.* The maximum amount of a tax credit for an investment by an investor in any one qualifying business shall be \$50,000. Each year, an investor, and all affiliates of that investor, shall not claim tax credits under this rule for more than five different investments in five different qualifying businesses.

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c. An investor in a community-based seed capital fund shall receive a tax credit pursuant to this rule only for the investor's investment in the community-based seed capital fund and shall not receive any additional tax credit for the investor's share of investments in a qualifying business made by the community-based seed capital fund or in an Iowa-based seed capital fund which has at least 40 percent of its committed capital subscribed by community-based seed capital funds. However, an investor in a community-based seed capital fund may receive a tax credit under this rule with respect to a separate direct investment made by the investor in the same qualifying business in which the community-based seed capital fund invests.

**115.1(5) *Claiming an investment tax credit.*** A taxpayer that makes an investment in a qualifying business or community-based seed capital fund and that otherwise meets the requirements of this chapter will receive a board-approved tax credit certificate from the authority. To claim the credit, the taxpayer must attach the certificate to a tax return filed with the department of revenue. For more information on claiming the tax credit, see department of revenue rule 701—42.22(15E,422).

**115.1(6) *Tax credits for pass-through entities.*** If the taxpayer that is entitled to a tax credit for an investment in a community-based seed capital fund or a qualifying business is a pass-through entity electing to have its income taxed directly to its individual owners, such as a partnership, limited liability company, S corporation, estate or trust, the pass-through entity must allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro-rata share of the earnings of the entity, and the individual owners may claim their respective credits on their individual income tax returns.

**261—115.2(84GA,SF517) Definitions.** For purposes of this chapter, unless the context otherwise requires:

*"Affiliate"* means a spouse, child, or sibling of an investor or a corporation, partnership, or trust in which an investor has a controlling equity interest or in which an investor exercises management control.

*"Authority"* means the economic development authority created in 2011 Iowa Acts, House File 590.

*"Board"* means the same as defined in Iowa Code section 15.102 as amended by 2011 Iowa Acts, House File 590, section 3.

*"Community-based seed capital fund"* means a fund that meets the following criteria:

1. Is organized as a limited partnership or limited liability company;
2. Has, on or after January 1, 2011, a total of capital commitments from both investors and investments in qualifying businesses of at least \$125,000, but not more than \$3 million. If the fund is either a rural business investment company under the Rural Business Investment Program of the federal Farm Security and Rural Investment Act of 2002 or an Iowa-based seed capital fund with at least 40 percent of its committed capital subscribed by community-based seed capital funds, the fund may have more than \$3 million of capital commitments from both investors and investments in qualifying businesses; and

3. Has no fewer than five investors that are not affiliates, with no single investor and affiliates of that investor together owning a total of more than 25 percent of the ownership interests outstanding in the fund.

*"Controlling equity interest"* means ownership of more than 50 percent of the outstanding equity interests of a corporation, partnership, limited liability company or trust.

*"Equity"* means common or preferred corporate stock or warrants to acquire such stock, membership interests in limited liability companies, partnership interests in partnerships, or near equity. Equity shall be limited to securities or interests acquired only for cash and shall not include securities or interests acquired at any time for services, contributions of property other than cash, or any other non-cash consideration.

*"Investor"* means a person that makes a cash investment in a community-based seed capital fund or in a qualifying business on or after January 1, 2011. "Investor" does not include a person that holds at least a 70 percent ownership interest as an owner, member, or shareholder in a qualifying business for investments made on or after January 1, 2011.

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“*Management control*” means holding more than 50 percent of the voting power on any board of directors or trustees, any management committee, or any other group managing a corporation, partnership, limited liability company or trust.

“*Near equity*” means debt that may be converted to equity at the option of the debt holder, and royalty agreements.

“*Person*” means an individual, corporation, limited liability company, business trust, estate, trust, partnership or association, or any other legal entity.

“*Qualifying business*” means a business that meets the following criteria:

1. The principal business operations of the business are located in the state of Iowa;
2. The business has been in operation for six years or less, as measured from the date of the investment for which a credit is claimed;
3. The business has an owner who has successfully completed one of the following:
  - An entrepreneurial venture development curriculum, such as programs developed by a John Pappajohn Entrepreneurial Center, or a holistic training program recognized by the Iowa economic development authority which generally encompasses the following areas: entrepreneurial training, management team development, intellectual property management, market research and analysis, sales and distribution development, financial planning, and management and strategic planning;
  - Three years of relevant business experience;
  - A four-year college degree in business management, business administration or a related field;
  - Other training or experience sufficient to increase the probability of success of the qualifying business;
4. The business is not a business engaged primarily in retail sales, real estate or the provision of health care services or other services requiring a professional license;
5. The business does not have a net worth that exceeds \$5 million as of the date of the investment for which the credit is claimed; and
6. Within 24 months from the first date on which the equity investments qualifying for investment tax credits have been made, the business shall have secured total equity or near equity financing equal to at least \$250,000.

“*Services requiring a professional license*” includes but is not limited to the professions listed in Iowa Code section 496C.2.

**261—115.3(84GA,SF517) Cash investments required.** In order to qualify for a tax credit under this chapter, the taxpayer’s investment must be made in the form of cash to purchase equity in a qualifying business or in a community-based seed capital fund.

**261—115.4(84GA,SF517) Applying for an investment tax credit.**

**115.4(1)** A taxpayer that desires to receive an investment tax credit for an equity investment in a qualifying business or community-based seed capital fund shall submit an application to the board for approval and provide such other information and documentation as may be requested by the board. Application forms for the investment tax credit may be obtained by contacting the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. The telephone number is (515)725-3000.

**115.4(2)** Application forms may also be obtained by contacting a Small Business Development Center in the applicant’s geographic location. The authority will coordinate with Small Business Development Centers throughout the state to provide uniform application forms to Small Business Development Centers and to disseminate information regarding the investment tax credits. The authority will provide a summary of the investment tax credits to Small Business Development Centers by either supplying the Small Business Development Centers with a copy of these rules or delivering substantially similar information in any other format approved by the authority. The authority will make itself accessible to Small Business Development Centers for assistance with questions concerning completion of applications or any other questions pertaining to the investment tax credits available under this chapter.

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**115.4(3)** Applications shall be date- and time-stamped by the authority in the order in which such applications are received. Applications for the investment tax credit shall be accepted by the authority until March 31 of the year following the calendar year in which the taxpayer's equity investment was made.

EXAMPLE 1: A taxpayer makes an equity investment in a qualifying business on December 31, 2011. The taxpayer has until March 31, 2012, to apply to the authority for an investment tax credit. A taxpayer makes an equity investment in a qualifying business on December 31, 2011. The taxpayer has until March 31, 2012, to apply to the authority for an investment tax credit.

EXAMPLE 2: A taxpayer makes an equity investment in a qualifying business on July 1, 2012. The taxpayer has until March 31, 2013, to apply to the authority for an investment tax credit. A taxpayer makes an equity investment in a qualifying business on July 1, 2012. The taxpayer has until March 31, 2013, to apply to the authority for an investment tax credit.

**261—115.5(84GA,SF517) Verification of qualifying business and community-based seed capital funds.**

**115.5(1) *Qualifying businesses.***

*a.* Within 180 days from the first date on which the equity investments qualifying for investment tax credits have been made (or, for investments made during the 2011 calendar year, not later than June 30, 2012), a qualifying business shall provide to the authority the following information as a prerequisite to the authority's issuance of any investment tax credits to investors in such qualifying business:

(1) A signed statement, from an officer, director, manager, member, or general partner of the qualifying business, that contains a description of the general nature of its business operations, the location of the principal business operations, the date on which the business was formed, and the date on which the business commenced operations;

(2) A balance sheet, certified by the chief executive officer and the chief financial officer of the qualifying business, that reflects the qualifying business's assets, liabilities and owners' equity as of the close of the most recent month or quarter;

(3) A signed statement, from an owner of the business, that describes the manner in which such owner satisfies one of the training requirements set forth in the definition of a qualifying business under rule 261—115.2(84GA,SF517);

(4) A signed statement, from an officer, director, manager, member or general partner of the qualifying business, that states the names, addresses, shares or equity interests issued, consideration paid for the shares or equity interests, and the amounts of any tax credits of all shareholders or equity holders who may initially qualify for the tax credits and the earliest year in which the tax credits may be redeemed. The statement shall contain a commitment by the qualifying business to amend its statement as may be necessary from time to time to reflect new equity interests or transfers in equity among current equity holders or as any other information on the list may change; and

(5) A certificate of existence of a business plan for the qualifying business which details the business's growth strategy, management team, production/management plan, marketing plan, financial plan and other standard elements of a business plan.

*b.* Upon the authority's receipt of the information and documentation necessary to demonstrate satisfaction of the criteria set forth herein, the authority shall, within a reasonable period of time, determine whether a business is a qualifying business. If the authority verifies that the business is a qualifying business, the authority shall register the qualifying business on a registry of such qualifying businesses. The authority shall maintain the registry and use it to authorize the issuance of further investment tax credits to taxpayers who make equity investments in qualifying businesses registered with the authority. The authority shall issue written notification to the qualifying business and the applicant that such business has been registered as a qualifying business with the authority for the purpose of issuing investment tax credits but that such registration is subject to removal and rescission under rule 261—115.9(84GA,SF517) for any failure of the business to continuously satisfy the requirements necessary for verification and registration as a qualifying business.

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**115.5(2) Community-based seed capital funds.**

a. Within 180 days from the first date on which the equity investments qualifying for investment tax credits have been made (or, for investments made during the 2011 calendar year, not later than June 30, 2012), a community-based seed capital fund shall provide to the authority information as a prerequisite to the authority's issuance of investment tax credits to investors in such community-based seed capital fund. A community-based seed capital fund cannot invest in the Iowa fund of funds organized by the Iowa capital investment corporation under Iowa Code section 15E.65 but may invest up to 60 percent of its committed capital in an Iowa-based seed capital fund with at least 40 percent of its committed capital subscribed by community-based seed capital funds. The following information must be provided:

(1) A copy of the fund's certificate of limited partnership, limited partnership agreement, articles of organization or operating agreement, or any combination thereof, certified by the chief executive officer of the community-based seed capital fund.

(2) A signed statement, from an officer, director, manager, member or general partner of the fund, that states the total amount of capital contributions or capital commitments from investors, the total number of individual investors that are not affiliates, and the ownership interest of each individual investor in the fund.

(3) A signed statement, from an officer, director, manager, member or general partner of the fund, that states the names, addresses, equity interests issued, consideration paid for the interests and the amounts of any tax credits, of all limited partners or members who may initially qualify for the tax credits, and the earliest year in which the tax credits may be redeemed. The statement shall also contain a commitment by the fund to amend its statement as may be necessary from time to time to reflect new equity interests or transfers in equity among current equity holders or as any other information on the list may change.

b. Upon the authority's receipt of the information and documentation necessary to demonstrate a community-based seed capital fund's satisfaction of the criteria set forth herein, the board shall, within a reasonable period of time, determine whether a fund is a community-based seed capital fund. If the authority verifies that the fund is a community-based seed capital fund, the authority shall register the community-based seed capital fund on a registry of such community-based seed capital funds. The authority shall maintain the registry and use it to authorize the issuance of further investment tax credits to taxpayers that make equity investments in the community-based seed capital funds registered with the authority. The authority shall issue written notification to the community-based seed capital fund and the applicant that such fund has been registered as a community-based seed capital fund with the authority for the purpose of issuing investment tax credits but that such registration is subject to removal and rescission under rule 261—115.9(84GA,SF517) for any failure of the community-based seed capital fund to continuously satisfy the requirements necessary for verification and registration as a community-based seed capital fund.

**261—115.6(84GA,SF517) Approval, issuance and distribution of investment tax credits.**

**115.6(1) Approval by the board.** Upon verification and registration by the authority of a qualifying business or community-based seed capital fund and approval of the taxpayer's application, the board will approve the issuance of a tax credit certificate to the taxpayer applying for the tax credit.

**115.6(2) Issuance by the authority.** Upon approval by the board, the authority shall issue a tax credit certificate to the applicant, provided, however, that such tax credit certificate shall be subject to rescission pursuant to rule 261—115.9(84GA,SF517).

**115.6(3) Preparation of certificate.** The tax credit certificate shall be prepared by the authority in a form approved by the board and shall contain the taxpayer's name, address, and tax identification number, the amount of credit, the name of the qualifying business or community-based seed capital fund, the year in which the credit may be redeemed and any other information that may be required by the department of revenue. In addition, the tax credit certificate shall contain the following statement:

Neither the authority nor the board has recommended or approved this investment or passed on the merits or risks of such investment. Investors should rely solely on their

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own investigation and analysis and seek investment, financial, legal and tax advice before making their own decision regarding investment in this enterprise.

**115.6(4) *Maximum aggregate limitation.*** The aggregate amount of tax credits issued pursuant to this chapter shall not exceed the amount allocated by the board pursuant to Iowa Code section 15.119, subsection 2. For fiscal year 2012 and all subsequent fiscal years, that amount is \$2 million.

If, during any fiscal year during which tax credits are to be issued under this chapter, applications totaling more than the maximum aggregate amount are received and approved, the applications will be carried forward and prioritized to receive tax credit certificates on a first-come, first-served basis in subsequent fiscal years.

When carrying forward and prioritizing such applications, the authority shall (1) issue tax credit certificates to the taxpayers for such carryover tax credits before issuing any new tax credits to later applicants, and (2) apply the aggregate amount of the credits carried over against the total amount of tax credits to be issued during the subsequent fiscal year before approving or issuing additional tax credits.

**261—115.7(84GA,SF517) *Claiming the tax credits.*** To claim a tax credit under this chapter, a taxpayer must attach to that taxpayer's tax return a certificate issued pursuant to this chapter when the return is filed with the department of revenue. For more information on claiming tax credits, see department of revenue rule 701—42.22(15E,422).

**261—115.8(84GA,SF517) *Notification to the department of revenue.*** Upon the issuance and distribution of investment tax credits for a tax year, the authority shall promptly notify the department of revenue by providing copies of the tax credit certificates issued for such tax year to the department of revenue. Such notification shall also include, but not be limited to, the aggregate number and amount of tax credits issued for the tax year.

**261—115.9(84GA,SF517) *Rescinding tax credits.***

**115.9(1) *Rescission of credits for investments in qualifying businesses.***

*a.* Within 24 months from the first date on which the equity investments qualifying for investment tax credits have been made, a qualifying business shall provide to the authority information and documentation sufficient to demonstrate that the business has secured total equity or near equity financing equal to at least \$250,000. Examples of sufficient information and documentation include, but are not limited to, the following:

(1) Corporate, partnership or limited liability company-certified resolutions setting forth the names of individuals or entities making capital contributions and the amounts of such capital contributions;

(2) Certified corporate, partnership, or limited liability company minutes reflecting the names of individuals or entities making capital contributions and the amounts of such capital contributions.

*b.* On or by the last day of the 24-month period described in paragraph 115.9(1) "a," a qualifying business shall certify to the authority, by a statement signed by an officer, director, member, manager, or general partner of the qualifying business, that it has secured the requisite amount of equity financing required by this rule within the time period prescribed in paragraph 115.9(1) "a" and shall recertify to the authority that the qualifying business continues to meet the requirements set forth in subrule 115.5(1).

*c.* In the event that a qualifying business fails to meet or maintain any requirement set forth in this rule, including, without limitation, timely filing of the certifications described in paragraph 115.9(1) "b," the authority, upon action by the board, shall rescind any tax credit certificates issued to those taxpayers and shall notify the department of revenue that it has done so. A tax credit certificate that has been rescinded by the authority shall be null and void, and the department of revenue will not accept the tax credit certificate. In addition, the authority shall remove the qualifying business from the registry and shall issue written notification of such removal to the qualifying business and the applicants.

**115.9(2) *Rescission of credits for investments in community-based seed capital funds.***

*a.* A community-based seed capital fund shall have invested at least 33 percent of its invested capital in one or more separate qualifying businesses on or by the last day of the 48-month period that commences with the fund's investing activities.

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*b.* On or by the last day of the 48-month period described in paragraph 115.9(2)“*a*,” a community-based seed capital fund shall certify to the board, by a statement signed by an officer, director, member, manager, or general partner of the community-based seed capital fund, that it has met the requirements of this rule within the time period prescribed by this subrule and shall recertify to the board that the community-based seed capital fund continues to meet the requirements set forth in subrule 115.5(2).

*c.* In the event that a community-based seed capital fund fails to meet or maintain any requirement set forth in this subrule, including, without limitation, timely filing of the certifications described in paragraph 115.9(2)“*b*,” the authority, upon action of the board, shall rescind any tax credit certificates issued to limited partners or members and shall notify the department of revenue that it has done so. A tax credit certificate that has been rescinded by the authority shall be null and void, and the department of revenue will not accept the tax credit certificate. In addition, the authority shall remove such community-based seed capital fund from the registry and shall issue written notification of such removal to the community-based seed capital fund and the applicants.

*d.* Notwithstanding paragraphs 115.9(2)“*a*” to “*c*,” a community-based seed capital fund may apply to the authority for a one-year waiver from the requirements of this rule. The authority shall, upon review of a community-based seed capital fund’s application for waiver, exercise reasonable discretion in granting or denying such waiver. In the event that the authority grants to a community-based seed capital fund a one-year waiver from the requirements of this rule, the authority shall defer any rescission of the tax credit certificates until the expiration of such one-year waiver period. If the community-based seed capital fund meets the requirements of this rule by the expiration of such one-year waiver period, the tax credit certificates shall not be rescinded. However, the tax credit certificates shall be rescinded at the end of such one-year waiver period if such requirements have not been met.

**261—115.10(84GA,SF517) Additional information.** The authority may at any time request additional information and documentation from a qualifying business or community-based seed capital fund regarding the operations, job creation and economic impact of such qualifying business or community-based seed capital fund, and the authority may use such information in preparing and publishing any reports to be provided to the governor and the general assembly.

These rules are intended to implement Iowa Code chapter 15E, division V, and 2011 Iowa Acts, Senate File 517.

ITEM 2. Adopt the following new 261—Chapter 116:

## CHAPTER 116

## TAX CREDITS FOR INVESTMENTS IN CERTIFIED INNOVATION FUNDS

**261—116.1(84GA,SF517) Tax credit for investments in certified innovation funds.**

**116.1(1) Tax credit allowed.** For tax years beginning on or after January 1, 2011, a taxpayer may claim a tax credit for a portion of the taxpayer’s equity investment in a certified innovation fund. The tax credit may be claimed against the taxpayer’s tax liability for any of the following taxes:

- a.* The personal net income tax imposed under Iowa Code chapter 422, division II.
- b.* The business tax on corporations imposed under Iowa Code chapter 422, division III.
- c.* The franchise tax on financial institutions imposed under Iowa Code chapter 422, division V.
- d.* The tax on the gross premiums of insurance companies imposed under Iowa Code chapter 432.
- e.* The tax on moneys and credits imposed under Iowa Code section 533.329.

**116.1(2) Treatment of pass-through entities.** If the taxpayer that is entitled to an investment tax credit for an investment in an innovation fund is a pass-through entity electing to have its income taxed directly to its individual owners, such as a partnership, limited liability company, S corporation, estate or trust, the pass-through entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner’s pro-rata share of the earnings of the entity, and the individual owners may claim their respective credits on their individual income tax returns.

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**116.1(3) Credits for certain investments disallowed.** A taxpayer shall not claim an investment tax credit for an investment in an innovation fund if the taxpayer is a venture capital investment fund allocation manager for the Iowa fund of funds described in Iowa Code section 15E.65, an investor that receives a tax credit for the same investment in a community-based seed capital fund as described in Iowa Code section 15E.45, or an investor that receives a tax credit for the same investment in a qualifying business as described in Iowa Code section 15E.44.

**116.1(4) Cash investments required.** The taxpayer's equity investment must be made in the form of cash to purchase equity in an innovation fund.

**116.1(5) Amount of credit.** The taxpayer may claim a tax credit in an amount equal to 20 percent of the taxpayer's equity investment in a certified innovation fund.

**261—116.2(84GA,SF517) Definitions.** For purposes of this chapter, unless the context otherwise requires:

*"Authority"* means the economic development authority created in 2011 Iowa Acts, House File 590.

*"Board"* means the same as defined in Iowa Code section 15.102 as amended by 2011 Iowa Acts, House File 590, section 3.

*"Equity"* means common or preferred corporate stock or warrants to acquire such stock, membership interests in limited liability companies, partnership interests in partnerships, or near equity. Equity shall be limited to securities or interests acquired only for cash and shall not include securities or interests acquired at any time for services, contributions of property other than cash, or any other non-cash consideration.

*"Innovation fund"* means a private, early-stage capital fund that has been certified by the board.

*"Innovative business"* means a business applying novel or original methods to the manufacture of a product or the delivery of a service. "Innovative business" includes but is not limited to a business engaged in advanced manufacturing, biosciences, or information technology.

**261—116.3(84GA,SF517) Verification of innovation funds.**

**116.3(1)** An innovation fund shall provide to the authority information as a prerequisite to the issuance of any investment tax credits to investors in such innovation funds. The innovation fund must provide this information within 120 days from the first date on which the equity investments qualifying for the investment tax credit have been made (or, for investments made during the 2011 calendar year, by the later of 120 days from the first date on which the investments have been made or March 31, 2012).

**116.3(2)** Application forms setting forth the information required to verify the eligibility of an innovation fund may be obtained by contacting the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. The telephone number is (515)725-3000. Applications shall be submitted to the authority at the address identified above.

**116.3(3)** The following information must be submitted to the authority in order for an eligible innovation fund to be verified:

*a.* A copy of the fund's certificate of limited partnership, limited partnership agreement, articles of organization or operating agreement certified by the chief executive officer of the innovation fund.

*b.* A signed statement, from an officer, director, manager, member or general partner of the fund, stating the following:

(1) That the fund will make investments in promising early-stage companies which have a principal place of business in the state.

(2) That the fund proposes to make investments in innovative businesses which have a principal place of business in the state.

(3) That the fund seeks to secure private funding sources for investment in such businesses.

**116.3(4)** Upon the authority's receipt of the information and documentation necessary to demonstrate satisfaction of the criteria set forth herein, the authority shall, within a reasonable period of time, determine whether a certification will be issued for the innovation fund. If the authority certifies the innovation fund, the authority shall register the fund on a registry that shall be maintained by the authority. The authority shall use the registry to authorize the issuance of further investment tax credits

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to taxpayers who make equity investments in the innovation funds registered with the authority. The authority shall issue written notification to the innovation fund that the fund has been registered as an innovation fund with the authority for the purpose of issuing investment tax credits.

**261—116.4(84GA,SF517) Application for the investment tax credit.** Upon verification and registration by the authority of an innovation fund, a taxpayer who desires to receive an investment tax credit for an equity investment in an innovation fund must submit an application to the authority for approval by the board and provide such other information and documentation as may be requested by the authority. Application forms for the investment tax credit may be obtained by contacting the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. Applications shall be submitted to the authority at the address identified above. Each application shall be date- and time-stamped by the authority in the order in which such applications are received. Applications for the investment tax credit shall be accepted by the authority until March 31 of the year following the calendar year in which the taxpayer's equity investment is made.

**261—116.5(84GA,SF517) Approval, issuance and distribution of investment tax credits.**

**116.5(1) Approval and issuance.** Upon verification and registration by the authority of an innovation fund, the authority, upon approval by the board, shall issue a tax credit certificate to the applicant. Applicants shall receive tax credit certificates on a first-come, first-served basis until the maximum aggregate amount of credits authorized for issuance has been reached for any fiscal year.

**116.5(2) Carry forward.** If, during any fiscal year during which tax credits are to be issued under this chapter, applications totaling more than the maximum aggregate amount are received and approved, the applications will be carried forward and prioritized to receive tax credit certificates on a first-come, first-served basis in subsequent fiscal years.

When carrying forward and prioritizing such applications, the authority shall (1) issue tax credit certificates to the taxpayers for such carryover tax credits before issuing any new tax credits to later applicants, and (2) apply the aggregate amount of the credits carried over against the total amount of tax credits to be issued during the subsequent fiscal year before approving or issuing additional tax credits.

**116.5(3) Preparation of the certificate.** The tax credit certificate shall be in a form approved by the authority and shall contain the taxpayer's name, address, and tax identification number, the amount of credit, the name of the innovation fund, the year in which the credit may be redeemed and any other information that may be required by the department of revenue. In addition, the tax credit certificate shall contain the following statement:

Neither the authority nor the board has recommended or approved this investment or passed on the merits or risks of such investment. Investors should rely solely on their own investigation and analysis and seek investment, financial, legal and tax advice before making their own decision regarding investment in this enterprise.

**116.5(4) Credit amount.** A tax credit for investment in an innovation fund is equal to 20 percent of the taxpayer's equity investment in the fund.

**116.5(5) Maximum aggregate limitation.** The maximum aggregate amount of tax credits issued pursuant to this chapter shall not exceed the amount allocated by the board pursuant to Iowa Code section 15.119, subsection 2. For fiscal year 2012 and all subsequent fiscal years, that amount is \$8 million.

**261—116.6(84GA,SF517) Claiming the tax credits.** To claim a tax credit under this chapter, a taxpayer must attach to that taxpayer's tax return a certificate issued pursuant to this chapter when the return is filed with the department of revenue. For more information on claiming tax credits, see department of revenue rule 701—42.22(15E,422).

**261—116.7(84GA,SF517) Notification to the department of revenue.** Upon the issuance and distribution of investment tax credits for a tax year, the authority shall promptly notify the department of revenue by providing copies of the tax credit certificates issued for such tax year to the department of

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

revenue. Such notification shall also include, but not be limited to, the aggregate number and amount of tax credits issued for the tax year.

**261—116.8(84GA,SF517) Additional information.** The authority may at any time request additional information and documentation from an innovation fund regarding the operations, job creation and economic impact of the fund, and the authority may use such information in preparing and publishing any reports to be provided to the governor and the general assembly.

These rules are intended to implement 2011 Iowa Acts, Senate File 517.

[Filed 1/20/12, effective 3/14/12]

[Published 2/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/12.

## ARC 9986B

### ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A(1), the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 2, "Public Records and Fair Information Practices," Iowa Administrative Code.

This amendment conforms to 2011 Iowa Acts, House File 126, which made changes to where lobbyist registration statements and lobbyist client reports are to be filed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 24, 2011, as **ARC 9679B**. No public comment was received on this amendment. This amendment is identical to the amendment published under Notice of Intended Action.

This amendment was adopted by the Board on November 10, 2011.

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

This amendment is intended to implement Iowa Code chapter 68B as amended by 2011 Iowa Acts, House File 126.

This amendment will become effective on March 14, 2012.

The following amendment is adopted.

Amend subrule 2.15(10) as follows:

**2.15(10) Executive branch lobbying reports.** The ~~board~~ general assembly serves as the repository for public viewing of executive branch lobbyist registration statements, ~~executive branch lobbying reports,~~ and executive branch lobbyist client reports. These reports are ~~available by paper and are also~~ accessible via the board's Web site at [www.iowa.gov/ethics](http://www.iowa.gov/ethics). The information disclosed on these reports is required by 2011 Iowa Code Supplement sections 68B.36, ~~68B.37,~~ and 68B.38. This information does not match, collate, or permit comparison with other data processing systems.

[Filed 1/12/12, effective 3/14/12]

[Published 2/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/12.

## ARC 9985B

### ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A(1), the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 8, "Executive Branch Lobbying," Iowa Administrative Code.

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

This amendment conforms to 2011 Iowa Acts, House File 126, which made changes to where lobbyist registration statements and lobbyist client reports are to be filed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 24, 2011, as **ARC 9680B**. One public comment was received requesting that subrule 8.7(3) be rescinded because the Board no longer has the authority to dictate what information is required on a lobbyist registration statement. In response, this amendment has been changed from the proposed amendment published under Notice of Intended Action.

This amendment was adopted by the Board on November 10, 2011.

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

This amendment is intended to implement Iowa Code chapter 68B as amended by 2011 Iowa Acts, House File 126.

This amendment will become effective on March 14, 2012.

The following amendment is adopted.

Amend rule 351—8.7(68B) as follows:

**351—8.7(68B) Lobbyist registration required.**

**8.7(1) *Time of filing.*** Any individual engaging in executive branch lobbying activity shall register by electronically filing an executive branch lobbyist registration statement with the ~~board~~ chief clerk of the house of representatives or the secretary of the senate on or before the day the lobbying activity begins. Registration expires ~~upon the commencement of a new~~ at the end of the calendar year. ~~Persons wishing to register for a new calendar year may do so on or after December 1 of the previous year. Beginning December 1 of each year, a person may preregister to lobby for the following calendar year.~~

**8.7(2) *Place of filing.*** Executive branch lobbyist registration statements shall be electronically filed with the ~~board~~ electronically chief clerk of the house of representatives or the secretary of the senate through the ~~board's~~ general assembly's Web site at [www.iowa.gov/ethics](http://www.iowa.gov/ethics) <http://www.legis.iowa.gov/Lobbyist/reports.aspx>.

**8.7(3) *Information required.*** The following information shall be disclosed on the executive branch lobbyist registration statement:

*a.*—~~The lobbyist's name and business address. The lobbyist's residential address and E-mail address are optional. The lobbyist shall indicate whether mail should be sent to the lobbyist's office or residence.~~

*b.*—~~A general description of the issues or interests that the lobbyist might follow and a list of agencies or offices that may be lobbied.~~

*c.*—~~Whether or not the lobbyist is a governmental official representing the official position of the lobbyist's department, agency, or governmental entity.~~

*d.*—~~Each of the lobbyist's clients, including the name and address of the client, a contact person and job title, and the contact person's telephone number. An E-mail address is optional.~~

*e.*—~~The lobbyist's signature and date of filing. Registration statements filed electronically through the board's Web site are deemed signed and dated when filed.~~

**8.7(4) ~~8.7(3)~~ *Amendment to registration.*** Any change or addition to the information in an executive branch lobbyist's registration statement shall be filed with the ~~board~~ chief clerk of the house of representatives or the secretary of the senate within ten days after the change or addition is made known to the lobbyist. The lobbyist may file changes or additions by electronically filing an amended registration statement.

**8.7(5) ~~8.7(4)~~ *Failure to timely file registration.*** An individual who fails to file an executive branch lobbyist registration statement before engaging in executive branch lobbying activities in violation of

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

2011 Iowa Code Supplement section 68B.36 may be subject to sanctions by the board as permitted under Iowa Code chapter 68B or rule 351—9.4(68B).

This rule is intended to implement 2011 Iowa Code Supplement section 68B.36 as amended by ~~2010 Iowa Acts, House File 2109, section 8.~~

[Filed 1/12/12, effective 3/14/12]

[Published 2/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/12.

**ARC 9984B****ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A(1), the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 8, "Executive Branch Lobbying," Iowa Administrative Code.

This amendment conforms to 2011 Iowa Acts, House File 126, which made changes to where lobbyist registration statements and lobbyist client reports are to be filed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 24, 2011, as **ARC 9681B**. One public comment was received requesting that subrule 8.9(1) be rescinded because the Board no longer has the authority to dictate what information is required on a lobbyist client report and that subrule 8.9(3) be modified instead of rescinded to provide for the possibility that the General Assembly may extend a due date that falls on a weekend or a holiday. In response, this amendment has been changed from the proposed amendment published under Notice of Intended Action.

This amendment was adopted by the Board on November 10, 2011.

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

This amendment is intended to implement Iowa Code chapter 68B as amended by 2011 Iowa Acts, House File 126.

This amendment will become effective on March 14, 2012.

The following amendment is adopted.

Amend rule 351—8.9(68B) as follows:

**351—8.9(68B) Executive branch lobbyist client reporting.**

**8.9(1)** Every executive branch lobbyist client shall file reports that contain the following information:

*a.*—The name and address of the client, including a contact person.

*b.*—The name of the client's lobbyists.

*c.*—The amount of all salaries, fees, retainers, and reimbursements paid by the client to each lobbyist for engaging in lobbying activities for the period commencing on July 1 of the previous year through June 30 of the current year. A report shall be filed even if the client did not pay any compensation to the client's lobbyist. If no compensation was paid, the client shall disclose on the report \$0.00 as compensation paid. In the case of a salaried position when lobbying is part of the individual's duties, the reportable salary shall be based on a pro-rata basis of time spent engaging in lobbying activities.

*d.*—The signature of the client's contact person and the date signed. Lobbyist client reports filed electronically through the board's Web site are deemed signed and dated when filed.

**8.9(2)** **8.9(1)** *Place of filing.* Executive branch lobbyist client reports shall be electronically filed with the board electronically general assembly through the board's general assembly's Web site at [www.iowa.gov/ethics](http://www.iowa.gov/ethics) <http://www.legis.iowa.gov/Lobbyist/onlineFiling.aspx>.

**8.9(3)** **8.9(2)** *Time of filing.* An executive branch lobbyist client report shall be filed on or before July 31 unless the due date is extended by the general assembly. The report must be electronically received

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

~~by the board on or before 11:59 p.m. on the due date. If the report due date falls on a weekend or holiday, the due date shall be extended to the next business day.~~

This rule is intended to implement 2011 Iowa Code Supplement section 68B.38.

[Filed 1/12/12, effective 3/14/12]

[Published 2/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/12.

**ARC 9983B****ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A(1), the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 8, "Executive Branch Lobbying," Iowa Administrative Code.

This amendment conforms to 2011 Iowa Acts, House File 126, which made changes to where lobbyist registration statements and lobbyist client reports are to be filed.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 24, 2011, as **ARC 9682B**. No public comment was received on this amendment. This amendment is identical to the amendment published under Notice of Intended Action.

This amendment was adopted by the Board on November 10, 2011.

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

This amendment is intended to implement Iowa Code chapter 68B as amended by 2011 Iowa Acts, House File 126.

This amendment will become effective on March 14, 2012.

The following amendment is adopted.

Amend rule 351—8.20(68) as follows:

**351—8.20(68 68B) Retention and availability of filed forms.**

**8.20(1) *Public record.*** All forms filed under this chapter are public records and shall be available in the board office for inspection and copying. A filed form shall be retained by the board for a period of at least five years from the date the form was filed.

**8.20(2) *Internet access.*** Forms filed under this chapter shall be accessible for viewing via the board's Web site at [www.iowa.gov/ethics](http://www.iowa.gov/ethics) as follows:

*a.* A list of registered executive branch lobbyists and executive branch lobbyist clients for the current calendar year and the two previous calendar years.

*b.* An executive branch lobbyist client report for ~~a period of at least three years from the report due date~~ as long as the general assembly posts the executive branch lobbyist client reports on the general assembly's Web site.

*c.* A session function registration notice and a session function reporting form for as long as the general assembly posts the session function registration notice and a session function reporting form on the general assembly's Web site.

This rule is intended to implement Iowa Code section 68B.32A(5) ~~as amended by 2010 Iowa Acts, Senate File 2067, section 4.~~

[Filed 1/12/12, effective 3/14/12]

[Published 2/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/12.

**ARC 9981B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Iowa Administrative Code.

This amendment removes the remaining exclusions from Medicaid coverage for drugs to promote cessation of smoking. Public Law 111-148, the Patient Protection and Affordable Care Act, mandates coverage of smoking cessation products for pregnant women by October 1, 2010, and for all Medicaid members by January 1, 2014. State Medicaid Director Letter 11-007, published June 24, 2011, clarified that all smoking cessation products (legend and over-the-counter) must be covered. Currently, Iowa does not cover legend nicotine nasal spray and oral inhaler products. Because of the limited cost expected, the Department has decided to expand coverage for all members at this time for ease of administration.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on November 2, 2011, as **ARC 9835B**. This amendment was also Adopted and Filed Emergency and was published as **ARC 9834B** on the same date. The Department received no comments on the Notice of Intended Action. This amendment is identical to the amendment Adopted and Filed Emergency and published under Notice of Intended Action.

The Council on Human Services adopted this amendment on January 11, 2012.

This amendment does not provide for waivers in specified situations since it expands Medicaid coverage.

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

This amendment is intended to implement Iowa Code section 249A.4 and Sections 4107 and 2502 of Public Law 111-148.

This amendment shall become effective on March 14, 2012, at which time the Adopted and Filed Emergency amendment is rescinded.

The following amendment is adopted.

Rescind and reserve subparagraph **78.2(4)“b”(4)**.

[Filed 1/11/12, effective 3/14/12]

[Published 2/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/12.

**ARC 9982B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 249J.24, the Department of Human Services amends Chapter 92, "IowaCare," Iowa Administrative Code.

Item 1 of these amendments streamlines procedural requirements for applying for the IowaCare program by requiring Form 470-4194, IowaCare Premium Agreement, only when the applicant:

- Used a Medicaid application other than the IowaCare application or renewal application, and
- Has sufficient income to be required to pay a premium (over 150 percent of the federal poverty guidelines).

Only 10 percent of IowaCare members have income high enough to pay premiums. The IowaCare application forms include the explanation of premiums and the agreement to pay premiums. Only a person who originally applied for Medicaid but was referred to IowaCare due to higher income or lack of categorical eligibility needs to acknowledge this requirement separately.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Item 2 of these amendments removes language about determining the timeliness of a hardship request using the postmark on the envelope and replaces it with a timeliness standard of receipt by five working days after the premium due date. In automating the reading of the premium payment submissions, the Department will face higher expenses if the envelope must be imaged in addition to the premium payment form.

Additionally, a significant percentage of the postmarks are illegible, and it is expected that this percentage will increase with document scanning. In those cases, the member may be disadvantaged by the current rule, which counts the request as of the receipt date but does not allow any time for mailing. The Department has determined that allowance of five working days for mail receipt is adequate to allow for weekends and holidays. Also, evidence of the date of receipt will be more reliable than evidence of the mailing date.

Notice of Intended Action on Item 1 was published in the Iowa Administrative Bulletin on November 16, 2011, as **ARC 9842B**. The Department published an Amended Notice in the Iowa Administrative Bulletin on November 30, 2011, as **ARC 9895B**. The Amended Notice added Item 2 to the proposed rule making. The Department received no comments on the Notices of Intended Action. These amendments are identical to those published under Notice of Intended Action and Amended Notice of Intended Action.

The Council on Human Services adopted these amendments on January 11, 2012.

These amendments do not provide for waivers in specified situations because they eliminate a requirement for the persons affected.

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

These amendments shall become effective on April 1, 2012.

These amendments are intended to implement Iowa Code chapter 249J.

The following amendments are adopted.

ITEM 1. Amend subrule 92.3(1) as follows:

**92.3(1)** An application for IowaCare may also be submitted on Comm. 239, IowaCare Application, or Form 470-4364, IowaCare Renewal Application. An applicant who submits an application on another form allowed under 441—76.1(249A) and has income over 150 percent of the federal poverty level shall also sign Form 470-4194, IowaCare Premium Agreement, and submit it within ten days of the department's request.

ITEM 2. Amend subrule 92.7(3) as follows:

**92.7(3) Hardship exemption.** A member or household that submits a written statement indicating that payment of the monthly premium will be a financial hardship shall be exempted from premium payment for that month, except as provided in paragraph "c."

*a.* If the statement is not ~~postmarked~~ received by five working days after the premium due date, the member or household shall be obligated to pay the premium.

~~*a. b.* A partial payment If the statement is timely submitted with a written statement indicating that full payment of the monthly premium will be a financial hardship that is postmarked or received on or before the end of the month for which the premium is due shall be considered a request for a hardship exemption. The partial payment, exemption shall be granted for the balance owed for that month.~~

*b.* ~~If the postmark is illegible, the date that the hardship declaration is initially received by the department or the department's designee shall be considered the date of the request.~~

*c.* A member or household shall not be exempted from premium payment for a month in which the member misrepresented the household's circumstances.

[Filed 1/11/12, effective 4/1/12]

[Published 2/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/12.

**ARC 0006C****PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic hereby amends Chapter 43, “Practice of Chiropractic Physicians,” Iowa Administrative Code.

This amendment adds a chiropractic state association to the list of organizations that can provide a chiropractic assistant training program.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 30, 2011, as **ARC 9885B**. A public hearing was held on December 20, 2011, from 8 to 8:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. This amendment is identical to the one published under Notice of Intended Action.

This amendment was adopted by the Board of Chiropractic Examiners on January 11, 2012.

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

This amendment is intended to implement Iowa Code chapters 21, 147, 151 and 272C.

This amendment will become effective March 14, 2012.

The following amendment is adopted.

Amend paragraph **43.12(2)“a”** as follows:

*a.* The supervising chiropractic physician shall ensure that a chiropractic assistant has completed a chiropractic assistant training program. A chiropractic assistant training program shall include training and instruction on the use of chiropractic physiotherapy procedures related to services to be provided by the chiropractic assistant. Any chiropractic assistant training program shall be provided by an approved CCE-accredited chiropractic college or a chiropractic state association.

[Filed 1/20/12, effective 3/14/12]

[Published 2/8/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/12.

**ARC 9993B****PUBLIC SAFETY DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby amends Chapter 302, “State Building Code—Accessibility of Buildings and Facilities Available to the Public,” Iowa Administrative Code.

Iowa Code section 103A.7 requires that the State Building Code include reasonable provisions for “the accessibility and use by persons with disabilities and elderly persons, of buildings, structures, and facilities which are constructed and intended for use by the general public.” This Iowa Code section further provides that the requirements for accessibility are to be “consistent with federal standards for building accessibility.” The federal standards being referenced were originally codified in the Americans with Disabilities Act Accessibility Guidelines, published in 1994, and since 2004 these guidelines have served as the basis for Iowa’s accessibility requirements for buildings and facilities available to the public.

Last year, the U.S. Department of Justice adopted new accessibility guidelines published as the 2010 Standards for Accessible Design. Under federal regulations, compliance with the federal requirements for accessibility of buildings and facilities available to the public will be required as of March 15, 2012. The amendments adopted herein retain the required consistency between Iowa requirements for accessibility of buildings and facilities available to the public and the parallel federal requirements and consequently avoid the possibility of construction projects’ incurring significant additional costs in order to ensure compliance with two separate sets of standards for accessibility.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 9922B** on December 14, 2011. There was a public hearing on the proposed amendments held on January 3, 2012. No comments were received at the public hearing. However, several comments were received from operators of swimming pools expressing concern about the impact of the new requirements on swimming pools, especially those requirements having to do with provision of electronic lifts to assist persons in wheelchairs entering and exiting a pool.

While the Building Code Commissioner is cognizant of and sympathetic to concerns raised by operators of swimming pools, the Commissioner also believes that these concerns arise from misunderstanding about the scope and application of these amendments. Accessibility requirements are imposed both by federal and state law. The new requirements are slated to go into effect in federal law and therefore be binding on owners and operators of public facilities and public accommodations on that date, regardless of any action by the state Building Code Commissioner. In addition, the accessibility requirements in the State Building Code apply to construction going forward from the effective date and are not retroactive to any existing facility unless the facility undergoes major remodeling or renovation. Consequently, the adoption of the new requirements by the Building Code Commissioner does not itself trigger a need for retrofitting of a swimming pool or any other public facility or accommodation.

Two explanatory notes have been added to rule 661—302.3(103A,104A) since publication of the Notice of Intended Action. One of these notes reflects the comments noted above and explains the applicability of the new requirements to construction projects after the effective date of the requirements. The other note explains that designers and build project owners who choose to use the option of following the accessibility requirements contained in the International Building Code, 2009 edition, remain responsible for compliance with applicable federal requirements, whether or not a specific requirement is included in the International Building Code.

Provisions of the State Building Code are not subject to waiver, but instead are subject to the process for considering requests for alternate materials or methods of construction as provided in Iowa Code section 103A.13.

No fiscal impact on the state is anticipated.

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

These amendments are intended to implement Iowa Code sections 103A.7, 103A.9, and 104A.1.

These amendments will become effective on March 15, 2012.

The following amendments are adopted.

ITEM 1. Amend rule 661—302.1(103A,104A) as follows:

**661—302.1(103A,104A) Purpose and scope.** Rules 661—302.1(103A,104A) through 661—302.20(103A,104A) are intended to ensure that buildings and facilities used by the public, other than places of worship, are accessible to, and functional for, persons with disabilities. Rules 661—302.1(103A,104A) through 661—302.11(103A,104A) apply Rule 661—302.3(103A,104A) applies statewide to new construction, of buildings and facilities available to the public and to renovation, and rehabilitation projects on existing buildings and facilities when local or state building codes require compliance with standards for new construction. Rule 661—302.20(103A,104A) applies statewide to construction of multiunit residential buildings.

~~Some requirements contained in rules 661—302.1(103A,104A) through 661—302.11(103A,104A) are not readily enforceable through the plan review process and may not be enforced through this means. Any of the requirements may be enforced during inspections in jurisdictions which inspect construction projects for compliance with building code requirements. Owners and operators of buildings and facilities subject to the provisions of rules 661—302.1(103A,104A) through 661—302.11(103A,104A) are responsible for compliance with any applicable requirements contained within these rules regardless of whether those requirements are enforced through plan reviews or inspections.~~

~~Rules 661—302.2(103A,104A) through 661—302.11(103A,104A) are~~ NOTE A: Although rule 661—302.2(103A,104A) is based upon the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) 2010 ADA Standards for Accessible Design and in many instances adopt adopts the language of ADAAG the 2010 ADA Standards for Accessible Design by reference. ~~However,~~

PUBLIC SAFETY DEPARTMENT[661](cont'd)

and rule 661—302.20(103A,104A) is based upon the requirements of the federal Fair Housing Act, state and local building officials charged with enforcement of these rules 661—302.2(103A,104A) through 661—302.11(103A,104A) are unable to warrant the acceptance of any interpretation of ADAAG language approval of design or construction by federal agencies or any other state. A state or local official's decision to approve a building plan under rules 661—302.2(103A,104A) through 661—302.11(103A,104A) these rules does not prevent the federal government or another state from making a different decision under ADAAG or other applicable law, notwithstanding any similarities among such laws.

NOTE A: See rule 661—302.20(103A,104A) for specific requirements within the individual dwelling units and public and common use spaces of multiple dwelling unit buildings.

NOTE B: Other federal and state laws address requirements for accessibility for persons with disabilities and may be applicable to buildings and facilities subject to rules 661—302.1(103A,104A) through 661—302.20(103A,104A). Nothing in these rules should be interpreted as limiting the applicability of other provisions of state or federal law. These provisions include, but are not limited to, the following:

1. Iowa Code chapter 216, the Iowa civil rights Act of 1965.
2. Iowa Code chapter 216C, which enumerates the rights of persons who are blind or partially blind and persons with physical disabilities.
3. Iowa Code chapter 321L and 661—Chapter 18, which relate to requirements for parking for persons with disabilities.
4. The federal Architectural Barriers Act of 1968 (Public Law 90-480).
5. The federal Rehabilitation Act of 1973 (Public Law 93-112).
6. The federal Fair Housing Act of 1968 (Public Law 90-284), the federal Fair Housing Amendments Act of 1988 (Public Law 100-430), and related regulations, including 24 CFR 100, Subpart D.

ITEM 2. Rescind rule 661—302.2(103A,104A) and adopt the following **new** rule in lieu thereof:

**661—302.2(103A,104A) Definitions.** The following definitions are adopted for purposes of rules 661—302.1(103A,104A) through 661—302.20(103A,104A).

“ADA” means the federal Americans with Disabilities Act, Public Law 101-336.

“ADAAG” means Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, 28 CFR Part 36, Appendix A, as revised through July 1, 1994.

“ADASAD 2010” means 2010 ADA Standards for Accessible Design, published by the U.S. Department of Justice, September 15, 2010. Included in the publication are accessibility standards for state and local government facilities and accessibility standards for public accommodations and commercial facilities.

NOTE: Copies of ADASAD 2010 and additional explanatory material may be downloaded from <http://www.ada.gov/regs2010/ADAREgs2010.htm>.

“IBC 2009” means the International Building Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041.

ITEM 3. Rescind rule 661—302.3(103A,104A) and adopt the following **new** rule in lieu thereof:

**661—302.3(103A,104A) Accessibility of buildings and facilities available to the public.** Buildings and facilities which are available to the public, other than places of worship, shall comply with one of the following:

**302.3(1)** Applicable provisions of ADASAD 2010, or

**302.3(2)** IBC 2009, Chapter 11 and applicable accessibility provisions contained in IBC 2009.

NOTE I: Approval of construction plans based upon compliance with the applicable provisions of the International Building Code, 2009 edition, as provided, does not relieve the designer, builder, building owner, or building operator from responsibility under federal law to comply with all applicable provisions of the 2010 ADA Standards for Accessible Design.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

NOTE 2: Amendments to requirements contained in the state of Iowa building code do not apply retroactively to existing construction. New amendments to the state building code apply only to construction which occurs on or after the effective date of the amendments.

ITEM 4. Rescind and reserve rules **661—302.4(103A,104A)** to **661—302.11(103A,104A)**.

ITEM 5. Amend the implementation sentence after rule **661—302.11(103A,104A)** as follows:

Rules 661—302.1(103A,104A) through 302.11(103A,104A) to 661—302.3(103A,104A) are intended to implement Iowa Code sections 103A.7, 103A.9, and 104A.1.

[Filed 1/18/12, effective 3/15/12]

[Published 2/8/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/8/12.

## ARC 9987B

### RACING AND GAMING COMMISSION[491]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby adopts amendments to Chapter 4, "Contested Cases and Other Procedures," Chapter 8, "Wagering and Simulcasting," Chapter 9, "Harness Racing," Chapter 10, "Thoroughbred and Quarter Horse Racing," and Chapter 11, "Gambling Games," Iowa Administrative Code.

Item 1 amends rule 491—4.7(99D,99F), Penalties (gaming board and board of stewards), to restore language that was removed in error.

Item 2 adopts rule 491—8.6(99D) on advance deposit wagering. This rule, which is adopted through the normal rule-making process, replaces an identical rule that was Adopted and Filed Emergency and published in the December 14, 2011, Iowa Administrative Bulletin as **ARC 9897B**.

Items 3 and 6 remove an outdated provision related to eligibility for claiming a horse.

Item 4 rescinds the definition for "claiming race" and replaces it with a new definition.

Item 5 changes from 30 days to 60 days the time frame in which a published workout for quarter horses is required.

Item 7 establishes a waived claiming rule.

Item 8 amends the definition of "implement of gambling" to remove unnecessary language.

Item 9 removes outdated games listed in subrule 11.5(1).

Item 10 improves the integrity of tournaments for patrons by establishing controls for tournament chips.

Item 11 amends the subrule concerning wagers to clarify what information needs to be posted and to clarify requirements for "renting" a seat at a table game.

Item 12 clarifies wagering and shooting procedures for craps.

Item 13 rescinds a subrule that pertains to an outdated table game.

Item 14 clarifies which poker games should have the Rules of Game on hand, what constitutes a "Bad Beat," and how the fund can be seeded. It prevents an administrative fee from being charged.

Item 15 improves the integrity of the game for players.

Item 16 establishes fundamental wagering rules for baccarat.

These adopted amendments are identical to the amendments published under Notice of Intended Action in the October 19, 2011, Iowa Administrative Bulletin as **ARC 9808B**. A public hearing was held on November 8, 2011. No comments were received.

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

These amendments will become effective March 14, 2012, at which time Adopted and Filed Emergency rule 491—8.6(99D) is hereby rescinded.

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

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

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 4, 8 to 11] is being omitted. These amendments are identical to those published under Notice as **ARC 9808B**, IAB 10/19/11.

[Filed 1/13/12, effective 3/14/12]

[Published 2/8/12]

[For replacement pages for IAC, see IAC Supplement 2/8/12.]

## **ARC 9991B**

### **TRANSPORTATION DEPARTMENT[761]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on January 10, 2012, adopted amendments to Chapter 600, "General Information," Chapter 604, "License Examination," Chapter 605, "License Issuance," Chapter 615, "Sanctions," and Chapter 630, "Nonoperator's Identification," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the November 30, 2011, Iowa Administrative Bulletin as **ARC 9874B**.

These amendments provide the Department flexibility in the decision making regarding the issuance of licenses, provide clarification for testing and vehicle equipment to meet current standards related to vehicle operation and the safety of the traveling public, and expand licensing fee payment options.

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

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

These amendments are intended to implement Iowa Code chapter 321.

These amendments will become effective March 14, 2012.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 600, 604, 605, 615, 630] is being omitted. These amendments are identical to those published under Notice as **ARC 9874B**, IAB 11/30/11.

[Filed 1/18/12, effective 3/14/12]

[Published 2/8/12]

[For replacement pages for IAC, see IAC Supplement 2/8/12.]



TERRY E. BRANSTAD  
GOVERNOR

OFFICE OF THE GOVERNOR

KIM REYNOLDS  
LT. GOVERNOR

January 23, 2012

Commissioner Larry Noble  
Iowa Department of Public Safety  
Department of Public Safety Headquarters Building  
215 E. 7<sup>th</sup> Street  
Des Moines, IA 50319

Dear Commissioner Noble:

I object to the portions of Iowa Admin. Code r. 661-551.2 and 661-552.1 which regulate electrical installations on farms as defined in Iowa Code §103.1. These filings were adopted by the Electrical Examining Board and published as part of ARC 7346B in XXXI IAB 11 (11-19-2008) and ARC 8396B in XXXII IAB 13 (12-16-2009), respectively.

The Electrical Examining Board has gone beyond their statutory authority. Iowa Code chapter 103 does not grant authority to the Electrical Examining Board to adopt rules to regulate electrical installations on farms by requiring a request for an inspection, a permit and/or an inspection. I find that the Electrical Examining Board went beyond the authority delegated to the agency when it included farm electrical installations within the definition of a "commercial installation" in Iowa Admin. Code r. 661-551.2. I further object to that portion of the third sentence of EXCEPTION 1 to Iowa Admin. Code r. 661-552.1(1) which requires a state electrical permit and/or an electrical inspection for a farm electrical installation as it is beyond the delegated authority of the agency.

The permit and inspection requirements for electrical installations on farms are unreasonable, arbitrary and capricious for several reasons. These rules increase the regulatory burden on farms and farmers. This power-grab by the Electrical Examining Board hurts hard-working Iowa farmers. It leads to unwanted government intrusion. It imposes the very costs on farmers that the legislature intended to protect them from when it created common-sense exemption for farmers. (2007 Iowa Acts, chapter 197). This rule hurts the opportunity of hard-working Iowa farmers to earn a living, free from undue bureaucratic interference. These over-reaching rules harm economic opportunities in agriculture and job growth in Iowa.

The portions of the Iowa Administrative Code r. 661-551.2 and 661-552.1 as described herein, are deemed to be unreasonable, arbitrary, capricious, or otherwise beyond the authority delegated to the agency. This letter constitutes notification of my objection to the above referenced rules as required by Iowa Code §17A.4(6).

Certified as a true and correct copy of my objection this 23<sup>rd</sup> day of January 2012, by:



Terry E. Branstad, Governor

cc: Electrical Examining Board  
Administrative Code Editor



Objection filed January 23, 2012