



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.

KATHLEEN K. WEST, Administrative Code Editor	Telephone:	(515)281-3355
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CITATION of Administrative Rules

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

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

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

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

NOTE: In accordance with Iowa Code section 7.17, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rule Making 2009

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
2	Wednesday, June 24, 2009	July 15, 2009
3	Friday, July 10, 2009	July 29, 2009
4	Friday, July 24, 2009	August 12, 2009

PLEASE NOTE:

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

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

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

AGENCY	HEARING LOCATION	DATE AND TIME
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Targeted jobs withholding tax credit program, 71.1, 71.4 to 71.6 IAB 6/17/09 ARC 7846B	ICN Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	July 7, 2009 2:30 to 4:30 p.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Debts to state or local government—noncompliance, ch 8 IAB 6/17/09 ARC 7862B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	July 8, 2009 1 p.m.
Applicants from recognized non-Iowa institutions, 13.3 IAB 6/17/09 ARC 7872B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	July 8, 2009 1 p.m.
Removal of option to receive license before receiving degree, 13.10(4) IAB 6/17/09 ARC 7860B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	July 8, 2009 1 p.m.
Exchange licenses, 13.17 IAB 6/17/09 ARC 7871B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	July 8, 2009 1 p.m.
Administrator exchange licenses—applicants from non-Iowa institutions, 18.3 IAB 6/17/09 ARC 7874B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	July 8, 2009 1 p.m.
Administrator exchange licenses, 18.6 IAB 6/17/09 ARC 7873B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	July 8, 2009 1 p.m.
Valid authorization for behind-the-wheel driving instructor, 23.2 IAB 6/17/09 ARC 7861B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	July 8, 2009 1 p.m.
Standards of professional conduct and ethics—Standard I, 25.3(1) IAB 6/17/09 ARC 7868B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	July 8, 2009 1 p.m.
Standards of professional conduct and ethics—Standard VII, 25.3(7) IAB 6/17/09 ARC 7864B	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	July 8, 2009 1 p.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Air quality, amendments to chs 20, 22, 23, 25, 28, 33 IAB 6/17/09 ARC 7855B	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	July 20, 2009 1 p.m.
Water quality standards, effluent and pretreatment standards, amendments to chs 61, 62 IAB 6/17/09 ARC 7853B	Public Library 112 Albany Ave. S.E. Orange City, Iowa	July 7, 2009 11 a.m.
	Public Library 21 E. 3rd St. Spencer, Iowa	July 7, 2009 6 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)		
	Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	July 9, 2009 1 p.m.
	Public Library 360 W. 11th St. Dubuque, Iowa	July 13, 2009 11 a.m.
	Public Library 123 S. Linn St. Iowa City, Iowa	July 13, 2009 6 p.m.
	Public Library 507 Poplar St. Atlantic, Iowa	July 15, 2009 10 a.m.
	Public Library 200 N. 4th St. Clear Lake, Iowa	July 16, 2009 11 a.m.
E. coli effluent limits; nutrient monitoring, 62.8(2), ch 63 Table II IAB 6/3/09 ARC 7813B	Fifth Floor East/West Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	June 25, 2009 1 to 3 p.m.
UST operator training, closure investigations, compliance inspections, and piping leak detection, 134.14(6), 135.2, 135.4, 135.5(1), 135.15(3)"a," 135.20 IAB 6/17/09 ARC 7854B	Denison Public Meeting Room 111 N. Main St. Denison, Iowa	July 7, 2009 1 p.m.
	Meeting Room B, Public Library 1401 5th St. Coralville, Iowa	July 8, 2009 1 p.m.
	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 9, 2009 1 p.m.
HISTORICAL DIVISION[223]		
Historic site preservation grant program—award limit, 50.3(8) IAB 6/3/09 ARC 7817B	Tone Boardroom, Historical Bldg. 600 E. Locust St. Des Moines, Iowa	June 23, 2009 10 a.m.
INSPECTIONS AND APPEALS DEPARTMENT[481]		
Dependent adult abuse in facilities and programs, ch 52 IAB 6/3/09 ARC 7828B	Room 319, Third Floor Lucas State Office Bldg. Des Moines, Iowa	June 26, 2009 3 p.m.
General provisions for elder group homes, assisted living programs, and adult day services, ch 67 IAB 6/17/09 ARC 7877B (ICN Network)	ICN Room, Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	July 10, 2009 3 p.m.
	Room 118, Iowa Lake Community College 1900 N. Grand Ave. Spencer, Iowa	July 10, 2009 3 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
INSPECTIONS AND APPEALS DEPARTMENT[481] (Cont'd)		
(ICN Network)	Room 024, Looft Hall Iowa Western Community College 2700 College Rd. Council Bluffs, Iowa	July 10, 2009 3 p.m.
	Room 110, Tama Hall Hawkeye Community College 1501 E. Orange Rd. Waterloo, Iowa	July 10, 2009 3 p.m.
	Meeting Room D, Public Library 123 S. Linn St. Iowa City, Iowa	July 10, 2009 3 p.m.
Assisted living programs, ch 69 IAB 6/17/09 ARC 7878B (ICN Network)	ICN Room, Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	July 10, 2009 3 p.m.
	Room 118, Iowa Lake Community College 1900 N. Grand Ave. Spencer, Iowa	July 10, 2009 3 p.m.
	Room 024, Looft Hall Iowa Western Community College 2700 College Rd. Council Bluffs, Iowa	July 10, 2009 3 p.m.
	Room 110, Tama Hall Hawkeye Community College 1501 E. Orange Rd. Waterloo, Iowa	July 10, 2009 3 p.m.
	Meeting Room D, Public Library 123 S. Linn St. Iowa City, Iowa	July 10, 2009 3 p.m.
LABOR SERVICES DIVISION[875]		
Certificate fee—addition of four-year certificate, 90.7(2) IAB 6/17/09 ARC 7865B	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	July 10, 2009 1:30 p.m. (If requested)
Construction contractor registration—fees, 150.6 IAB 6/17/09 ARC 7875B	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	July 10, 2009 3 p.m. (If requested)
NATURAL RESOURCE COMMISSION[571]		
Endangered, threatened, and special concern animals—birds, 77.2(1), 77.2(3) IAB 6/17/09 ARC 7856B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 16, 2009 10 a.m.
PROFESSIONAL LICENSURE DIVISION[645]		
Behavioral science—temporary licensure, supervised work experience, 5.3, 31.2, 31.5, 31.7 IAB 6/17/09 ARC 7858B	Fifth Floor Board Room Lucas State Office Bldg. Des Moines, Iowa	July 7, 2009 9:30 to 10 a.m.
Licensure of podiatrists, 220.2 to 220.4, 220.6, 220.7 IAB 5/20/09 ARC 7779B	Fifth Floor Board Room 526 Lucas State Office Bldg. Des Moines, Iowa	June 17, 2009 9 to 9:30 a.m.

AGENCY	HEARING LOCATION	DATE AND TIME
REAL ESTATE COMMISSION[193E]		
Buyer(s) acknowledgment of receipt of radon fact sheet, 14.1(6) IAB 6/3/09 ARC 7799B	Professional Licensing Conference Room Second Floor 1920 SE Hulsizer Rd. Ankeny, Iowa	June 23, 2009 9 a.m.
STATUS OF WOMEN DIVISION[435]		
Iowans in transition, rescind ch 5 IAB 6/3/09 ARC 7821B	Room 208 Lucas State Office Bldg. Des Moines, Iowa	June 23, 2009 1 p.m.
UTILITIES DIVISION[199]		
Abbreviated franchise process—eligibility, petition, and notice requirements, 11.1(9), 11.2(3), 11.3(1)“g,” 11.5(11) IAB 6/17/09 ARC 7859B	Board Hearing Room 350 Maple St. Des Moines, Iowa	July 28, 2009 1:30 p.m.
Wind energy tax credits, 15.18(1)“c”(2), 15.19(4), 15.20(1), 15.21(1) IAB 6/17/09 ARC 7849B	Board Hearing Room 350 Maple St. Des Moines, Iowa	July 29, 2009 10 a.m.
Notification and reporting of electrical outages, 20.18(6), 20.19 IAB 6/3/09 ARC 7820B	Board Hearing Room 350 Maple St. Des Moines, Iowa	July 28, 2009 9 a.m.

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

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

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

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

The following list will be updated as changes occur:

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ADMINISTRATIVE SERVICES DEPARTMENT

Public Notice

NOTICE OF OFFICIAL PUBLICATION RATE INCREASE FOR THE FISCAL YEAR
COMMENCING JULY 1, 2009, AND ENDING JUNE 30, 2010

In accordance with Iowa Code section 618.11, Iowa Department of Administrative ITE Infrastructure Services/Printing Administrator hereby publishes the lineage rate* for newspaper publications of any order, citation, or other publication required or allowed by law (also known as official publications) for the period commencing on July 1, 2009, and ending on June 30, 2010, in the following amounts:

* Lineage rate: "...each line of eight point type two inches in length, or its equivalent." (Iowa Code section 618.11.)

One insertion = 42.4 cents
Each subsequent insertion = 28.8 cents

The rate becomes effective on July 1, 2009. The rate was determined by applying the formula specified in the statute. According to the federal Department of Labor, Bureau of Labor Statistics, the consumer price index for all urban consumers decreased -.4% from March 2008 to March 2009. The March index was the most recent index available as of May 14, 2009, the date on which this notice was submitted for publication.

Pursuant to Iowa Code section 618.11, this notice is exempt from the rule-making process in Iowa Code chapter 17A.

Questions with respect to this notice may be directed to:

Lorrie Tritch, ITE Infrastructure/Printing Administrator
Iowa Department of Administrative Services
1305 E. Walnut
Des Moines, Iowa 50319
Telephone: (515)281-7702
E-mail: Lorrie.Tritch@iowa.gov

ARC 7867B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 175B.5, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 50, "Women, Infants, and Children/Farmers' Market Nutrition Program and Senior Farmers' Market Nutrition Program," Iowa Administrative Code.

The proposed amendments allow participants in the Senior Farmers' Market Nutrition Program to purchase locally produced, raw honey. This change is authorized by the federal Farm Bill.

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

Any interested person may make written comments on the proposed amendments on or before July 7, 2009. Comments may be sent to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319; or E-mailed to Margaret.Thomson@IowaAgriculture.gov.

The proposed amendments are subject to the Department's general rules on waivers under 21—Chapter 8.

These amendments are intended to implement Iowa Code section 175B.3.

The following amendments are proposed.

ITEM 1. Amend rule **21—50.3(159)**, definition of “Eligible foods,” as follows:

“*Eligible foods*” means fresh, nutritious, unprepared, locally grown fruits, vegetables and herbs for human consumption. Eligible foods may not be processed or prepared beyond their natural state except for usual harvesting and cleaning processes. Locally grown, raw honey is an eligible food only for the recipients of SFMNP benefits.

ITEM 2. Amend rule **21—50.3(159)**, definition of “Fresh produce,” as follows:

“*Fresh produce*” means fruits and vegetables that have not been processed in any manner. This term does not include such items as dried fruits and vegetables, potted or dried herbs, wild rice, nuts of any kind including raw nuts, popcorn, fruit or vegetable plants/seedlings, dried beans/peas, seeds/grains, flowers, ~~honey~~, maple syrup, cider, eggs, meat, cheese, and seafood.

ARC 7846B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development gives Notice of Intended Action to amend Chapter 71, “Targeted Jobs Withholding Tax Credit Program,” Iowa Administrative Code.

The proposed amendments:

- Add definitions of “employer’s taxable capital investment” and “local financial support.”
- Require the total amount of awarded withholding tax credits to be stated in the withholding agreement.
- Establish a limit on the total amount of withholding tax credits awarded based upon the total dollar amount of qualifying investment in the project.
- Prohibit the entering of a withholding agreement by an employer not located within a pilot project city when another Iowa community competes for the same project.
- Extend until 2013 the ability of a pilot project city to enter into a withholding agreement.
- Clarify required components of a withholding agreement and local match requirements.
- Require base employment to be established by the business at the time of submission of an application.
- Establish the Department’s review authority to approve a withholding agreement application.
- Modify reporting requirements of pilot project cities and require annual verification by the Department.

Written public comments concerning the proposed amendments will be accepted until 4:30 p.m. on July 7, 2009. Interested persons may submit written comments to Stoney B. Harris, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4735; or E-mail stoney.harris@iowalifechanging.com.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

The Department will hold a public hearing to accept public comments on July 7, 2009, from 2:30 to 4:30 p.m. in the ICN Main Conference Room at the Iowa Department of Economic Development, 200 E. Grand Avenue, Des Moines, Iowa 50309.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 7848B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code section 403.19A as amended by 2009 Iowa Acts, Senate File 304.

ARC 7862B

EDUCATIONAL EXAMINERS BOARD[282]

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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to adopt new Chapter 8, "Debts to State or Local Government—Noncompliance," Iowa Administrative Code.

New Chapter 8 is proposed to comply with legislation that was passed during the 2008 legislative session. These rules describe the steps that will be taken if a licensee does not comply with state or local government obligations.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, July 8, 2009, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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 proposed rules. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147; or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed rules before 4 p.m. on Friday, July 10, 2009. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

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

The following amendment is proposed.

Adopt the following **new** 282—Chapter 8:

CHAPTER 8

DEBTS TO STATE OR LOCAL GOVERNMENT—NONCOMPLIANCE

282—8.1(272D) Issuance or renewal of a license—denial. The board shall deny the issuance or renewal of a license upon receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue according to the procedures set forth in Iowa Code chapter 272D. In addition to the procedures contained in Iowa Code chapter 272D, the following shall apply.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

8.1(1) The notice required by Iowa Code chapter 272D shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the applicant or licensee may accept service personally or through authorized counsel.

8.1(2) The effective date of the denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code chapter 272D, shall be 60 days following service of the notice upon the applicant or licensee.

8.1(3) The board's administrator is authorized to prepare and serve the notice required by Iowa Code chapter 272D upon the applicant or licensee.

8.1(4) Applicants and licensees shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code chapter 272D, court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

8.1(5) All board fees required for application, license renewal, or license reinstatement must be paid by applicants or licensees and all continuing education requirements must be met before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license pursuant to Iowa Code chapter 272D.

8.1(6) In the event an applicant or licensee timely files a district court action following service of a board notice pursuant to Iowa Code chapter 272D, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For purposes of determining the effective date of the denial of the issuance or renewal of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

8.1(7) The board shall notify the applicant or licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the denial of the issuance or renewal of a license and shall similarly notify the applicant or licensee when the license is issued or renewed following the board's receipt of the certificate of noncompliance.

282—8.2(272D) Suspension or revocation of a license. The board shall suspend or revoke a license upon receipt of a certificate of noncompliance from the centralized collection unit according to the procedures set forth in Iowa Code chapter 272D. In addition to the provisions contained in Iowa Code chapter 272D, the following shall apply.

8.2(1) The notice required by Iowa Code chapter 272D shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with the Iowa Rules of Civil Procedure. Alternatively, the licensee may accept service personally or through authorized counsel.

8.2(2) The effective date of the suspension or revocation of a license, as specified in the notice required by Iowa Code chapter 272D, shall be 60 days following service of the notice upon the licensee.

8.2(3) The board's administrator is authorized to prepare and serve the notice required by Iowa Code chapter 272D and is directed to notify the licensee that the license will be suspended, unless the license is already suspended on other grounds. In the event a license is on suspension, the administrator shall notify the licensee of the board's intention to continue the suspension.

8.2(4) Licensees shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code chapter 272D, court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

8.2(5) All board fees required for license renewal or license reinstatement must be paid by licensees and all continuing education requirements must be met before a license will be renewed or reinstated after the board has suspended or revoked a license pursuant to Iowa Code chapter 272D.

8.2(6) In the event a licensee timely files a district court action following service of a board notice pursuant to Iowa Code chapter 272D, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

board to proceed. For purposes of determining the effective date of the suspension or revocation of a license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

8.2(7) The board shall notify the licensee in writing through regular first-class mail, or such other means as the board deems appropriate in the circumstances, within ten days of the effective date of the suspension or revocation of a license and shall similarly notify the licensee when the license is reinstated following the board's receipt of the certificate of noncompliance.

282—8.3(17A,22,272D) Sharing of information. Notwithstanding any statutory confidentiality provision, the board may share information with the centralized collection unit for the sole purpose of identifying applicants or licensees subject to enforcement under Iowa Code chapter 272D.

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

ARC 7872B**EDUCATIONAL EXAMINERS BOARD[282]****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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, "Issuance of Teacher Licenses and Endorsements," Iowa Administrative Code.

The Board has begun to adapt its rules because of requests from nontraditionally prepared applicants. In a review of Board rules for out-of-state applicants and the application process for nontraditionally prepared applicants, several changes that needed to be made were identified, including this amendment. This change specifically removes the language regarding teacher preparation at non-Iowa institutions; due to the changes to the exchange license, this language is not needed.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, July 8, 2009, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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 proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, July 10, 2009. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Amend rule 282—13.3(272) as follows:

282—13.3(272) Applicants from recognized non-Iowa institutions. An applicant for initial licensure who completes the teacher, administrator, or school service personnel preparation program from a recognized non-Iowa institution shall verify the requirements of either subrule 13.18(4) or 13.18(5).

~~13.3(1) Non-Iowa teacher preparation program. Provided all requirements for Iowa licensure have been met, the applicant shall:~~

~~a. —Have the recommendation for the specific license and endorsement(s) from the designated recommending official at the recognized institution where the preparation was completed, and~~

~~b. —Submit a copy of a valid regular teaching certificate or license exclusive of a temporary, emergency or substitute license or certificate, and~~

~~c. —Provide verification of successfully passing mandated tests in the state in which the applicant is currently licensed if the applicant has completed fewer than three years of teaching experience.~~

13.3(2) 13.3(1) Requirements for an alternative preparation license for out-of-state candidates. An applicant who holds a valid license from another state and whose preparation was completed through a state-approved alternative teacher preparation program must:

a. Hold a baccalaureate degree with a minimum cumulative grade point average of 2.50 on a 4.0 scale from a regionally accredited institution.

b. Provide a valid out-of-state teaching license based on a state-approved alternative preparation program.

c. Provide a recommendation from a regionally accredited institution, department of education, or a state's standards board indicating the completion of an approved alternative teacher preparation program.

d. Provide an official institutional transcript(s) to be analyzed for the requirements necessary for full Iowa licensure based on 13.9(4) "a"(1) to (7) and 13.9(4) "c"(1) to (5).

e. If the applicant has completed fewer than three years of teaching experience, provide verification from the state licensing agency/department in the state where the alternative preparation program was completed indicating that the applicant has successfully passed that state's mandated tests.

f. Verify three years of teaching experience, which will waive the student teaching requirement.

~~13.3(3) 13.3(2)~~ A recognized non-Iowa teacher preparation institution is one that is state-approved and is accredited by the regional accrediting agency for the territory in which the institution is located.

ARC 7860B

EDUCATIONAL EXAMINERS BOARD[282]

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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, "Issuance of Teacher Licenses and Endorsements," Iowa Administrative Code.

This amendment removes the option that allows an applicant to be issued a teaching license before the applicant receives a degree. There has been concern that an applicant who is issued a teaching license before the applicant receives a degree would not be considered highly qualified based on federal requirements.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, July 8, 2009, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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 proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, July 10, 2009. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Rescind and reserve subrule **13.10(4)**.

ARC 7871B

EDUCATIONAL EXAMINERS BOARD[282]

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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 13, "Issuance of Teacher Licenses and Endorsements," Iowa Administrative Code.

The Board has begun to adapt its rules because of requests from nontraditionally prepared applicants. In a review of Board rules for out-of-state applicants and the application process for nontraditionally prepared applicants, several changes that needed to be made were identified, including the proposed amendment to rule 282—13.17(272). This amendment changes the duration of the exchange license from two years to one year and changes the type of preparation programs that will be accepted.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at a public hearing that will be held Wednesday, July 8, 2009, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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 proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, July 10, 2009. Written comments and suggestions should be addressed to Kim

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend rule 282—13.17(272) as follows:

282—13.17(272) Specific requirements for exchange licenses. An applicant seeking Iowa licensure who completes the teacher preparation program from a recognized non-Iowa institution shall verify the requirements of subrules 13.18(4) and 13.18(5) through traditional course-based preparation program and transcript review. A recognized non-Iowa teacher preparation institution is one that is state-approved and is accredited by the regional accrediting agency for the territory in which the institution is located.

13.17(1) ~~Two-year~~ One-year teacher exchange license.

a. A ~~two-year~~ one-year nonrenewable exchange license may be issued to an applicant under the following conditions:

(1) The applicant has completed a state-approved, regionally accredited teacher education program; and

(2) The applicant has the recommendation for the specific license and endorsement(s) from the designated recommending official at the recognized non-Iowa institution where the preparation was completed; and

~~(2) (3)~~ The applicant holds and submits a copy of a valid regular certificate or license in the state in which the preparation was completed, exclusive of a temporary, emergency or substitute license or certificate; and

~~(3) —The applicant is not subject to any pending disciplinary proceedings in any state or country; and~~

~~(4) —The applicant complies with all requirements with regard to application processes and payment of licensure fees; and~~

~~(5) (4)~~ If the applicant has fewer than three years of teaching experience or is being recommended for a K-6 elementary education endorsement, the applicant must verify successful completion of mandated tests in the state in which the applicant is currently licensed; and

~~b. (5) Authorization.~~ Each exchange license shall be limited to the area(s) and level(s) of instruction as determined by an analysis of the application, the transcripts and the license or certificate held in the state in which the basic preparation for licensure was completed or of the application and the credential evaluation report. The applicant must have completed at least 50 percent of the endorsement requirements through a two- or four-year institution in order for the endorsement to be included on the exchange license; and

~~(6) The applicant is not subject to any pending disciplinary proceedings in any state or country; and~~

~~(7) The applicant complies with all requirements with regard to application processes and payment of licensure fees.~~

~~e. b. Conversion.~~ After the term of the exchange license has expired, the applicant may apply to be fully licensed if the applicant has completed all requirements and is eligible for full licensure.

13.17(2) and 13.17(3) No change.

ARC 7874B**EDUCATIONAL EXAMINERS BOARD[282]****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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 18, "Issuance of Administrator Licenses and Endorsements," Iowa Administrative Code.

The Board has begun to adapt its rules because of requests from nontraditionally prepared applicants. In a review of Board rules for out-of-state applicants and the application process for nontraditionally prepared applicants, several changes that needed to be made were identified, including the proposed rescission of rule 282—18.3(272). This amendment removes the language regarding non-Iowa institutions for administrators. Because of the modifications to the administrator exchange license, this language is no longer needed.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, July 8, 2009, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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 proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, July 10, 2009. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Rescind and reserve rule **282—18.3(272)**.

ARC 7873B**EDUCATIONAL EXAMINERS BOARD[282]****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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 18, "Issuance of Administrator Licenses and Endorsements," Iowa Administrative Code.

The Board has begun to adapt its rules because of requests from nontraditionally prepared applicants. In a review of Board rules for out-of-state applicants and the application process for nontraditionally prepared applicants, several changes that needed to be made were identified, including the proposed amendment to rule 282—18.6(272). This amendment changes the length of the administrator exchange license from two years to one year and changes the type of preparation programs that will be accepted.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, July 8, 2009, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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 proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, July 10, 2009. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend rule 282—18.6(272) as follows:

282—18.6(272) Specific requirements for a two-year administrator exchange license. An applicant seeking Iowa licensure who completes an administrator preparation program from a recognized non-Iowa institution shall verify the requirements of rules 282—18.1(272) and 282—18.4(272) through traditional course-based preparation program and transcript review. A recognized non-Iowa administrator preparation institution is one that is state-approved and is accredited by the regional accrediting agency for the territory in which the institution is located.

18.6(1) Specific requirements. A ~~two~~ one-year nonrenewable administrator exchange license may be issued to an individual who completes the requirements in paragraphs 18.4(2) "a" through "f" and ~~who~~ satisfies the following:

a. Has completed a state-approved, regionally accredited administrator preparation program in a college or university approved by the state board of education or the state licensing agency in the individual's preparation state; and

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

b. Has the recommendation for the specific license and endorsement(s) from the designated recommending official at the recognized non-Iowa institution where the preparation was completed; and

~~b. c.~~ Holds and submits a copy of a valid regular administrator certificate or license in the state in which the preparation was completed, exclusive of a temporary, emergency or substitute license or certificate -; and

~~e. — Is not subject to any pending disciplinary proceedings in any state.~~

d. Meets the experience requirements for the administrator ~~endorsements~~ endorsement(s). Verified successful completion of three years of full-time teaching experience in other states, on a valid license, shall be considered equivalent experience necessary for the principal endorsement. Verified successful completion of six years of full-time teaching and administrative experience in other states, on a valid license, shall be considered equivalent experience for the superintendent endorsement provided that at least three years were as a teacher and at least three years were as a building principal or other PK-12 districtwide administrator-; and

e. Is not subject to any pending disciplinary proceedings in any state; and

f. Complies with all requirements with regard to application processes and payment of licensure fees.

18.6(2) Authorization. Each exchange license shall be limited to the area(s) and level(s) of administration as determined by an analysis of the application, the transcripts, and the license or certificate held in the state in which the basic preparation for the administrator licensure was completed.

18.6(3) Conversion. Each individual receiving the ~~two~~ one-year exchange license must complete any identified licensure deficiencies in order to be eligible for a ~~regular educational and professional~~ administrator license in Iowa.

ARC 7861B**EDUCATIONAL EXAMINERS BOARD[282]****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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 23, "Behind-the-Wheel Driving Instructor Authorization," Iowa Administrative Code.

This amendment sets forth the requirement that the behind-the-wheel driving instructor must meet the qualifications set forth in subrule 23.1(1) in order for the authorization to remain valid.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, July 8, 2009, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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 proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, July 10, 2009. Written comments and suggestions should be addressed to Kim

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend rule 282—23.2(272,321) as follows:

282—23.2(272,321) Validity. All fees are nonrefundable as set out in 282—Chapter 12. The behind-the-wheel driving instructor authorization shall be valid for one calendar year, and it shall expire one year after issue date. The behind-the-wheel driving instructor authorization shall be valid only if the holder continues to be qualified under 282—subrule 23.1(1).

ARC 7868B**EDUCATIONAL EXAMINERS BOARD[282]****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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 25, "Code of Professional Conduct and Ethics," Iowa Administrative Code.

This amendment is proposed to help clarify the definition of "fraud" in the code of professional conduct and ethics. It removes a conflicting definition in paragraph 25.3(1)"a" and allows the definition in rule 282—25.2(272) to stand.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, July 8, 2009, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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 proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, July 10, 2009. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend subrule 25.3(1) as follows:

25.3(1) Standard I—conviction of crimes, sexual or other immoral conduct with or toward a student, and child and dependent adult abuse. Violation of this standard includes:

a. *Fraud.* ~~Fraud in the procurement or renewal of a practitioner's license~~ Fraud means the same as defined in rule 282—25.2(272).

b. to e. No change.

ARC 7864B**EDUCATIONAL EXAMINERS BOARD[282]****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 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 25, "Code of Professional Conduct and Ethics," Iowa Administrative Code.

This amendment is proposed to comply with legislation that was passed in the 2008 legislative session. The law states that if a licensee fails to fulfill the licensee's obligations to the state or local government, action may be taken against the license; therefore, it is necessary to amend the code of professional conduct and ethics.

A waiver provision is not included. The Board has adopted a uniform waiver rule.

Any interested party or persons may present their views either orally or in writing at the public hearing that will be held Wednesday, July 8, 2009, at 1 p.m. in Room 3 Southwest, Third Floor, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa.

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 proposed amendment. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th Street and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any person who intends to attend the public hearing and requires special accommodations for specific needs, such as a sign language interpreter, should contact the office of the Executive Director at (515)281-5849.

Any interested person may make written comments or suggestions on the proposed amendment before 4 p.m. on Friday, July 10, 2009. Written comments and suggestions should be addressed to Kim Cunningham, Board Secretary, Board of Educational Examiners, at the above address, or sent by E-mail to kim.cunningham@iowa.gov, or by fax to (515)281-7669.

This amendment is intended to implement Iowa Code chapter 272.

The following amendment is proposed.

Amend subrule 25.3(7) as follows:

25.3(7) Standard VII—compliance with state law governing obligations to state or local governments, student loan obligations, and child support obligations. Violation of this standard includes:

a. Failing to comply with 282—Chapter 8 concerning payment of debts to state or local governments.

~~**b.**~~ Failing to comply with 282—Chapter 9 concerning repayment of student loans.

~~**c.**~~ Failing to comply with 282—Chapter 10 concerning child support obligations.

ARC 7855B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 22, "Controlling Pollution," Chapter 23, "Emission Standards for Contaminants," Chapter 25, "Measurement of Emissions," Chapter 28, "Ambient Air Quality Standards," and Chapter 33, "Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality," Iowa Administrative Code.

The primary purpose of the proposed amendments is to update state air quality rules by adopting new federal requirements, including adoption of new National Ambient Air Quality Standards (NAAQS) and adoption of two new federal air toxics standards. The proposed amendments also revise construction permitting requirements and stack testing requirements. Additional amendments to other rules and changes to federal regulations also are being proposed.

Item 1 amends rule 567—20.2(455B), the definition of "volatile organic compounds" or "VOC." EPA removed two compounds, Propylene Carbonate (CAS# 108-32-7) and Dimethyl Carbonate (CAS# 616-38-6), from the definition of VOC in a final regulation published on January 21, 2009. EPA has determined that these two compounds are negligibly reactive, which means they contribute little or nothing to tropospheric ozone formation.

Facilities must still report Propylene Carbonate and Dimethyl Carbonate as VOC for the calendar year 2008 air emissions inventory because these compounds were considered to be VOC for that year. Facilities will not be required to report Propylene Carbonate and Dimethyl Carbonate as VOC in their air emissions inventory for calendar year 2009.

Item 2 amends rule 567—20.3(455B) to update the ZIP code for the Department's Air Quality Bureau offices. The Air Quality Bureau offices will remain in the current location. However, a ZIP code change for the current location will take effect on July 1, 2009.

Item 3 amends subrule 22.1(2) by adding paragraph "oo," which provides for an exemption from construction permitting for certain temporary diesel engines used in periodic testing and maintenance of natural gas pipelines. Several times per year, natural gas pipelines require periodic testing and repair. Because of the lead time for this type of project, the owner or operator of the pipeline often does not have sufficient time to apply for and obtain a construction permit prior to installing the engine and must instead apply to the Department for a variance from the permitting requirements of Chapter 22. The Department has conducted an air quality assessment of these projects and has determined that an exemption from construction permitting is appropriate. The exemption contains conditions to ensure that engine emissions will not exceed the emission limits currently allowed under the small unit exemption specified in paragraph 22.1(2)"w."

Item 4 amends the introductory paragraph of subrule 22.1(3) to update the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2.

Item 5 amends the introductory paragraph of subrule 22.3(8) to update the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2.

Item 6 amends paragraph 22.8(1)"e," the provisions for applying for a permit by rule for spray booths (PBR), to include new certification requirements regarding National Emission Standards for Hazardous Air Pollutants (NESHAP) for metal fabrication and finishing at area sources (see Item 16 for an explanation of the NESHAP). The amendment is being proposed because the NESHAP for

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metal fabrication and finishing does not contain any de minimus usage level for materials used in spray applications. This amendment is similar to an amendment adopted earlier in 2009 regarding the NESHAP for miscellaneous surface coating at area sources. As with the earlier adopted amendment, the Department is modifying the required PBR notification form to include questions that will assist the owner or operator with the NESHAP requirements for metal fabrication and finishing operations. The amendments to the PBR rules and the revisions to the PBR notification form will help ensure that owners and operators are aware of the NESHAP requirements and realize that all spray applications must be in compliance with or otherwise be exempt from the NESHAP by the applicable compliance dates.

Item 7 amends subrule 22.9(3) to update the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2.

Item 8 amends the introductory paragraph of subrule 22.105(1), regarding the requirements for submitting a Title V operating permit application, and updates the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2. With the proposed amendment, facility owners and operators submitting electronic Title V applications are no longer required to also submit hard copy applications to EPA Region VII. The Department has given EPA access to the Department's database so that EPA may review electronic copies of Title V applications.

Item 9 amends subrule 22.128(4) to update the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2.

Item 10 amends the introductory paragraph of subrule 22.203(1) to update the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2.

Item 11 amends the introductory paragraph of rule 567—22.209(455B) to update the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2.

Item 12 amends the introductory paragraph of paragraph 22.300(8)“a” to update the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2.

Item 13 amends the introductory paragraph of subrule 22.300(12) to update the ZIP code for the Department's Air Quality Bureau offices as explained previously for Item 2.

Item 14 amends the introductory paragraph of subrule 23.1(2), the provisions that adopt by reference the federal New Source Performance Standards (NSPS) contained in 40 CFR Part 60.

On December 22, 2008, EPA amended the NSPS General Conditions (Subpart A) for alternative work practices for equipment leak detection and repair. The alternative work practice is an alternative to the current leak detection and repair work practice, which is not being revised. The final regulations add a requirement to perform monitoring once per year using the current EPA Method 21 leak detection instrument.

On January 28, 2009, EPA amended the NSPS for electric utility steam generating units and the NSPS for industrial, commercial, and institutional steam generating units (Subparts A, D, Da, Db and Dc). These amendments add compliance alternatives for owners and operators; eliminate the opacity standard for facilities with a particulate matter limit of 0.030 pounds per million Btu (lb/MMBtu) or less that voluntarily install and use particulate matter continuous emission monitors to demonstrate compliance with that limit; and correct technical and editorial errors. The federal amendments are EPA's response to petitions for reconsideration of the NSPS requirements.

On March 20, 2009, EPA amended the NSPS for stationary combustion turbines (Subpart KKKK). These amendments remove requirements for additional sulfur dioxide (SO₂) emission control on turbines that burn more than 50 percent biogas (such as landfill gas and digester gas) and set a new sulfur dioxide (SO₂) limit of 0.15 lb/MMbtu for these turbines. In finalizing these amendments, EPA states that its intent was not to require SO₂ control on turbines that burn predominantly biogas, a fuel with relatively low sulfur content. Biogas that is not burned in a combustion turbine is usually flared or emitted directly to the atmosphere.

Item 15 amends the introductory paragraph of subrule 23.1(4), the emission standards for hazardous air pollutants for source categories, also known as National Emission Standards for Hazardous Air Pollutants or “NESHAP,” to adopt recent amendments that EPA made to 40 CFR Part 63. On December 22, 2008, EPA amended the NESHAP General Conditions for alternative work practices for equipment

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leak detection and repair. The amendments are the same as those described in Item 14. The new NESHAP proposed for adoption are described in Item 16.

Item 16 amends subrule 23.1(4) by adopting new paragraphs “ew” and “ex.” This amendment adopts by reference two new NESHAP for new and existing area sources. Area sources are usually smaller commercial or industrial operations. Specifically, area sources have potential emissions less than 10 tons per year (tpy) of any single hazardous air pollutant (HAP) and less than 25 tpy of any combination of HAP and are classified as minor sources for HAP. Facilities that have potential HAP emissions greater than or equal to these levels are classified as major sources.

Because of the potential impacts to small businesses and previously unregulated facilities, the Department developed implementation strategies in conjunction with this rule making. The strategies include cooperative efforts with University of Northern Iowa—Iowa Air Emissions Assistance Program (UNI), Iowa Department of Economic Development, and the local air quality programs of Linn and Polk Counties to provide outreach, education and compliance assistance to affected facilities. The Department’s outreach efforts began in 2008 and are continuing during the rule-making process. It is hoped that these new rules in conjunction with the Department’s outreach efforts will result in reductions in air toxics while minimizing the regulatory burden to small businesses and other affected facilities.

On July 1, 2008, EPA finalized the NESHAP area source standards for plating and polishing operations (Subpart WWWW). The NESHAP affects area sources engaged in specific plating and polishing activities that use or emit cadmium, chromium, lead, manganese, or nickel. The NESHAP requirements impact plating and polishing tanks, dry mechanical polishing operations, and thermal spraying operations. Owners and operators must implement management practices, such as the use of wetting agents or fume suppressants, and also must comply with equipment standards, such as the use of tank covers or control devices and the capture and control of emissions from thermal spraying and dry mechanical blasting. EPA determined that most facilities already are implementing these management and equipment standards. EPA estimates that the average, ongoing costs for each facility for record keeping and reporting will be \$1100 per year for the first three years and \$713 for each year thereafter.

The Department estimates that 100 facilities may be subject to the NESHAP for plating and polishing. The Department in conjunction with UNI is developing compliance tools for affected businesses and is already working directly with several affected facilities. Owners and operators will have until July 2010 to comply with the NESHAP.

On July 23, 2008, EPA finalized the NESHAP for nine metal fabrication and finishing area source categories (Subpart XXXXXX). The NESHAP affects area sources that use or emit cadmium, chromium, lead, manganese, or nickel and the facility is engaged in one of the following: (1) electrical and electronic equipment finishing operations; (2) fabricated metal products; (3) fabricated plate work (boiler shops); (4) fabricated structural metal manufacturing; (5) heating equipment, except electric; (6) industrial machinery and equipment finishing operations; (7) iron and steel forging; (8) primary metal products manufacturing; and (9) valves and pipe fittings. Owners and operators of affected facilities must implement management practices to reduce air toxics from dry abrasive blasting, machining, dry grinding and dry polishing with machines, spray painting, and welding. EPA determined that most facilities already are implementing these management practices, and that the average, ongoing costs for each facility for monitoring, record keeping and reporting will be \$569 per year. Facilities with spray painting operations may have additional equipment and training costs.

The Department estimates that between 60 and 100 facilities may be subject to the NESHAP for metal fabrication and finishing. The Department in conjunction with UNI is developing outreach materials for affected businesses and is already working directly with a number of affected facilities. Owners and operators of existing facilities will have until July 2011 to comply with the NESHAP.

Item 17 amends paragraph 25.1(7)“a” to better reflect the Department’s current practices regarding stack testing notifications, pretest meetings, and test protocols. The amendments provide clarity and allow more flexibility.

Item 18 amends rule 567—28.1(455B) to adopt by reference new National Ambient Air Quality Standards (NAAQS). EPA recently strengthened the NAAQS for ozone and for lead to more adequately

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protect public health and welfare. EPA issued final rules to revise the NAAQS for ozone on March 27, 2008. EPA issued final rules to revise the NAAQS for lead on November 12, 2008.

Item 19 amends subrule 33.3(1), the definition for “volatile organic compounds” or “VOC” as described in Item 1.

Any person may make written suggestions or comments on the proposed amendments on or before July 21, 2009. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515)242-5094; or by electronic mail to christine.paulson@dnr.iowa.gov.

A public hearing will be held on Monday, July 20, 2009, at 1 p.m. in the conference rooms at the Department’s Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa. At the public hearing, comments on the proposed amendments may be submitted orally or in writing. All comments must be received no later than July 21, 2009.

Any person who intends to attend the public hearing and has special requirements, such as those related to hearing or mobility impairments, should contact Christine Paulson at (515)242-5154 to advise of any specific needs.

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

The following amendments are proposed.

ITEM 1. Amend rule **567—20.2(455B)**, definition of “Volatile organic compound” or “VOC,” as follows:

“~~Volatile organic compound~~ compounds” or “VOC” means any compound included in the definition of ~~volatile organic compound~~ “volatile organic compounds” found at 40 CFR Section 51.100(s) as amended through ~~January 18, 2007~~ January 21, 2009.

ITEM 2. Amend rule 567—20.3(455B) as follows:

567—20.3(455B) Air quality forms generally. The following forms are used by the public to apply for various departmental approvals and to report on activities related to the air programs of the department. All forms may be obtained from ~~the central office:~~

~~Administrative Support Station—Environmental Protection Division~~

~~Iowa Department of Natural Resources—Air Quality Bureau~~

~~Henry A. Wallace Building~~

~~900 East Grand~~ 7900 Hickman Road, Suite 1

~~Des Moines Windsor Heights, Iowa 50319~~ 50324

Properly completed forms should be submitted in accordance with the instructions to the form. Where not specified in the instructions, forms should be submitted to the program operations division.

20.3(1) to 20.3(6) No change.

ITEM 3. Adopt the following **new** paragraph **22.1(2)“oo”**:

oo. A non-road diesel fueled engine, as defined in 40 CFR 1068.30 and as amended through October 8, 2008, with a brake horsepower rating of less than 1,100 at full load measured at the shaft, used to conduct periodic testing and maintenance on natural gas pipelines. For the purposes of this exemption, the manufacturer’s nameplate rating shall be defined as the brake horsepower output at the shaft at full load.

(1) To qualify for the exemption, the engine must:

1. Be used for periodic testing and maintenance on natural gas pipelines outside the compressor station, which shall not exceed 330 hours in any 12-month consecutive period at a single location; or
2. Be used for periodic testing and maintenance on natural gas pipelines within the compressor station, which shall not exceed 330 hours in any 12-month consecutive period.

(2) The owner or operator shall maintain a monthly record of the number of hours the engine operated and a record of the rolling 12-month total of the number of hours the engine operated for each location outside the compressor station and within the compressor station. These records shall be maintained for two years. Records shall be made available to the department upon request.

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(3) This exemption shall not apply to the replacement or substitution of engines for backup power generation at a pipeline compressor station.

ITEM 4. Amend subrule 22.1(3), introductory paragraph, as follows:

22.1(3) Construction permits. The owner or operator of a new or modified stationary source shall apply for a construction permit unless a conditional permit is required by Iowa Code chapter 455B or subrule 22.1(4) or requested by the applicant in lieu of a construction permit. Two copies of a construction permit application for a new or modified stationary source shall be presented or mailed to Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, ~~Urbandale~~ Windsor Heights, Iowa ~~50322~~ 50324. Alternatively, the owner or operator may apply for a construction permit for a new or modified stationary source through the electronic submittal format specified by the department. The owner or operator of any new or modified industrial anaerobic lagoon or a new or modified anaerobic lagoon for an animal feeding operation other than a small operation as defined in rule 567—65.1(455B) shall apply for a construction permit. Two copies of a construction permit application for an anaerobic lagoon shall be presented or mailed to Department of Natural Resources, Water Quality Bureau, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319.

ITEM 5. Amend subrule 22.3(8), introductory paragraph, as follows:

22.3(8) Ownership change of permitted equipment. The new owner shall notify the department in writing no later than 30 days after the change in ownership of equipment covered by a construction permit pursuant to 567—22.1(455B). The notification to the department shall be mailed to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, ~~Urbandale~~ Windsor Heights, Iowa ~~50322~~ 50324, and shall include the following information:

ITEM 6. Amend paragraph **22.8(1)“e”** as follows:

e. Notification letter.

(1) Facilities which claim to be permitted by provisions of this rule must submit to the department a written notification letter, on forms provided by the department, certifying that the facility meets the following conditions:

1. All paint booths and associated equipment are in compliance with the provisions of subrule 22.8(1);

2. All paint booths and associated equipment are in compliance with all applicable requirements including, but not limited to, the allowable particulate emission rate for painting and surface coating operations of 0.01 gr/scf of exhaust gas as specified in 567—subrule 23.4(13); and

3. All paint booths and associated equipment currently are or will be in compliance with or otherwise exempt from the national emissions standards for hazardous air pollutants (NESHAP) for paint stripping and miscellaneous surface coating at area sources (40 CFR Part 63, Subpart HHHHHH) and the NESHAP for metal fabricating and finishing at area sources (40 CFR Part 63, Subpart ~~XXXXXX~~) by the applicable NESHAP compliance dates.

(2) The certification must be signed by one of the following individuals:

1. For corporations, a principal executive officer of at least the level of vice president, or a responsible official as defined at 567 IAC 22.100(455B).

2. For partnerships, a general partner.

3. For sole proprietorships, the proprietor.

4. For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

ITEM 7. Amend subrule 22.9(3) as follows:

22.9(3) Duty to self-identify. The owner or operator or designated representative of a facility meeting the conditions of subrule 22.9(2) shall submit two copies of a completed BART Eligibility Certification Form #542-8125. ~~The BART Eligibility Certification Form #542-8125, which shall include all information necessary for the department to complete eligibility determinations. The information submitted shall include source identification, description of processes, potential emissions, emission unit and emission point characteristics, date construction commenced and date of startup, and~~

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other information required by the department. The completed form was required to be submitted to the Air Quality Bureau, Department of Natural Resources, 7900 Hickman Road, Suite 1, ~~Urbandale~~ Windsor Heights, Iowa 50322 50324, by September 1, 2005.

ITEM 8. Amend subrule 22.105(1), introductory paragraph, as follows:

22.105(1) Duty to apply. For each source required to obtain a Title V permit, the owner or operator or designated representative, where applicable, shall present or mail a complete and timely permit application in accordance with this rule to the following locations: Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, ~~Urbandale~~ Windsor Heights, Iowa 50322 50324 (two copies); and U.S. EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101 (one copy); and, if applicable, the local permitting authority, which is either Linn County Public Health Department, Air Quality Division, 501 13th Street NW, Cedar Rapids, Iowa 52405 (one copy); or Polk County Public Works, Air Quality Division, 5885 NE 14th Street, Des Moines, Iowa 50313 (one copy). Alternatively, an owner or operator may submit a complete and timely application through the electronic submittal format specified by the department. ~~If an application is submitted electronically, the owner or operator shall provide one hard copy of the application to U.S. EPA Region VII.~~

ITEM 9. Amend subrule 22.128(4) as follows:

22.128(4) Submission of copies. The original and three copies of all permit applications shall be presented or mailed to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, ~~Urbandale~~ Windsor Heights, Iowa 50322 50324.

ITEM 10. Amend subrule 22.203(1), introductory paragraph, as follows:

22.203(1) Duty to apply. Any source which would qualify for a voluntary operating permit and which would not qualify under the provisions of rule 22.300(455B), ~~Operating~~ operating permit by rule for small sources, must apply for either a voluntary operating permit or a Title V operating permit. Any source determined not to be eligible for a voluntary operating permit shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in rule 22.202(455B) and rule 22.300(455B). For each source applying for a voluntary operating permit, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, ~~Urbandale~~ Windsor Heights, Iowa 50322 50324, an original and one copy of a timely and complete permit application in accordance with this rule.

ITEM 11. Amend rule 567—22.209(455B), introductory paragraph, as follows:

567—22.209(455B) Change of ownership for facilities with voluntary operating permits. The new owner shall notify the department in writing no later than 30 days after the change of ownership of equipment covered by a voluntary operating permit. The notification to the department shall be mailed to Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, ~~Urbandale~~ Windsor Heights, Iowa 50322 50324, and shall include the following information:

ITEM 12. Amend paragraph **22.300(8)“a,”** introductory paragraph, as follows:

a. Duty to apply. Any person who owns or operates a source otherwise required to obtain a Title V operating permit and which would be eligible for an operating permit by rule for small sources must either register for an operating permit by rule for small sources, apply for a voluntary operating permit, or apply for a Title V operating permit. Any source determined not to be eligible for an operating permit by rule for small sources, and operating without a valid Title V or a valid voluntary operating permit, shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in the application shield provisions contained in rules 22.104(455B) and 22.202(455B). For each source registering for an operating permit by rule for small sources, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, ~~Urbandale~~ Windsor Heights, Iowa 50322 50324, one original and one copy of a timely and complete registration form in accordance with this rule.

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ITEM 13. Amend subrule 22.300(12), introductory paragraph, as follows:

22.300(12) *Change of ownership.* The new owner shall notify the department in writing no later than 30 days after the change of ownership of equipment covered by an operating permit by rule for small sources. The notification to the department shall be mailed to Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, ~~Urbandale~~ Windsor Heights, Iowa ~~50322~~ 50324, and shall include the following information:

ITEM 14. Amend subrule 23.1(2), introductory paragraph, as follows:

23.1(2) *New source performance standards.* The federal standards of performance for new stationary sources, as defined in 40 Code of Federal Regulations Part 60 as amended or corrected through ~~June 2, 2008~~ March 20, 2009, are adopted by reference, except § 60.530 through § 60.539b (Part 60, Subpart AAA), and shall apply to the following affected facilities. The corresponding 40 CFR Part 60 subpart designation is in parentheses. Reference test methods (Appendix A), performance specifications (Appendix B), determination of emission rate change (Appendix C), quality assurance procedures (Appendix F) and the general provisions (Subpart A) of 40 CFR Part 60 also apply to the affected facilities.

ITEM 15. Amend subrule 23.1(4), introductory paragraph, as follows:

23.1(4) *Emission standards for hazardous air pollutants for source categories.* The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through ~~July 22, 2008~~ December 22, 2008, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses. 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, “hazardous air pollutant” has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a “major source” means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an “area source” means any stationary source of hazardous air pollutants that is not a “major source” as defined in this subrule. Paragraph 23.1(4) “a,” general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below. The provisions of 40 CFR Part 60, Subparts A, B, Da, and HHHH for the Clean Air Mercury Rule (CAMR), are found at subrules 23.1(2) and 23.1(5) and in 567—Chapter 34.

ITEM 16. Adopt the following new paragraphs **23.1(4)“ew”** and **“ex”**:

ew. Emission standards for hazardous air pollutants for area sources: plating and polishing. This standard applies to plating and polishing activities at new and existing facilities that are area sources for hazardous air pollutant emissions. (Part 63, Subpart WWWW)

ex. Emission standards for hazardous air pollutants for area sources: metal fabrication and finishing. This standard applies to new and existing facilities in which the primary activity or activities at the facility are metal fabrication and finishing and that are area sources for hazardous air pollutant emissions. (Part 63, Subpart XXXXXX)

ITEM 17. Amend paragraph **25.1(7)“a”** as follows:

a. General. The owner of new or existing equipment or the owner’s authorized agent shall notify the ~~director~~ department in writing, not less than 30 days before a required test or before a performance evaluation of a continuous emission monitor ~~is performed~~ to determine compliance with applicable

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

requirements of 567—Chapter 23 or a permit condition. ~~For the department to consider test results a valid demonstration of compliance with applicable rules or a permit condition, such notice shall be given. Such notice shall include the time, the place, the name of the person who will conduct the tests and other information as required by the department. If the owner or operator does not provide timely notice to the department, the department shall not consider the test results or performance evaluation results to be a valid demonstration of compliance with applicable rules or permit conditions. Upon written request, the department may allow a notification period of less than 30 days. Unless specifically waived by the department, At the department's request, a pretest meeting shall be held not later than 15 days prior to conducting before the owner or operator conducts the compliance demonstration. The department may accept a testing protocol in lieu of the pretest meeting. A testing protocol shall be submitted to the department no later than 15 days before the owner or operator conducts the compliance demonstration.~~ A representative of the department shall be permitted to witness the tests. Results of the tests shall be submitted in writing to the director in the form of a comprehensive report within six weeks of the completion of the testing.

ITEM 18. Amend rule 567—28.1(455B) as follows:

567—28.1(455B) Statewide standards. The state of Iowa ambient air quality standards shall be the National Primary and Secondary Ambient Air Quality Standards as published in 40 Code of Federal Regulations Part 50 (1972) and as amended at 38 Federal Register 22384 (September 14, 1973), 43 Federal Register 46258 (October 5, 1978), 44 Federal Register 8202, 8220 (February 9, 1979), 52 Federal Register 24634-24669 (July 1, 1987), 62 Federal Register 38651-38760, 38855-38896 (July 18, 1997), ~~and 71 Federal Register 61144-61233 (October 17, 2006), 73 Federal Register 16436-16514 (March 27, 2008), and 73 Federal Register 66964-67062 (November 12, 2008).~~ except that the annual PM₁₀ standard specified in 40 CFR Section 50.6(b) shall continue to be applied for purposes of implementation of new source permitting provisions in 567 IAC Chapters 22 and 33. The department shall implement these rules in a time frame and schedule consistent with implementation schedules in federal laws, regulations and guidance documents.

This rule is intended to implement Iowa Code section 455B.133.

ITEM 19. Amend subrule **33.3(1)**, definition of “Volatile organic compounds” or “VOC,” as follows:

“Volatile organic compounds” or “VOC” means any compound included in the definition of “volatile organic compounds” found at 40 CFR 51.100(s) as amended through ~~January 18, 2007~~ January 21, 2009.

ARC 7853B**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 gives Notice of Intended Action to amend Chapter 61, “Water Quality Standards,” and Chapter 62, “Effluent and Pretreatment Standards: Other Effluent Limitations or Prohibitions,” Iowa Administrative Code.

The proposed amendments will:

- Establish numerical water quality criteria for chloride for the protection of aquatic life uses.
- Establish numerical water quality criteria for sulfate for the protection of aquatic life uses.

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- Update the effective date of references to the “Supporting Document for Iowa Water Quality Management Plans” found in 567 IAC Chapters 61 and 62 to reflect the removal of the total dissolved solids site-specific approach and revision of the sulfate ion guideline value.

- Revise the default hardness level used for hardness-dependent chemical criteria from 100 mg/l (as CaCO₃) to 200 mg/l.

Iowa Code sections 455B.171 to 455B.183 establish requirements for the protection and management of surface water quality. The Environmental Protection Commission, with the assistance of the Department, promulgates administrative regulations on water quality. Iowa’s water quality standards are written into regulation at 567 IAC Chapter 61.

In 2004, the Iowa Department of Natural Resources (DNR) moved forward with a proposed chloride standard. Concerns were raised that the proposed chloride standard was not scientifically defensible for use in Iowa. Consequently, a chloride standard was not approved, and an interim strategy using total dissolved solids as an indicator regarding water quality was put in place while the Department worked through the issues surrounding the chloride standard.

Recently, the research and analysis related to toxicity of total dissolved solids, chloride and sulfate have been completed by the Department in conjunction with the U.S. Environmental Protection Agency. The purpose of the research and analysis was to update and develop criteria for these parameters to better protect aquatic life based on new scientific information.

The DNR worked with the U.S. Environmental Protection Agency to ensure that the research compiled met certain scientific standards. Gaps were identified in the research and resulted in new toxicity tests being performed in 2008 and 2009.

With the availability of new research and toxicity data, the information is now available to propose numeric criteria for chloride and sulfate to better protect river, stream and lake aquatic life uses and remove the current interim approach for total dissolved solids criteria.

Additional information on Iowa’s water quality standards and the Department’s rules can be found on the Department’s Web site at <http://www.iowadnr.com/water/standards/index.html>.

Any person may submit written suggestions or comments on the proposed amendments through August 14, 2009. Such written material should be submitted to Adam Schnieders, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034, fax (515)281-8895 or by E-mail to adam.schnieders@dnr.iowa.gov. Persons who have questions may contact Adam Schnieders at (515)281-7409.

Persons are invited to present oral or written comments at the public hearings, which will be held throughout the state as follows:

July 7, 2009	11 a.m.	Orange City Public Library 112 Albany Avenue S.E. Orange City, Iowa
July 7, 2009	6 p.m.	Spencer Public Library 21 E. 3rd Street Spencer, Iowa
July 9, 2009	1 p.m.	Wallace State Office Building Fifth Floor Conference Rooms 502 E. 9th Street Des Moines, Iowa
July 13, 2009	11 a.m.	Dubuque Public Library 360 W. 11th Street Dubuque, Iowa

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Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	HH
Zinc	Chronic	200	—	120 215 (L)	120 215 (L)	120 215 (L)	100	—	—
		220	—	120 215 (L)	120 215 (L)	120 215 (L)	110	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	26*(e)
	Human Health + — F & W	—	—	—	—	—	—	—	7.4*(f)

* units expressed as milligrams/liter

ITEM 5. Amend subrule **61.3(3)**, TABLE 1. Criteria for Chemical Constituents, footnotes (h) to (l), as follows:

- (h) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of ~~400~~ 200 mg/l (as CaCO₃ (mg/l)). Numerical criteria (µg/l) for cadmium are a function of hardness (as CaCO₃ (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[1.0166\text{Ln}(\text{Hardness}) - 3.924]}$	$e^{[1.0166\text{Ln}(\text{Hardness}) - 3.924]}$	$e^{[1.0166\text{Ln}(\text{Hardness}) - 3.924]}$
Chronic	$e^{[0.7409\text{Ln}(\text{Hardness}) - 4.719]}$	$e^{[0.7409\text{Ln}(\text{Hardness}) - 4.719]}$	$e^{[0.7409\text{Ln}(\text{Hardness}) - 4.719]}$

- (i) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of ~~400~~ 200 mg/l (as CaCO₃ (mg/l)). Numerical criteria (µg/l) for copper are a function of hardness (CaCO₃ (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[0.9422\text{Ln}(\text{Hardness}) - 1.700]}$	$e^{[0.9422\text{Ln}(\text{Hardness}) - 1.700]}$	$e^{[0.9422\text{Ln}(\text{Hardness}) - 1.700]}$
Chronic	$e^{[0.8545\text{Ln}(\text{Hardness}) - 1.702]}$	$e^{[0.8545\text{Ln}(\text{Hardness}) - 1.702]}$	$e^{[0.8545\text{Ln}(\text{Hardness}) - 1.702]}$

- (j) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of ~~400~~ 200 mg/l (as CaCO₃ (mg/l)). Numerical criteria (µg/l) for lead are a function of hardness (CaCO₃ (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[1.2731\text{Ln}(\text{Hardness}) - 1.46]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 1.46]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 1.46]}$
Chronic	$e^{[1.2731\text{Ln}(\text{Hardness}) - 4.705]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 4.705]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 4.705]}$

- (k) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of ~~400~~ 200 mg/l (as CaCO₃ (mg/l)). Numerical criteria (µg/l) for nickel are a function of hardness (CaCO₃ (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[0.846\text{Ln}(\text{Hardness}) + 2.255]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 2.255]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 2.255]}$
Chronic	$e^{[0.846\text{Ln}(\text{Hardness}) + 0.0584]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 0.0584]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 0.0584]}$

- (l) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of ~~400~~ 200 mg/l (as CaCO₃ (mg/l)). Numerical criteria (µg/l) for zinc are a function of hardness (CaCO₃ (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$
Chronic	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$

ITEM 6. Amend subrule **61.3(3)**, TABLE 1. Criteria for Chemical Constituents, by adopting new footnote (m) as follows:

- (m) Acute and chronic criteria listed in main table are based on a hardness of 200 mg/l (as CaCO₃ (mg/l)) and a sulfate concentration of 63 mg/l. Numerical criteria (µg/l) for chloride are a function of hardness (CaCO₃ (mg/l)) and sulfate (mg/l) using the equation for each use according to the following table:

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	B(CW1), B(CW2), B(WW-1), B(WW-2), B(WW-3), B(LW)
Acute	$287.8(\text{Hardness})^{0.205797}(\text{Sulfate})^{-0.07452}$
Chronic	$177.87(\text{Hardness})^{0.205797}(\text{Sulfate})^{-0.07452}$

ITEM 7. Amend subrule **61.3(3)** by adopting the following **new** table:

TABLE 4. Aquatic Life Criteria for Sulfate for Class B Waters

(all values expressed in milligrams per liter)

Hardness mg/l as CaCO ₃	Chloride		
	Cl ⁻ < 5 mg/l	5 ≤ Cl ⁻ < 25	25 ≤ Cl ⁻ ≤ 500
H < 100 mg/l	500	500	500
100 ≤ H ≤ 500	500	$[-57.478 + 5.79(\text{hardness}) + 54.163(\text{chloride})] \times 0.65$	$[1276.7 + 5.508(\text{hardness}) - 1.457(\text{chloride})] \times 0.65$
H > 500	500	2,000	2,000

ARC 7854B

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.474, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 134, "Underground Storage Tank Licensing and Certification Programs," and Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," Iowa Administrative Code.

The proposed changes amend existing rules and adopt new rules requiring underground storage tank (UST) operator training, requiring closure investigations be conducted by a certified groundwater professional, amending the conflict of interest provisions for conducting compliance inspections, clarifying the biennial compliance inspection requirement, and providing piping leak detection requirements at unstaffed sites.

The Iowa Legislature passed legislation (2007 Iowa Acts, Senate File 499) granting rule-making authority to the Environmental Protection Commission in response to provisions of the federal Energy Policy Act of 2005 (Federal Act). The Iowa legislation requires the Commission to adopt rules consistent with Environmental Protection Agency (EPA) guidance (see <http://www.epa.gov/OUST/index.htm>) requiring underground storage tank operator training rules. (See Iowa Code section 455B.474(8)"a.")

EPA guidance requires three classes of operators: Class A operators responsible for managing resources and personnel to achieve and maintain compliance; Class B operators responsible for implementing day-to-day aspects of operating, maintaining and record keeping for one or more facilities; and Class C operators who are the on-site employees controlling or monitoring the dispensing of fuel and who are the first line of response to emergency conditions. One person can be more than one class of operator.

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The amendments provide responsibilities for each class of operator and criteria for training. The Department does not plan to provide training for operators, but intends to approve training classes for Class A and Class B operators. The training will be provided by third parties or within a company's normal training of personnel. All training must be approved by the Department. The amendments do allow for approval of on-line computer training that meets the requirements. Class C operators can be trained by the Class B operator.

Class A and Class B operators must be designated and trained by August 1, 2011. Written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility are required for Class C operators, who must receive some basic training within six months of the effective date of these amendments.

The amendments to the conflict of interest provisions for compliance inspections are proposed to meet the EPA guidance for inspections required in the Energy Policy Act. The existing rules were adopted prior to the Act and EPA guidance. The EPA guidance does not allow compliance inspections to be conducted by licensed inspectors who are employees of the underground storage tank owner or operator. The change is required for the Department to continue receiving federal funding and EPA state program approval.

The rule change for piping leak detection at unstaffed facilities requires in-line leak detection to shut off the submersible pump and stop product flow to the dispenser. In-line leak detection is for catastrophic leaks in pressurized product lines. These systems are generally designed to alert the on-site operator of a catastrophic release by slowing down product flow or activating an alarm so that the submersible pump can be immediately shut down. When facilities are not staffed, there is no one available to respond to an alarm. At existing sites that operate unstaffed, this requirement must be met by June 1, 2010.

The amendments require that a groundwater professional certified by the Department under 567—Chapter 134, Part A, conduct the soil and groundwater investigation required when underground storage tanks are permanently closed by removal or filling in place. This change gives the Department discretion to waive this requirement under certain circumstances and if Department staff are willing and able to provide direct supervision of the tank closure.

Any interested person may submit written comments on the proposed amendments on or before July 10, 2009. Written comments should be sent to the Iowa Department of Natural Resources, Attn. Paul Nelson, 502 E. 9th Street, Des Moines, Iowa 50319; fax (515)281-8895; or E-mail paul.nelson@dnr.iowa.gov.

Three public hearings will be held at 1 p.m. on the dates indicated at the following locations, at which time persons may present their views either orally or in writing.

Tuesday, July 7, 2009	Denison Public Meeting Room 111 N. Main Street Denison, Iowa
Wednesday, July 8, 2009	Coralville Public Library Meeting Room B 1401 5th Street Coralville, Iowa
Thursday, July 9, 2009	Wallace State Office Building 5th Floor Conference Room 502 E. 9th Street Des Moines, Iowa

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

These amendments are intended to implement Iowa Code section 455B.474.

The following amendments are proposed.

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ITEM 1. Adopt the following **new** subrule 134.14(6):

134.14(6) Conflict of interest. A compliance inspector shall not conduct a compliance inspection if the compliance inspector is the owner or operator of the UST system, an employee of the owner or operator of the UST system, or a person having daily on-site responsibility for the operation and maintenance of the UST system.

ITEM 2. Adopt the following **new** definitions in rule **567—135.2(455B)**:

“*Class A operator*” means a person responsible for managing resources and personnel to achieve and maintain compliance with regulatory requirements under this chapter. This includes ensuring appropriate individuals are trained in the proper operation and maintenance of the underground storage tank system, the maintenance of all required records, the procedures for response to emergencies caused by releases or spills, and assuring financial responsibility and documentation to the department or its representatives as required.

“*Class B operator*” means a person who implements applicable underground storage tank regulatory requirements and standards. This includes implementing the day-to-day aspects of operating, maintaining, and record keeping for underground storage tanks at one or more facilities. A Class B operator typically monitors, maintains and ensures that release detection methods and record-keeping and reporting requirements are met; release prevention equipment and record-keeping and reporting requirements are met; all relevant equipment complies with performance standards; and appropriate individuals are trained to properly respond to emergencies caused by releases and spills.

“*Class C operator*” means an on-site employee who typically controls or monitors the dispensing or sale of regulated substances and who is the first line of response to events indicating emergency conditions.

ITEM 3. Adopt the following **new** subrules 135.4(6) to 135.4(11):

135.4(6) *Training required for UST operators.*

a. An owner or operator shall designate Class A, Class B, and Class C operators for each underground storage tank system or facility that has underground storage tanks regulated by the department, except for unstaffed facilities, which may designate only Class A and Class B operators.

b. A facility may not operate after August 8, 2011, unless operators have been designated and trained as required in this rule, or unless otherwise agreed upon by the department based on a finding of good cause for failure to meet this requirement and a plan for designation and training at the earliest practicable date.

c. Trained operators must be readily available to respond to suspected or confirmed releases, equipment shut-offs or failures, and other unusual operating conditions.

d. The Class A or Class B operator should be immediately available for telephone consultation with the Class C operator when a facility is in operation. Class A or Class B operators should be able to be on site at the storage tank facility within four hours.

e. For staffed facilities, a Class C operator must be on site whenever the UST facility is in operation.

f. For unstaffed facilities, a Class B operator must be geographically located such that the person can be on site within two hours of being contacted by the public, the owner or operator of the facility, or the department. Emergency contact information and emergency procedures must be prominently displayed at the site. An unstaffed facility shall have an emergency shutoff device and a sign posted in a conspicuous place that includes the name and telephone number of the facility owner, an emergency response telephone number to contact the Class B operator, and information on local emergency responders.

g. Designated operators must successfully complete required training under subrule 135.4(9) no later than August 8, 2011.

h. A person may be designated for more than one class of operator.

i. When a facility is found to be out of compliance, the department may require the owner and operator to retrain the designated UST system Class A, B, or C operator under a plan approved by the

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department. The retraining must occur within 60 days from departmental notice for Class A or Class B operators and within 15 days for Class C operators.

135.4(7) UST operator responsibilities.

a. Class A operator. Class A operators have the primary responsibility to operate and maintain the underground storage tank system and facility. The Class A operator's responsibilities include managing resources and personnel to achieve and maintain compliance with regulatory requirements under this chapter in the following ways:

(1) Class A operators assist the owner by ensuring that underground tank systems are properly installed and expeditiously repaired and inspected; financial responsibility is maintained; and records of system installation, modification, inspection and repair are retained and made available to the department and licensed compliance inspectors. The Class A operator shall properly respond to and report emergencies caused by releases or spills from UST systems, ensure that the annual tank management fees are paid, and ensure that Class B and Class C operators are properly trained.

(2) Class A operators shall be familiar with training requirements for each class of operator and may provide required training for Class C operators.

(3) Class A operators shall provide site drawings that indicate equipment locations for Class B and Class C operators.

(4) Department-licensed installers, installation inspectors, and compliance inspectors may perform Class A operator duties when employed or contracted by the tank owner to perform these functions so long as they are properly trained and designated as Class A operators pursuant to subrules 135.4(9) through 135.4(11). Class A operators who are also licensed compliance inspectors under 567—Chapter 134, Part C, may perform in-house facility inspections of the UST system, but shall not perform department-mandated compliance inspections pursuant to rule 567—135.20(455B). Compliance inspections of a UST facility required by rule 567—135.20(455B) must be completed by a third-party compliance inspector licensed under 567—Chapter 134, Part B.

(5) The owner or operator of a site undergoing a change in ownership shall designate a Class A operator prior to bringing the UST system into operation. The Class A operator is responsible for ensuring that all necessary documentation for change of ownership is completed and submitted to the department prior to bringing the UST system into operation. If a UST was temporarily closed or newly installed and will be brought into operation, the Class A operator must ensure that the department's checklist for returning a UST to service or initiating service is followed and that the necessary documentation is submitted to the department.

b. Class B operator. A Class B operator implements applicable underground storage tank regulatory requirements and standards in the field or at the tank facility. A Class B operator oversees and implements the day-to-day aspects of operation, maintenance, and record keeping for the underground storage tanks at facilities within four hours of travel time from the Class B operator's principal place of business. A Class B operator's responsibilities include, but are not limited to:

(1) Performing mandated system tests at required intervals and making sure spill prevention, overfill control equipment, and corrosion protection equipment are properly functioning.

(2) Assisting the owner by ensuring that release detection equipment is operational, release detection monitoring and tests are performed at the proper intervals, and release detection records are retained and made available to the department and compliance inspectors.

(3) Making sure record-keeping and reporting requirements are met and that relevant equipment manufacturers' or third-party performance standards are available and followed.

(4) Properly responding to, investigating, and reporting emergencies caused by releases or spills from USTs.

(5) Performing UST release detection in accordance with rule 567—135.5(455B).

(6) Monitoring the status of UST release detection.

(7) Meeting spill prevention, overfill prevention, and corrosion protection requirements.

(8) Reporting suspected and confirmed releases and taking release prevention and response actions according to the requirements of rule 567—135.6(455B).

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(9) Training and documenting Class C operators to make sure at least one Class C operator is on site during operating hours. Class B operators shall be familiar with Class C operator responsibilities and may provide required training for Class C operators.

(10) Department-licensed installers, installation inspectors, and compliance inspectors may perform Class B operator duties when employed or contracted by the tank owner to perform these functions so long as they are properly trained and designated as Class B operators under subrules 135.4(9) through 135.4(11). Class B operators who are also licensed compliance inspectors under 567—Chapter 134, Part C, may perform in-house facility inspections of the UST system, but cannot perform department-mandated compliance inspections pursuant to rule 567—135.20(455B). Compliance inspections of a UST facility pursuant to rule 567—135.20(455B) must be completed by a third-party compliance inspector licensed under 567—Chapter 134, Part B.

(11) The owner or operator of a site undergoing a change in ownership shall designate a Class B operator prior to bringing the UST system into operation. The Class B operator must conduct an inspection using the department's inspection checklist and submit the completed checklist along with the change of ownership form prior to operation. If a UST system was temporarily closed, the Class B operator shall ensure that the department's checklist for returning a UST to service is followed and that the necessary documentation is submitted to the department prior to operation of the UST system.

c. Class C operator. A Class C operator is an on-site employee who typically controls or monitors the dispensing or sale of regulated substances and is the first to respond to events indicating emergency conditions. A Class C operator must be present at the facility at all times during normal operating hours. A Class C operator monitors product transfer operations to ensure that spills and overfills do not occur. The Class C operator must know how to properly respond to spills, overfills and alarms when they do occur. In the event of a spill, overfill or alarm, a Class C operator shall notify the Class A and Class B operators, as well as the department and appropriate local emergency authorities as required by rule.

(1) Within six months after [insert the effective date of these amendments], written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site.

(2) There may be more than one Class C operator at a storage tank facility, but not all employees of a facility need be Class C operators.

135.4(8) UST operator training course requirements. Individuals must attend a department-approved training course covering material designated for each operator class. Individuals must attend every session of the training, take the examination, and attend examination review.

a. Class A operators. To be certified as a Class A operator, the applicant must successfully complete a department-approved training course that covers underground storage tank system requirements as outlined in this chapter and in 567—Chapters 134 and 136. The course must also provide a general overview of the department's UST program, purpose, groundwater protection goals, public safety and administrative requirements. The training must include, but is not limited to, the following:

(1) Components and materials of underground storage tank systems.

(2) A general discussion of the content of PEI/RP900-08, Recommended Practices for the Inspection and Maintenance of UST Systems, and PEI/RP500, Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment.

(3) Spill and overfill prevention, to include the American Petroleum Institute (API) Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(4) Ensuring product delivery to the correct tank by using color-symbol codes in the API Standard RP1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals."

(5) Proper fuel ordering and delivery, including procedures in API RP1007, "Loading and Unloading of MC/DOT 406 Cargo Tank Motor Vehicles."

(6) Release detection methods and related reporting requirements.

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(7) Corrosion protection and inspection requirements, including the requirement to have a department-licensed cathodic protection tester.

(8) Discussion of the benefits of monthly or frequent inspections and content and use of inspection checklists. Training materials for operators shall include the department's "Iowa UST Operator Inspection Checklist" or a checklist template similar to the department's document.

(9) Requirement and content of third-party compliance inspections.

(10) How to properly respond to an emergency, including hazardous conditions.

(11) Product and equipment compatibility, including the department's ethanol compatibility guidance and certification.

(12) Financial responsibility, including detailed explanation of liability, notice and claim procedures, and the six-month window to check for and report a release prior to insurance termination to maintain coverage for corrective action.

(13) Notification of installation and storage tank registration requirements.

(14) Requirement to use department-licensed companies and individuals for UST installation, testing, lining, and removal.

(15) Temporary and permanent closure procedures and requirements.

(16) NESHAP vapor recovery requirements.

(17) Conditions under which the department may stop fuel delivery and take enforcement action.

(18) Ensuring that annual tank management fees are paid.

(19) Ensuring that suspected and confirmed releases are investigated and reported according to subrule 135.6(1).

b. Class B operators. To be certified as a Class B operator, the individual must successfully complete a department-approved training course that provides in-depth understanding of UST system regulations applicable to this class. Training must also provide a general overview of the department's UST program, purpose, groundwater protection goals, public safety and administrative requirements. Training shall cover the operation and maintenance requirements set forth in this chapter, including, but not limited to, the following:

(1) A general discussion of the content of PEI/RP900-08, Recommended Practices for the Inspection and Maintenance of UST Systems, and PEI/RP500, Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment.

(2) Components and materials of underground storage tank systems.

(3) Spill and overfill prevention.

(4) Ensuring product delivery to the correct tank by using color-symbol codes in the API Standard RP1637.

(5) Proper fuel ordering and delivery, including procedures from API RP1007.

(6) Methods of release detection and related reporting requirements.

(7) Corrosion protection and related testing.

(8) Discussion of the benefits of monthly or frequent inspections and content and use of inspection checklists. Training materials for operators shall include the department's "Iowa UST Operator Inspection Checklist" or a checklist template similar to the department's document.

(9) Requirement and content of third-party compliance inspections.

(10) Emergency response, reporting and investigating releases.

(11) Product and equipment compatibility, including the department's ethanol compatibility guidance and certification.

(12) Financial responsibility, including detailed explanation of liability, notice and claim procedures, and the six-month window to check for and report a release prior to insurance termination to maintain coverage for corrective action.

(13) Notification of installation and storage tank registration requirements.

(14) Requirement to use department-licensed companies and individuals for UST installation, testing, lining, and removal.

(15) Reporting and record-keeping requirements.

(16) Overview of Class C operator training requirements.

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(17) NESHAP vapor recovery requirements.

(18) Conditions under which the department may stop fuel delivery and take enforcement action.

c. Class C operators. To be certified as a Class C operator, an individual must complete a department-approved training course that covers, at a minimum, a general overview of the department's UST program and purpose; groundwater protection goals; public safety and administrative requirements; and action to be taken in response to an emergency condition due to a spill or release from a UST system. Training must include written procedures for the Class C operator, including notification instructions necessary in the event of emergency conditions. The written instructions and procedures must be readily available on site. A Class A or Class B operator may provide Class C training.

135.4(9) Examination and review requirement. Class A and Class B operators must complete the department-approved training course and take an examination to verify their understanding and knowledge. The examination may include both written and practical (hands-on) testing activities. The trainer must follow up the examination with a review of missed test questions with the class or individual to ensure understanding of problem areas. Upon successful completion of the training course, the applicant will receive a certificate verifying the applicant's status as a Class A, Class B, or Class C operator.

a. Reciprocity. The department may waive the training course for operators upon a showing of successful completion of a training course and examination approved by another state or regulatory agency that the department determines are substantially equivalent to the UST requirements contained in this chapter.

b. Transferability to another UST site. A Class A and Class B operator may transfer to other UST facilities in Iowa provided the operator is properly designated by the facility owner as a Class A or Class B operator according to 567—subrule 134.4(13). Class A or Class B operators transferring from other states shall seek prior approval of training qualifications, unless the department has preapproved the out-of-state program as substantially equivalent to the requirements of this chapter.

135.4(10) Timing of UST operator training.

a. An owner shall ensure that Class A, Class B, and Class C operators are trained as soon as practicable after [insert the effective date of these amendments] contingent upon availability of approved training providers, but not later than August 8, 2011, except as provided in paragraph 135.4(6) "b."

b. When a Class A or Class B operator is replaced, a new operator must be trained prior to assuming duties for that class of operator.

c. Class C operators must be trained before assuming the duties of a Class C operator. Within six months after [insert the effective date of these amendments], written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site. A Class C operator may be briefed on these procedures concurrent with annual safety training required under Occupational Safety and Health Administration regulations, 29 CFR, Part 1910.

135.4(11) Documentation of operator training.

a. The owner of an underground storage tank facility shall maintain a list of designated operators. The list shall be made available to the department in accordance with subrule 135.4(5). The list shall represent the current Class A, Class B and Class C operators for the underground storage tank facility and must include:

(1) The name of each operator and the operator's class(es); contact information for the Class A and Class B operators; the date each operator successfully completed initial training and refresher training, if any; the name of the company providing the training; and the name of the trainer.

(2) For all classes of operators, the site(s) for which an operator is responsible if more than one site.

b. A copy of the certificates of training for Class A and Class B operators shall be on file and readily available for inspection in accordance with subrule 135.4(5).

c. A copy of the certificates of training for Class B and Class C operators shall be conspicuously posted at each facility for which the operator is responsible.

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d. Class A and Class B operator contact information, including names and telephone numbers and any emergency information, shall be conspicuously posted at unstaffed facilities near the dispensers and the station building.

ITEM 4. Adopt the following new paragraph 135.5(1)“e”:

e. UST sites with no on-site personnel.

(1) Piping in-line leak detectors that shut off the submersible pump and stop product flow to the dispenser must be used. At existing sites without an electronic line leak detector, the electronic line leak detector must be installed by June 1, 2010.

(2) At sites with containment basins and sump sensors for leak detection, the sump sensors must shut off product flow when a leak is detected.

ITEM 5. Amend paragraph 135.15(3)“a,” introductory paragraph, as follows:

a. Before permanent closure or a change-in-service is completed, owners or operators must measure for the presence of a release where contamination is most likely to be present at the UST site. This soil and groundwater closure investigation must be conducted by a certified groundwater professional licensed under 567—Chapter 134, Part A, unless the department in its discretion grants an exemption and provides direct supervision of the closure investigation. In selecting the sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release.

ITEM 6. Rescind subrule 135.20(1) and adopt the following new subrule in lieu thereof:

135.20(1) The owner or operator must have the UST system inspected and an inspection report submitted to the department by a UST compliance inspector certified by the department under 567—Chapter 134. An initial compliance site inspection shall be conducted no later than December 31, 2007. All subsequent compliance site inspections conducted after the compliance inspection for the 2008-2009 biennial period shall be conducted within 24 months of the prior site inspection. Compliance site inspections must be separated by at least six months.

ITEM 7. Adopt the following new subrule 135.20(4):

135.20(4) Conflict of interest. A compliance inspection must be conducted by a certified compliance inspector who is not the owner or operator of the UST system being inspected, an employee of the owner or operator of the UST system being inspected, or a person having daily on-site responsibility for the operation and maintenance of the UST system.

ARC 7877B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 231B.2, 231C.3, and 231D.2, the Department of Inspections and Appeals hereby gives Notice of Intended Action to adopt new Chapter 67, “General Provisions for Elder Group Homes, Assisted Living Programs, and Adult Day Services,” Iowa Administrative Code.

These rules are proposed pursuant to 2007 Iowa Acts, Senate File 601, which transferred the regulatory authority for elder group homes, assisted living programs, and adult day services from the Department of Elder Affairs to the Department of Inspections and Appeals. Since that time, the Department has been working with stakeholder groups to develop the new chapter included in this

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Notice of Intended Action. The work with stakeholder groups has included written comments on two draft versions of the proposed rules, collaboration sessions across Iowa with over 200 participants, and presentations on the draft rules to industry groups. The Department intends to follow this Notice with Notices of Intended Action for Chapters 68 and 70, which will include specific provisions for elder group homes and adult day services. **ARC 7878B** published herein provides specific provisions for assisted living programs. The Department also intends to adopt simultaneously this chapter, the chapter under Notice in **ARC 7878B**, and the yet to be published chapters on elder group homes and adult day services. The rules in Chapter 67 include provisions common to the three entities. Chapter 67 will supersede the Department of Elder Affairs' 321—Chapter 26, which contains general provisions for elder group homes, assisted living programs, and adult day services.

Any interested person may make written suggestions or comments on these proposed rules on or before July 7, 2009. Such written materials should be sent to Steven Mandernach, Administrative Rules Coordinator, Department of Inspections and Appeals, 321 E. 12th Street, Third Floor, Lucas State Office Building, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-6863 or by E-mail to steven.mandernach@dia.iowa.gov.

Also, a joint public hearing regarding these proposed rules and the rules proposed in **ARC 7878B** will be held on July 10, 2009, at 3 p.m., at which time persons may present their views either orally or in writing. The hearing will be conducted over the Iowa Communications Network (ICN) at the following locations:

- ICN Room, Sixth Floor, Lucas State Office Building, 321 E. 12th Street, Des Moines
- Room 118, Iowa Lakes Community College, 1900 N. Grand Avenue, Spencer
- Room 024, Looft Hall, Iowa Western Community College, 2700 College Road, Council Bluffs
- Room 110, Tama Hall, Hawkeye Community College, 1501 E. Orange Road, Waterloo
- Meeting Room D, Iowa City Public Library, 123 S. Linn Street, Iowa City

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 proposed rules.

Any person who intends to attend the public hearing and who has special requirements, such as those relating to hearing or mobility impairments, should contact the Department to advise of specific needs.

These rules are intended to implement Iowa Code chapters 231B, 231C, and 231D.

The following amendment is proposed.

Adopt the following **new** 481—Chapter 67:

CHAPTER 67

GENERAL PROVISIONS FOR ELDER GROUP HOMES, ASSISTED LIVING PROGRAMS,
AND ADULT DAY SERVICES

481—67.1(231B,231C,231D) Definitions. The following definitions apply to this chapter and to 481—Chapters 68, 69, and 70.

“Activities of daily living” means the following self-care tasks: bathing, dressing, grooming, eating, transferring, toileting, and ambulation.

“Ambulatory” or *“ambulation”* means physically and cognitively able to walk without aid of another person.

“Applicable requirements” means Iowa Code chapters 135C, 231B, 231C, 231D, 235B, 235E, and 562A, this chapter, and 481—Chapters 68, 69, and 70, as applicable, and includes any other applicable administrative rules and provisions of the Iowa Code.

“Applicant or certificate holder” means the owner and operator of a program. If a program is operated under an operating agreement, both the owner and the operator are the applicant or certificate holder. If a program is leased, the lessee is the applicant or certificate holder.

“Assistance” means aid to a tenant who self-directs or participates in a task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the tenant regarding a particular task or activity shall be construed to mean the tenant has participated in the task or activity.

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“*Blueprint*” means copies of all completed drawings, schedules, and specifications that have been certified, sealed, and signed by an Iowa-licensed architect or Iowa-licensed engineer of record. The department may allow electronic transfer of blueprints pursuant to policy.

“*Dementia*” means an illness characterized by multiple cognitive deficits which represent a decline from previous levels of functioning and includes memory impairment and one or more of the following cognitive disturbances: aphasia, apraxia, agnosia, and disturbance in executive functioning.

“*Department*” means the department of inspections and appeals.

“*Director*” means the director of the department of inspections and appeals.

“*Elope*” means that a tenant who has impaired decision-making ability leaves the program without the knowledge or authorization of staff.

“*Global Deterioration Scale*” or “*GDS*” means the seven-stage scale for assessment of primary degenerative dementia developed by Dr. Barry Reisberg.

“*Health care professional*” means a physician, physician assistant, registered nurse or advanced registered nurse practitioner licensed in Iowa by the respective licensing board.

“*Health-related care*” means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis. “Health-related care” includes nurse-delegated assistance.

“*Human service professional*” means an individual with a bachelor’s degree in a human service field including, but not limited to: human services, gerontology, social work, sociology, psychology, or family science. Two years of experience in a human service field may be substituted for up to two years of the required education.

“*Impaired decision-making ability*” means a lack of capacity to make safe and prudent decisions regarding one’s own routine safety as determined by the program manager or nurse or means having a GDS score of four or above.

“*Instrumental activities of daily living*” means those activities that reflect the tenant’s ability to perform household and other tasks necessary to meet the tenant’s needs within the community, which may include but are not limited to shopping, housekeeping, chores, and traveling within the community.

“*Medication setup*” means assistance with various steps of medication administration to support a tenant’s autonomy, which may include, but is not limited to, routine prompting, cueing and reminding, opening containers or packaging at the direction of the tenant, reading instructions or other label information, or transferring medications from the original containers into suitable medication dispensing containers, reminder containers, or medication cups.

“*Modification*” means any addition to or change in physical dimensions or structure, except as incidental to the customary maintenance of the physical structure of the program’s facility.

“*Monitoring*” means an on-site evaluation of a program, a complaint investigation, or a program-reported incident investigation performed by the department to determine compliance with applicable requirements. A monitor who performs a monitoring for the department shall be a registered nurse, human service professional, or another person with program-related expertise.

“*Nurse-delegated assistance*” means delegated tasks or activities for which a registered nurse has assumed responsibility for assessing, planning, implementing, or evaluating, and for which the nurse remains legally responsible. Licensed practical nurses are allowed to delegate within the scope of their license.

“*Occupancy agreement*” or “*contractual agreement*” means a written contract entered into between a program and a tenant that clearly describes the rights and responsibilities of the program and the tenant and other information required by applicable requirements. An occupancy agreement may include a separate signed lease and signed service agreement.

“*Part-time or intermittent care*” means licensed nursing services and professional therapies that are provided no more than 5 days per week; or licensed nursing services and professional therapies that are provided 6 or 7 days per week for a temporary period of time with a predictable end within 21 days; or licensed nursing services and professional therapies that do not exceed 28 hours per week or, for adult day services, 4 hours per day and are provided in combination with nurse-delegated assistance with medications or activities of daily living.

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“Personal care” means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, and grooming that are essential to the health and welfare of a tenant.

“Preponderance of the evidence” means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true.

“Program” means one or more the following, as applicable: an elder group home as defined in Iowa Code section 231B.1 and 481—Chapter 68, an assisted living program as defined in Iowa Code section 231C.1 and 481—Chapter 69, or adult day services as defined in Iowa Code section 231D.1 and 481—Chapter 70.

“Qualified professional” means a facility plant engineer familiar with the type of program being provided, or a licensed plumbing, heating, cooling, or electrical contractor who furnishes regular service to such equipment.

“Recognized accrediting entity” means a nationally recognized accrediting entity that the department recognizes as having specific program standards equivalent to the program standards established by the department.

“Regulatory insufficiency” means a violation of an applicable requirement.

“Remodeling” means a modification of any part of an existing building, an addition of a new wing or floor to an existing building, or a conversion of an existing building.

“Routine” means more often than not or on a regular customary basis.

“Self-administration” means a tenant’s taking personal responsibility for all phases of medication except for any component assigned to the program under medication setup, and may include the tenant’s use of an automatic pill dispenser.

“Service plan” means the document that defines all services necessary to meet the needs and preferences of a tenant, whether or not the services are provided by the program or other service providers.

“Significant change” means a major decline or improvement in the tenant’s status which does not normally resolve itself without further interventions by staff or by implementing standard disease-related clinical interventions that have an impact on the tenant’s mental, physical, or functional health status.

“Substantial compliance” means a level of compliance with applicable requirements such that any identified regulatory insufficiency poses no greater risk to tenant health or safety than the potential for causing minimal harm.

“Tenant” means an individual who receives services through a program. In the context of adult day services, “tenant” means a participant as defined in 481—Chapter 70.

“Tenant advocate” means the office of long-term care resident’s advocate established in Iowa Code section 231.42.

“Tenant’s legal representative” means a person appointed by the court to act on behalf of a tenant or a person acting pursuant to a power of attorney. In the context of adult day services, “tenant’s legal representative” means a participant’s legal representative as defined in 481—Chapter 70.

“Waiver” means action taken by the department that suspends in whole or in part the requirements or provisions of a rule.

481—67.2(231B,231C,231D) Program policies and procedures, including those for incident reports. A program’s policies and procedures must meet the minimum standards set by applicable requirements. The program shall follow the policies and procedures established by a program. All programs shall have policies and procedures related to the reporting of incidents including allegations of dependent adult abuse.

67.2(1) The program’s policies and procedures on incident reports, at a minimum, shall include the following:

- a. The program shall have available incident report forms for use by program staff.
- b. An incident report shall be in detail and shall be provided on an incident report form.
- c. The person in charge at the time of the incident shall prepare and sign the report.

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d. The incident report shall include statements from individuals, if any, who witnessed the incident.

e. All accidents or unusual occurrences within the program's building or on the premises that affect tenants shall be reported as incidents.

f. A copy of the completed incident report shall be kept on file on the program's premises for a minimum of three years.

67.2(2) The program's policies and procedures on allegations of dependent adult abuse shall be consistent with Iowa Code chapter 235E and rules adopted pursuant to that chapter and, at a minimum, shall include:

- a.* Reporting requirements for staff and employees, and
- b.* Requirements that the victim and alleged abuser be separated.

481—67.3(231B,231C,231D) Tenant rights. All tenants have the following rights:

67.3(1) To be treated with consideration, respect, and full recognition of personal dignity and autonomy.

67.3(2) To receive care, treatment and services which are adequate and appropriate.

67.3(3) To receive respect and privacy in the tenant's medical care program. Personal and medical records shall be confidential, and the written consent of the tenant shall be obtained for their release to any individual, including family members, except as needed in case of the tenant's transfer to another health care facility or as required by law or a third-party payment contract.

67.3(4) To be free from mental and physical abuse.

67.3(5) To receive from the manager and staff of the program a reasonable response to all requests.

67.3(6) To associate and communicate privately and without restriction with persons and groups of the tenant's choice, including the tenant advocate, on the tenant's initiative or on the initiative of the persons or groups at any reasonable hour.

67.3(7) To manage the tenant's own financial affairs unless a tenant's legal representative has been appointed for the purpose of managing the tenant's financial affairs.

67.3(8) To present grievances and recommend changes in program policies and services, personally or through other persons or in combination with others, to the program's staff or person in charge without fear of reprisal, restraint, interference, coercion, or discrimination.

481—67.4(231B,231C,231D) Program notification to the department. The director or the director's designee shall be notified within 24 hours, or the next business day, by the most expeditious means available:

67.4(1) Of any accident causing major injury. For the purposes of this rule, "major injury" shall also mean a substantial injury.

a. "Major injury" shall be defined as any injury which:

- (1) Results in death; or
- (2) Requires admission to a higher level of care for treatment, other than for observation; or
- (3) Requires consultation with the attending physician, designee of the physician, or physician extender who determines, in writing on a form designated by the department, that an injury is a "major injury" based upon the circumstances of the accident, the previous functional ability of the tenant, and the tenant's prognosis.

b. The following are not reportable accidents:

- (1) An ambulatory tenant who falls when neither the program nor its employees have culpability related to the fall, even if the tenant sustains a major injury; or
- (2) Spontaneous fractures; or
- (3) Hairline fractures.

67.4(2) When damage to the program is caused by a natural or other disaster.

67.4(3) When there is an act that causes major injury to a tenant or when a program has knowledge of a pattern of acts committed by the same tenant on another tenant that results in any physical injury. For the purposes of this subrule, "pattern" means two or more times within a 30-day period.

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67.4(4) When a tenant elopes from a program.

67.4(5) When a tenant attempts suicide, regardless of injury.

67.4(6) When a fire occurs in a program and the fire requires the notification of emergency services, requires full or partial evacuation of the program, or causes physical injury to a tenant.

67.4(7) When a defect or failure occurs in the fire sprinkler or fire alarm system for more than 4 hours in a 24-hour period. (This reporting requirement is in addition to the requirement to notify the state fire marshal.)

NOTE: Additional reporting requirements are created by other rules and statutes, including but not limited to Iowa Code chapters 235B and 235E, which require reporting of dependent adult abuse.

481—67.5(231B,231C,231D) Medications. Each program shall follow its own written medication policy, which shall include the following:

67.5(1) The program shall not prohibit a tenant from self-administering medications.

67.5(2) A tenant shall self-administer medications unless:

a. The tenant or the tenant's legal representative delegates in the occupancy agreement or signed service plan any portion of medication setup to the program.

b. The tenant delegates medication setup to someone other than the program.

c. The program assumes partial control of medication setup at the direction of the tenant. The medication plan shall not be implemented by the program unless the program's registered nurse deems it appropriate under applicable requirements, including those in 655—Chapter 6 governing nurse delegation of duties, hereafter "nurse delegation." The program's registered nurse must agree to the medication plan.

67.5(3) A tenant shall keep medications in the tenant's possession unless the tenant or the tenant's legal representative, if applicable, delegates in the occupancy agreement or signed service plan partial or complete control of medications to the program. The service plan shall include the tenant's choice related to storage.

67.5(4) When a tenant has delegated medication administration to the program, the program shall maintain a list of the tenant's medications. If the tenant self-administers medications, the tenant may choose to maintain a list of medications in the tenant's apartment or to disclose a current list of medications to the program for the purpose of emergency response. If the tenant discloses a medication list to the program in case of an emergency, the tenant remains responsible for the accuracy of the list.

67.5(5) When medication setup is delegated to the program by the tenant, staff via nurse delegation may transfer medications from the original prescription containers or unit dosing into medication reminder boxes or medication cups. If medications are dispensed from a medication cart, the tenant's presence is required for medication setup.

67.5(6) When medications are administered traditionally by the program:

a. The administration of medications shall be provided by a registered nurse, licensed practical nurse or advanced registered nurse practitioner registered in Iowa or by unlicensed assistive personnel in accordance with requirements in 655—Chapter 6 governing nurse delegation.

b. Medication shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.

c. The program shall maintain a list of each tenant's medications and document the medications administered.

67.5(7) Narcotics protocol shall be determined by the program's registered nurse.

481—67.6(231B,231C,231D) Another business or activity located in a program.

67.6(1) A business or activity serving persons other than tenants of a program is allowed in a designated part of the physical structure in which the program is located if the other business or activity meets the requirements of applicable state and federal codes, administrative rules, and federal regulations.

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67.6(2) A business or activity conducted in the designated part of the physical structure in which the program is located shall not interfere with the use of the program by tenants or with services provided to tenants or disturb tenants.

67.6(3) A business or activity conducted in the designated part of the physical structure in which the program is located shall not reduce access, space, services, or staff available to tenants or necessary to meet the needs of tenants.

481—67.7(231B,231C,231D) Waiver of criteria for retention of a tenant in the program.

67.7(1) *Time-limited waiver.* Upon receipt of a program's request for waiver of the criteria for retention of a tenant, the department may grant a waiver of the criteria under applicable requirements for a time-limited basis. Absent extenuating circumstances, a waiver of the criteria for retention of a tenant is limited to a period of six months or less.

67.7(2) *Waiver petition procedures.* The following procedures shall be used to request and to receive approval of a waiver from criteria for the retention of a tenant:

a. A program shall submit the waiver request on a form and in a manner designated by the department as soon as it becomes apparent that a tenant exceeds retention criteria pursuant to an evaluation by a health care or human service professional.

b. The department shall respond in writing to a waiver request within 15 working days of receipt of all required documentation. In consultation with the program, the department may take an additional 15 working days to report its determination regarding the waiver request.

c. The program shall provide to the department within 5 working days written notification of any changes in the condition of the tenant as described in the approved waiver request.

67.7(3) *Factors for consideration for waiver of criteria for retention of a tenant.* In addition to the criteria established in Iowa Code subsection 17A.9A(2), the following factors may be demonstrative in determining whether the criteria for issuance of a waiver have been met.

a. It is the informed choice of the tenant or the tenant's legal representative, if applicable, to remain in the program;

b. The program is able to provide the staff necessary to meet the tenant's service needs in addition to the service needs of the other tenants;

c. The department shall only issue a waiver if the waiver will not jeopardize the health, safety, security or welfare of the tenant, program staff, or other tenants; and

d. The tenant has been diagnosed with a terminal illness and has been admitted to hospice, or the tenant exceeds the criteria for retention and admission for a temporary period of less than six months. A terminal diagnosis means the tenant is within six months of the end of life.

67.7(4) *Conditional waiver.* A conditional waiver may be granted contingent upon the department's receipt of additional information or performance of monitoring.

a. If a waiver has been in effect for six months, monitoring shall be conducted to determine whether the tenant meets the criteria to continue on a waiver.

b. The department may seek additional information during the period to determine if a waiver should be granted.

481—67.8(231B,231C,231D) All other waiver requests. Waiver requests relating to topics other than retention of a tenant in a program shall be filed in accordance with 481—Chapter 6.

481—67.9(231B,231C,231D) Staffing.

67.9(1) A sufficient number of trained staff shall be available at all times to fully meet tenants' identified needs.

67.9(2) All staff shall be able to implement the accident, fire safety, and emergency procedures.

67.9(3) Pursuant to Iowa Code section 135C.33, a prospective employee of a program shall have a criminal history check, dependent adult abuse check, and child abuse check performed before the prospective employee begins work. If a prospective employee has a criminal history or an abuse history, the prospective employee shall not be employed by the program unless the department of human services

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has performed an evaluation and determined that the record does not warrant the employment prohibition. Proof of the preemployment background check shall be maintained in the program's employee file. The program must meet all requirements of Iowa Code section 135C.33 and administrative rules adopted pursuant to Iowa Code section 135C.33.

67.9(4) The program shall have training and staffing plans on file and shall maintain documentation of training received by program staff.

67.9(5) Any nursing services shall be provided in accordance with Iowa Code chapter 152 and 655—Chapter 6.

67.9(6) A staff member shall not be designated as attorney-in-fact, guardian, conservator, or representative payee for a tenant unless the staff member is related to the tenant by blood, marriage, or adoption.

481—67.10(17A,231B,231C,231D) Monitoring, plans of correction, and requests for reconsideration.

67.10(1) *Frequency of monitoring.* The department shall monitor a certified program at least once during the program's certification period.

67.10(2) *Accessibility of records and program areas.* All records and areas of the program deemed necessary to determine compliance with the applicable requirements for certification shall be accessible to the department for purposes of monitoring.

67.10(3) *Standards for determining whether a regulatory insufficiency exists.* The department shall use a preponderance-of-the-evidence standard when determining whether a regulatory insufficiency exists. A preponderance-of-the-evidence standard does not require that the monitor shall have personally witnessed the alleged violation.

67.10(4) *Preliminary report.* When a regulatory insufficiency is found, a preliminary report detailing the insufficiency shall be sent by the department to the program within 20 working days. The department shall send the report by certified mail.

67.10(5) *Plan of correction.* Within 10 working days following receipt of the preliminary report, the program shall submit a plan of correction to the department.

a. Contents of plan. The plan of correction shall include: elements detailing how the program will correct each regulatory insufficiency, what measures will be taken to ensure the problem does not recur, how the program plans to monitor performance to ensure compliance, and any other required information.

b. Review of plan. The department shall review the plan of correction within 10 working days. The department may request additional information or suggest revisions to the plan. Once an acceptable plan of correction has been received, the department shall issue a final report within 10 working days and shall determine whether any enforcement action related to the program's continued certification is necessary.

67.10(6) *Request for reconsideration.* Within 10 working days of receiving the preliminary report, the program may submit a request for reconsideration in response to a regulatory insufficiency. Regardless of whether a request for reconsideration is submitted, a plan of correction must be submitted.

a. The request may include additional information to support the request for reconsideration.

b. The department shall review the request for reconsideration and additional information and determine whether to withdraw or modify the regulatory insufficiency.

c. The department shall accept a request for reconsideration if the additional information submitted by the program shows by a preponderance of the evidence that the regulatory insufficiency did not exist at the time of the monitoring.

d. The department's decision regarding a request for reconsideration shall be reflected in the final report.

67.10(7) *Final report.* The final report issued after the plan of correction and request for reconsideration have been considered may be appealed in accordance with the department's appeal procedures in rule 481—67.13(17A,231B,231C,231D). The department shall issue a final report regarding a monitoring whether or not any regulatory insufficiency is found.

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67.10(8) *Monitoring revisit.* The department may conduct a monitoring revisit to ensure that the plan of correction has been implemented and the regulatory insufficiency has been corrected. A monitoring revisit by the department shall review the program prospectively from the date of the plan of correction to determine compliance.

481—67.11(231B,231C,231D) Complaint and program-reported incident report investigation procedure.

67.11(1) *Complaints.* The process for filing a complaint is as follows:

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

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

c. The complainant shall include as much of the following information as possible in the complaint: the complainant's name, address and telephone number; the complainant's relationship to the program or tenant; and the reason for the complaint. The complainant's name shall be confidential information and shall not be released by the department. The department shall act on anonymous complaints unless the department determines that the complaint is intended to harass the program. If the department, upon preliminary review, determines that the complaint is intended as harassment or is without reasonable basis, the department may dismiss the complaint.

67.11(2) *Program-reported incident reports.* Program-reported incident reports. When the program is required pursuant to applicable requirements to report an incident, the program shall make the report to the department via:

a. The Web-based reporting tool accessible from the following Internet site, https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the "Complaints" tab;

b. Mail by sending the complaint to the Department of Inspections and Appeals, Complaints Unit, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083;

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

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

67.11(3) *Time frames for investigation of complaints or program-reported incident reports.* Upon receipt of a complaint or program-reported incident report made in accordance with this rule, the department shall conduct a preliminary review of the complaint or report to determine if a potential regulatory insufficiency has occurred. If a potential regulatory insufficiency exists, the department shall institute a monitoring of the program within 20 working days unless there is the possibility of immediate danger, in which case the department shall institute a monitoring of the program within 2 working days of receipt of the complaint or incident report.

67.11(4) *Standard for determining whether a complaint is substantiated.* The department shall apply a preponderance-of-the-evidence standard in determining whether or not a complaint or program-reported incident report is substantiated.

67.11(5) *Notification of program and complainant.* The department shall notify the program and, if known, the complainant of the final report regarding the complaint investigation. The department and the program shall follow the procedures outlined in subrules 67.10(2) through 67.10(7).

67.11(6) *Notification of accrediting entity.* In addition, for any credible report of alleged improper or inappropriate conduct or conditions within an accredited program, the department shall notify the accrediting entity by the most expeditious means possible of any actions taken by the department with respect to certification enforcement.

67.11(7) *Notification of complainant when complaint not investigated.* The department shall notify the complainant, if known, if the department does not investigate a complaint. The reasons for not investigating the complaint shall be included in the notification.

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481—67.12(17A,231B,231C,231D) Enforcement action. In all cases, if a regulatory insufficiency has been identified, the program shall comply with the plan of correction requirements in subrule 67.10(5). In addition, the department may take enforcement actions pursuant to this rule as a result of the program's noncompliance with applicable requirements.

67.12(1) Types of enforcement action. The department's enforcement action may include: denial, suspension, or revocation of a certification; issuance of a conditional certification and the placement of conditions upon a certificate such as requiring additional training; restriction of the program from accepting additional tenants for a period of time; or any other action or combination of actions deemed appropriate by the department.

67.12(2) Conditional certification. In lieu of denial, suspension or revocation of a certificate, the department may issue a conditional certification for a period of up to one year. A conditional certificate shall be issued only when regulatory insufficiencies pose no greater risk to tenant health or safety than the potential for causing minimal harm.

a. The department shall specify the regulatory insufficiency in the notice of enforcement action.

b. The department shall notify the tenant advocate when a conditional certificate is issued and when a conditional certification is lifted.

c. During the period of a conditional certification, the department shall conduct a monitoring to verify compliance prior to making the final certification decision.

d. The department shall issue reports pursuant to rule 481—67.10(17A,231B,231C,231D).

e. Failure by the program to adhere to the plan of correction may result in suspension or revocation of the conditional certification and may result in further enforcement action as available under applicable requirements.

f. A program must be in substantial compliance with applicable requirements before the removal of a conditional certificate by the department.

67.12(3) Civil penalties.

a. *When civil penalties may be issued.* Civil penalties may be issued when the director finds that any of the following have occurred:

(1) Noncompliance results in imminent danger or substantial probability of resultant death or physical harm. A program that is in noncompliance with applicable requirements and the noncompliance results in imminent danger or a substantial probability of resultant death or physical harm to a tenant may be assessed a civil penalty of not more than \$10,000.

(2) A program has failed to comply, and the noncompliance has a direct relationship to the health, safety, or security of tenants. Following receipt of a final report from the department, a program which fails or refuses to comply with applicable requirements within prescribed time frames established by the department or approved by the department in the program's plan of correction and the noncompliance has a direct relationship to the health, safety, or security of tenants may be assessed a civil penalty of not more than \$5,000.

(3) The program prevents or interferes with enforcement. A program that prevents, interferes with or attempts to impede in any way any duly authorized representative of the department in the lawful enforcement of applicable requirements may be assessed a civil penalty of not more than \$1,000.

b. *Factors in determining the amount of a civil penalty.* The department shall consider the following factors when determining the amount of a civil penalty:

(1) The frequency and length of time the regulatory insufficiency occurred (i.e., whether the regulatory insufficiency was an isolated or a widespread occurrence, practice, or condition);

(2) The past history of the program as it relates to the nature of the regulatory insufficiency (the department shall not consider more than the current certification period and the immediate previous certification period);

(3) The culpability of the program as it relates to the reasons the regulatory insufficiency occurred;

(4) The extent of any harm to the tenants or the effect on the health, safety, or security of the tenants which resulted from the regulatory insufficiency;

(5) The relationship of the regulatory insufficiency to any other types of regulatory insufficiencies which have occurred in the program;

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(6) The actions of the program after the occurrence of the regulatory insufficiency, including when corrective measures, if any, were implemented and whether the program notified the director as required;

(7) The accuracy and extent of records kept by the program which relate to the regulatory insufficiency, and the availability of such records to the department;

(8) The rights of tenants to make informed decisions;

(9) Whether the program made a good-faith effort to address a high-risk tenant's specific needs and whether the evidence substantiates this effort.

c. Civil penalties due. The department may assess a civil penalty, which shall be paid to the department within 30 days following the program's receipt of the final notice of the enforcement action. The program may appeal the decision in accordance with rule 481—67.13(17A,231B,231C,231D).

d. Automatic reduction of civil penalty if paid timely and no hearing is requested or request for hearing is withdrawn. If a program has been assessed a civil penalty, does not request a formal hearing pursuant to rule 481—67.13(17A,231B,231C,231D) or has withdrawn the request for a formal hearing within 30 days of the notice or service, and the civil penalty is paid within 30 days of receipt of notice or service, the amount of the civil penalty shall be reduced by 35 percent. The notice of civil penalty shall include a statement to this effect.

e. Suspension of civil penalty pending hearing. If the program appeals the civil penalty, the civil penalty shall be deemed suspended until a final agency decision is reached in accordance with rule 481—67.13(17A,231B,231C,231D) and 481—Chapter 10.

f. Duplicate penalties prohibited. The department shall not impose duplicate civil penalties on a program for the same set of facts and circumstances.

67.12(4) Immediate suspension of certificate. When the department finds that an imminent danger to the health or safety of tenants of a program exists which requires action on an emergency basis, the department may direct removal of all tenants from the program and suspend the certificate or require additional remedies to ensure the ongoing safety of the program's tenants prior to a hearing.

67.12(5) Immediate imposition of enforcement action. When the department finds that an imminent danger to the health or safety of tenants exists which requires action on an emergency basis, the department may immediately impose a conditional certificate and accompanying conditions upon the program in lieu of immediate suspension of the certificate and removal of the tenants from the program if the department finds that tenants' health and safety would still be protected. The program may request a hearing pursuant to rule 481—67.13(17A,231B,231C,231D) on the immediate enforcement action, but the immediate enforcement action remains in effect regardless of the request for hearing.

481—67.13(17A,231B,231C,231D) Notice, hearings, and appeals.

67.13(1) Effective date and status of enforcement action if a hearing is requested. An enforcement action described in rule 481—67.12(17A,231B,231C,231D) shall be effected by delivery of a notice of enforcement action setting forth the particular reasons for such action to the applicant or certificate holder by restricted certified mail, return receipt requested, or by personal service. The enforcement action shall become effective 30 days after the mailing or service of the notice unless the applicant or certificate holder, within such 30-day period gives the department written notice requesting a hearing, in which case the notice shall be deemed to be suspended. If, however, an enforcement action has been implemented immediately in accordance with subrule 67.12(4) or 67.12(5), the enforcement action remains in effect regardless of a request for hearing.

67.13(2) Final report containing a finding of a regulatory insufficiency. A final report issued pursuant to rule 481—67.10(17A,231B,231C,231D) shall be delivered to the applicant or certificate holder by restricted certified mail, return receipt requested, or by personal service. If a regulatory insufficiency is noted, the final report shall include particular reasons for the finding that a regulatory insufficiency exists.

67.13(3) Hearings shall be conducted by the administrative hearings division of the department pursuant to Iowa Code chapter 17A and 481—Chapter 10.

67.13(4) At any time during or prior to a hearing, the department may rescind or modify the notice of enforcement action or final report.

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67.13(5) Appeals. All appeals authorized under applicable requirements shall be conducted pursuant to 481—Chapter 10.

481—67.14(17A,231B,231C,231D) Judicial review. Procedures for judicial review shall be conducted pursuant to 481—Chapter 10.

481—67.15(17A,231C,231D) Emergency removal of tenants. If the department determines that the health or safety of tenants is in jeopardy and the tenants need to be removed from the program, the department shall use the following procedures to ensure a safe and orderly transfer.

67.15(1) The department shall notify the department of human services, the tenant advocate, the appropriate area agency on aging, and other agencies as necessary and appropriate:

- a. To alert them to the need to transfer tenants from a program;
- b. To request assistance in identifying alternative programs or other appropriate settings; and
- c. To contact the tenants and their legal representatives or family members, if applicable, and others as appropriate, including health care professionals.

67.15(2) The department shall notify the program of the immediate need to transfer tenants and of any assistance available, in coordination with the appropriate parties under subrule 67.15(1).

67.15(3) The department, in conjunction with other agencies as necessary and appropriate, shall proceed with the transfer of tenants.

481—67.16(231C) Nursing assistant work credit.

67.16(1) A person who is certified as a nursing assistant, including a medication aide, and who is supervised by a registered nurse may submit information to the department to obtain credit toward maintaining certification for working in a program. A program may add an employee to the direct care worker registry by calling (515)281-4077 or by registering through the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the “Documents” tab.

67.16(2) A program shall complete and submit to the department a direct care worker registry application for each nursing assistant who works in the program. A registered nurse employed by the program shall supervise the nursing assistant. The application may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the “Documents” tab.

67.16(3) A program shall complete and submit to the department a direct care worker registry quarterly employment report whenever a change in the employment of a certified nursing assistant occurs. The report form may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do, under the “Documents” tab.

481—67.17(231B,231C,231D) Public or confidential information.

67.17(1) Public information.

a. *Public disclosure of findings.* The program shall post a notice stating that copies of the final report resulting from a monitoring are available via the department’s Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do. The program shall post the notice in a prominent location on the premises of the program. Copies shall also be available upon request from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; telephone (515)281-6325.

- b. *Open records.* The following records are open records available for inspection:
- (1) Certification applications, certification status, and accompanying materials;
 - (2) Final findings of state monitorings, including a monitoring that results from a complaint or program-reported incident;
 - (3) Reports from the state fire marshal;
 - (4) Plans of correction submitted by a program;
 - (5) Official notices of certification sanctions, including enforcement actions;

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(6) Findings of fact, conclusions of law, decisions and orders issued pursuant to rules 481—67.10(17A,231B,231C,231D), 481—67.12(17A,231B,231C,231D), and 481—67.13(17A,231B,231C,231D);

(7) Waivers, including the department's approval and denial letter and any letter requesting the waiver.

67.17(2) Confidential information. Confidential information includes the following:

a. Information that does not comprise a final report resulting from a monitoring, complaint investigation, or program-reported incident investigation. Information which does not comprise a final report may be made public in a legal proceeding concerning a denial, suspension or revocation of certification;

b. Names of all complainants;

c. Names of tenants of a program, identifying medical information, copies of documentation appointing a legal representative, and the address of anyone other than an owner or operator; and

d. Social security numbers or employer identification numbers (EIN).

67.17(3) Redaction of confidential information. If a record normally open for inspection contains confidential information, the confidential information shall be redacted before the records are provided for inspection.

These rules are intended to implement Iowa Code chapters 231B, 231C and 231D.

ARC 7878B**INSPECTIONS AND APPEALS DEPARTMENT[481]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 231C.3, the Department of Inspections and Appeals hereby gives Notice of Intended Action to adopt new Chapter 69, "Assisted Living Programs," Iowa Administrative Code.

These rules are proposed pursuant to 2007 Iowa Acts, Senate File 601, which transferred the regulatory authority for the elder group homes, assisted living programs, and adult day services from the Department of Elder Affairs to the Department of Inspections and Appeals. Since that time, the Department has been working with stakeholder groups to develop the new chapter included in this Notice of Intended Action. The work with stakeholder groups has included written comments on two draft versions of the proposed rules, collaboration sessions across Iowa with over 200 participants, and presentations on the draft rules to industry groups. The Department has also submitted a Notice of Intended Action published herein as **ARC 7877B** that contains general provisions for elder group homes, assisted living programs, and adult day services.

The rules in Chapter 69 relate specifically to assisted living programs and will supersede the Department of Elder Affairs' current chapter on assisted living programs, 321—Chapter 25.

Any interested person may make written suggestions or comments on these proposed rules on or before July 7, 2009. Such written materials should be sent to Steven Mandernach, Administrative Rules Coordinator, Department of Inspections and Appeals, 321 E. 12th Street, Third Floor, Lucas State Office Building, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-6863 or by E-mail to steven.mandernach@dia.iowa.gov.

Also, a joint public hearing regarding these proposed rules and the rules proposed in **ARC 7877B** will be held on July 10, 2009, at 3 p.m., at which time persons may present their views either orally or in

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writing. The hearing will be conducted over the Iowa Communications Network (ICN) at the following locations:

- ICN Room, Sixth Floor, Lucas State Office Building, 321 E. 12th Street, Des Moines
- Room 118, Iowa Lakes Community College, 1900 N. Grand Avenue, Spencer
- Room 024, Looft Hall, Iowa Western Community College, 2700 College Road, Council Bluffs
- Room 110, Tama Hall, Hawkeye Community College, 1501 E. Orange Road, Waterloo
- Meeting Room D, Iowa City Public Library, 123 S. Linn Street, Iowa City

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 proposed rules.

Any person who intends to attend the public hearing and who has special requirements, such as those relating to hearing or mobility impairments, should contact the Department to advise of specific needs.

These rules are intended to implement Iowa Code chapter 231C.

The following amendment is proposed.

Adopt the following **new** 481—Chapter 69:

CHAPTER 69
ASSISTED LIVING PROGRAMS

481—69.1(231C) Definitions. In addition to the definitions in 481—Chapter 67 and Iowa Code chapter 231C, the following definitions apply.

“Accredited” means that the program has received accreditation from an accreditation entity recognized in subrule 69.14(1).

“Applicable requirements” means Iowa Code chapter 231C, this chapter, and 481—Chapter 67 and includes any other applicable administrative rules and provisions of the Iowa Code.

“Assisted living” means provision of housing with services, which may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living, to three or more tenants in a physical structure which provides a homelike environment. “Assisted living” also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. “Assisted living” includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included. “Assisted living” includes 24 hours per day response staff to meet scheduled and unscheduled or unpredictable needs in a manner that promotes maximum dignity and independence and provides supervision, safety, and security.

“CARF” means the Commission on Accreditation of Rehabilitation Facilities.

“Cognitive disorder” means a disorder characterized by cognitive dysfunction presumed to be the result of illness that does not meet the criteria for dementia, delirium, or amnesic disorder.

“Dementia-specific assisted living program” means an assisted living program certified under this chapter that:

1. Serves fewer than 55 tenants and has 5 or more tenants who have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
2. Serves 55 or more tenants and 10 percent or more of the tenants have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
3. Holds itself out as providing specialized care for persons with dementia, such as Alzheimer’s disease, in a dedicated setting.

“Dwelling unit” means an apartment, group of rooms or single room which is occupied as separate living quarters or, if vacant, is intended for occupancy as separate living quarters, in which a tenant can live and sleep separately from any other persons in the building, and which has direct access from the outside of the building or through a common hall.

“In the proximate area” means located within a five minutes or less response time.

“Maximal assistance with activities of daily living” means routine total dependence on staff for the performance of a minimum of four activities of daily living for a period that exceeds 21 days.

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“*Medically unstable*” means that a tenant has a condition or conditions:

1. Indicating physiological frailty;
 2. Resulting in three or more significant hospitalizations within a consecutive three-month period;
- and
3. Requiring frequent supervision of the tenant for more than 21 days by a registered nurse.

For example, a tenant who has a condition such as congestive heart failure which results in three or more hospitalizations during a quarter and which requires that the tenant receive frequent supervision may be considered medically unstable.

“*Nonaccredited*” means that the program has been certified under the provisions of this chapter but has not received accreditation from an accreditation entity recognized in subrule 69.14(1).

“*Program*” means an assisted living program.

“*Unmanageable incontinence*” means a condition that requires staff provision of total care for an incontinent tenant who lacks the ability to assist in bladder or bowel continence care.

“*Unmanageable verbal abuse*” means repeated verbalizations against tenants or staff that persist despite all interventions and that negatively affect the program. “Unmanageable verbal abuse” includes but is not limited to threats, frequent use of profane language, or unwelcome sexually oriented remarks.

481—69.2(231C) Program certification. A program may obtain certification by meeting all applicable requirements. In addition, a program may be voluntarily accredited by a recognized accreditation entity. For the purpose of these rules, certification is equivalent to licensure.

69.2(1) Posting requirements. A program’s current certificate shall be visibly displayed within the designated operation area of the program. In addition, the latest monitoring report, state fire marshal report, and food establishment inspections report issued pursuant to Iowa Code chapter 137F shall be made available to the public by the program upon request.

69.2(2) Dementia-specific programs and door alarms. If a program meets the definition of a dementia-specific assisted living program during two sequential certification monitorings, the program shall meet all requirements for a dementia-specific program, including the requirements set forth in rule 481—69.30(231C), subrules 69.29(2) and 69.29(4), paragraph 69.35(1) “d,” and subrule 69.32(2), which includes the requirements relating to door alarms.

481—69.3(231C) Certification of a nonaccredited program—application process.

69.3(1) The applicant shall complete an application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

69.3(2) The applicant shall submit one copy of the completed application and all supporting documentation to the department at the above address at least 90 calendar days prior to the expected date of beginning operation.

69.3(3) The appropriate fee as stated in Iowa Code section 231C.18 shall accompany each application and be payable by check or money order to the Department of Inspections and Appeals. Fees are nonrefundable.

69.3(4) The department shall consider the application when all supporting documents and fees are received.

481—69.4(231C) Nonaccredited program—application content. An application for certification or recertification of a nonaccredited program shall include the following:

69.4(1) A list that includes the names, addresses, and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the changes.

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69.4(2) A statement affirming that the individuals listed in subrule 69.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

69.4(3) A statement disclosing whether any of the individuals listed in subrule 69.4(1) have or have had an ownership interest in an assisted living program, adult day services program, elder group home, home health agency, licensed health care facility as defined in Iowa Code section 135C.1 or licensed hospital as defined in Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

69.4(4) The policy and procedure for evaluation of each tenant. A copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each tenant should be included.

69.4(5) The policy and procedure for service plans.

69.4(6) The policy and procedure for addressing medication needs of tenants.

69.4(7) The policy and procedure for accidents and emergency response.

69.4(8) The policies and procedures for food service, including those relating to staffing, nutrition, menu planning, therapeutic diets, and food preparation, service and storage.

69.4(9) The policy and procedure for activities.

69.4(10) The policy and procedure for transportation.

69.4(11) The policy and procedure for staffing and training.

69.4(12) The policy and procedure for emergencies, including natural disasters. The policy and procedure shall include an evacuation plan and procedures for notifying legal representatives in emergency situations as applicable.

69.4(13) The policy and procedure for managing risk and upholding tenant autonomy when tenant decision making may result in poor outcomes for the tenant or others.

69.4(14) The tenant occupancy agreement and all attachments.

69.4(15) If the program contracts for personal care or health-related care services from a certified home health agency, a mental health center or a licensed health care facility, a copy of that entity's current license or certification.

69.4(16) A copy of the state license for the entity that provides food service, whether the entity is the program or an outside entity or a combination of both.

69.4(17) The fee set forth in Iowa Code section 231C.18.

481—69.5(231C) Initial certification process for a nonaccredited program.

69.5(1) Upon receipt of all completed documentation, including state fire marshal approval and structural and evacuation review approval, the department shall determine whether or not the proposed program meets applicable requirements.

69.5(2) If, based upon the review of the complete application including all required supporting documents, the department determines the proposed program meets the requirements for certification, a provisional certification shall be issued to the program to begin operation and accept tenants.

69.5(3) Within 180 calendar days following issuance of provisional certification, the department shall conduct a monitoring to determine the program's compliance with applicable requirements.

69.5(4) If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

69.5(5) The department shall make a final certification decision based on the results of the monitoring and review of an acceptable plan of correction.

69.5(6) The department shall notify the program of a final certification decision within 10 working days following the finalization of the monitoring report or receipt of an acceptable plan of correction, whichever is applicable.

69.5(7) If the decision is to continue certification, the department shall issue a full two-year certification effective from the date of the original provisional certification.

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481—69.6(231C) Expiration of the certification of a nonaccredited program.

69.6(1) Unless conditionally issued, suspended or revoked, certification of a program shall expire at the end of the time period specified on the certificate.

69.6(2) The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.

481—69.7(231C) Recertification process for a nonaccredited program. To obtain recertification, a program shall:

69.7(1) Submit one copy of the completed application, including the information required in rule 481—69.4(231C), associated documentation, and the recertification fee as listed in Iowa Code section 231C.18 to the department at the address stated in subrule 69.3(1) at least 90 calendar days prior to the expiration of the program's certification. The program need not submit policies and procedures that have been previously submitted to the department and remain unchanged. The program shall provide a list of the policies and procedures that have been previously submitted and are not being resubmitted.

69.7(2) Submit additional documentation that each of the following has been inspected by a qualified professional and found to be maintained in conformance with manufacturer's recommendations and nationally recognized standards: heating system, cooling system, water heater, electrical system, plumbing, sewage system, artificial lighting, and ventilation system; and, if located on site, garbage disposal, kitchen appliances, washing machines and dryers, and elevators.

481—69.8(231C) Notification of recertification for a nonaccredited program.

69.8(1) The department shall review the application and associated documentation and fees. If the application is incomplete, the department shall contact the program to request the additional information. After all finalized documentation is received, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements.

69.8(2) The department shall conduct a monitoring of the program between 60 and 90 days prior to expiration of the program's certification.

69.8(3) If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

69.8(4) If no regulatory insufficiency is identified as a result of the monitoring, the department shall issue a report of the findings with the final recertification decision.

69.8(5) If the decision is to recertify, the department shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

69.8(6) If the decision is to deny recertification, the department shall issue a notice of denial and provide the program the opportunity for a hearing pursuant to rule 481—67.13(17A,231B,231C,231D).

69.8(7) If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

481—69.9(231C) Certification or recertification of an accredited program—application process.

69.9(1) An applicant for certification or recertification of a program accredited by a recognized accrediting entity shall:

a. Submit a completed application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at https://dia-hfd.iowa.gov/DIA_HFD/Home.do; by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

b. Submit a copy of the current accreditation outcome from the recognized accrediting entity.

c. Apply for certification or recertification within 90 calendar days following verification of compliance with life safety requirements pursuant to this chapter.

d. Maintain compliance with life safety requirements pursuant to this chapter.

e. Submit the appropriate fees as set forth in Iowa Code section 231C.18.

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69.9(2) The department shall not consider an application until it is complete and includes all supporting documentation and the appropriate fees.

481—69.10(231C) Certification or recertification of an accredited program—application content. An application for certification or recertification of an accredited program shall include the following:

69.10(1) A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the change.

69.10(2) A statement affirming that the individuals listed in subrule 69.10(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

69.10(3) A statement disclosing whether any of the individuals listed in subrule 69.10(1) have or have had an ownership interest in a program, adult day services program, elder group home, home health agency, licensed health care facility as defined under Iowa Code section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

69.10(4) A copy of the current accreditation outcome from the recognized accrediting entity.

481—69.11(231C) Initial certification process for an accredited program.

69.11(1) Within 20 working days of receiving all finalized documentation, including state fire marshal approval, the department shall determine and notify the accredited program whether or not the accredited program meets applicable requirements and whether or not certification will be issued.

69.11(2) If the decision is to certify, a certification shall be issued for the term of the accreditation not to exceed three years, unless the certification is conditionally issued, suspended or revoked by either the department or the recognized accrediting entity.

69.11(3) If the decision is to deny certification, the department shall provide the applicant an opportunity for hearing in accordance with rule 481—67.13(17A,231B,231C,231D).

69.11(4) Unless conditionally issued, suspended or revoked, certification for a program shall expire at the end of the time period specified on the certificate.

481—69.12(231C) Recertification process for an accredited program.

69.12(1) The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.

69.12(2) To obtain recertification, an accredited program shall submit one copy of the completed application, associated documentation, and the administrative fee as stated in Iowa Code section 231C.18 to the department at the address stated in subrule 69.9(1) at least 90 calendar days prior to the expiration of the program's certification.

69.12(3) Within 20 working days of receiving all finalized documentation, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements and make a recertification decision.

69.12(4) The department shall notify the accredited program within 10 working days of the final recertification decision.

a. If the decision is to recertify, a full certification shall be issued for the term of the accreditation not to exceed three years, unless the certification is conditionally issued, suspended or revoked by either the department or the recognized accrediting entity.

b. If the decision is to deny recertification, the department shall provide the applicant an opportunity for hearing in accordance with rule 481—67.13(17A,231B,231C,231D).

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69.12(5) If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

481—69.13(231C) Listing of all certified programs. The department shall maintain a list of all certified programs, which is available online at https://dia-hfd.iowa.gov/DIA_HFD/Home.do under the “Entities Book” tab.

481—69.14(231C) Recognized accrediting entity.

69.14(1) The department designates CARF as a recognized accrediting entity for programs.

69.14(2) To apply for designation by the department as a recognized accrediting entity for programs, an accrediting entity shall submit a letter of request, and its standards shall, at minimum, meet the applicable requirements for programs.

69.14(3) The designation shall remain in effect for as long as the accreditation standards continue to meet, at minimum, the applicable requirements for programs.

69.14(4) An accrediting entity shall provide annually to the department, at no cost, a current edition of the applicable standards manual and survey preparation guide, and training thereon, within 120 working days after the publications are released.

481—69.15(231C) Requirements for an accredited program. Each accredited program that is certified by the department shall:

69.15(1) Provide the department a copy of all survey reports including outcomes, quality improvement plans and annual conformance to quality reports generated or received, as applicable, within ten working days of receipt of the reports.

69.15(2) Notify the department by the most expeditious means possible of all credible reports of alleged improper or inappropriate conduct or conditions within the program and any actions taken by the accrediting entity with respect thereto.

69.15(3) Notify the department immediately of the expiration, suspension, revocation or other loss of the program’s accreditation.

481—69.16(231C) Maintenance of program accreditation.

69.16(1) An accredited program shall continue to be recognized for certification by the department if both of the following requirements are met:

a. The program complies with the requirements outlined in rule 481—69.15(231C).

b. The program maintains its voluntary accreditation status for the duration of the time-limited certification period.

69.16(2) A program that does not maintain its voluntary accreditation status must become certified by the department prior to any lapse in accreditation.

69.16(3) A program that does not maintain its voluntary accreditation status and is not certified by the department prior to any lapse in voluntary accreditation shall cease operation as a program.

481—69.17(231C) Transfer of certification.

69.17(1) Certification, unless conditionally issued, suspended or revoked, may be transferable to a new owner of a program. If the program’s certification has been conditionally issued, the new owner shall receive approval from the department prior to transfer of the certification.

69.17(2) The new owner is required to notify the department in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all applicable requirements for programs.

69.17(3) The department may conduct a monitoring within 90 days following a change in the program’s ownership or management corporation to ensure that the program complies with applicable requirements. If a regulatory insufficiency is found, the department shall take any necessary enforcement action authorized by applicable requirements.

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481—69.18(231C) Structural and life safety reviews of a building for a new program.

69.18(1) Before a building is constructed or remodeled for use in a new program, the department shall review the blueprints for compliance with requirements pursuant to this chapter. Construction or remodeling includes new construction, remodeling of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

69.18(2) A program applicant shall submit to the department blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in Iowa Code section 231C.18 to the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083.

69.18(3) Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

69.18(4) The department shall review the blueprints and notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

69.18(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to the department to state how any noncompliance will be resolved.

69.18(6) Upon final notification by the department that the blueprints meet structural and life safety requirements, construction or remodeling of the building may commence.

69.18(7) The department shall schedule an on-site visit of the building site with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the construction or remodeling process to ensure compliance with the approved blueprints. Any noncompliance must be resolved prior to approval for certification.

481—69.19(231C) Structural and life safety review prior to the remodeling of a building for a certified program.

69.19(1) Before a building for a certified program is remodeled, the department shall review the blueprints for compliance with requirements set forth in rule 481—69.35(231C). Remodeling includes modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

69.19(2) A certified program shall submit to the department blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in Iowa Code section 231C.18 to the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083.

69.19(3) Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

69.19(4) The department shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

69.19(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to the department in 20 working days to state how any noncompliance will be resolved.

69.19(6) Upon final notification by the department that the blueprints meet structural and life safety requirements, remodeling of the building may commence.

69.19(7) The department shall schedule an on-site visit of the building with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the remodeling process to ensure compliance with the approved blueprints. Any noncompliance must be resolved prior to approval for continued certification or recertification of the program.

481—69.20(231C) Cessation of program operation.

69.20(1) If a certified program ceases operation at any time prior to expiration of the program's certification, the program shall submit the certificate to the department. The program shall provide, at least 90 days in advance of closure, unless there is some type of emergency, written notification to the department and the tenant advocate of the date on which the program will cease operation.

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69.20(2) If a certified program plans to cease operation at the time the program's certification expires, the program shall provide written notice of this fact to the department and the tenant advocate at least 90 days prior to expiration of the certification.

69.20(3) At the time a program decides to cease operation, the program shall submit a plan to the department and make arrangements for the safe and orderly transfer of all tenants within the 90-day period specified by subrule 69.20(2).

69.20(4) The department may conduct monitoring during the 90-day period to ensure the safety of tenants during the transfer process.

69.20(5) The department may conduct an on-site visit to verify that the program has ceased operation in accordance with the notice provided by the program.

481—69.21(231C) Occupancy agreement.

69.21(1) The occupancy agreement shall be in 12-point type or larger, shall be written in plain language using commonly understood terms and, to the extent possible, shall be easy to understand by the tenant or the tenant's legal representative.

69.21(2) In addition to the requirements of Iowa Code section 231C.5, the written occupancy agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

- a. The telephone number for filing a complaint with the department.
- b. The telephone number for the office of the tenant advocate.
- c. The telephone number for reporting dependent adult abuse.
- d. A copy of the program's statement on tenants' rights.
- e. A statement that the tenant landlord law applies to assisted living programs.
- f. A statement that the program will notify the tenant at least 90 days in advance of any planned program cessation, except in cases of emergency.

69.21(3) The occupancy agreement shall be reviewed and updated as necessary to reflect any change in services or financial arrangements.

481—69.22(231C) Evaluation of tenant.

69.22(1) *Evaluation prior to occupancy or with significant change.* A program shall evaluate each prospective tenant's functional, cognitive and health status prior to the tenant's signing the occupancy agreement and taking occupancy of a dwelling unit in order to determine the tenant's eligibility for the program, including whether the services needed are available. The cognitive evaluation shall utilize a scored, objective tool. When the score from the cognitive evaluation indicates moderate cognitive decline and risk, the Global Deterioration Scale shall be used at all subsequent intervals. The evaluation shall be conducted by a health care professional or human service professional.

69.22(2) *Evaluation within 30 days of occupancy.* A program shall evaluate each tenant's functional, cognitive and health status within 30 days of occupancy and as needed with significant change, but not less than annually, to determine the tenant's continued eligibility for the program and to determine any changes to services needed. The evaluation shall be conducted by a health care professional or human service professional. A licensed practical nurse may complete the evaluation via nurse delegation when the tenant has not exhibited a significant change in status.

481—69.23(231C) Criteria for admission and retention of tenants.

69.23(1) *Persons who may not be admitted or retained.* A program shall not knowingly admit or retain a tenant who:

- a. Is bed-bound; or
- b. Requires routine, two-person assistance with standing, transfer or evacuation; or
- c. Is dangerous to self or other tenants or staff, including but not limited to a tenant who:
 - (1) Despite intervention chronically elopes, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or
 - (2) Displays behavior that places another tenant at risk; or

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- d.* Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
- e.* Is under the age of 18; or
- f.* Requires more than part-time or intermittent health-related care; or
- g.* Has unmanageable incontinence on a routine basis; or
- h.* Is medically unstable; or
- i.* Requires maximal assistance with activities of daily living.

69.23(2) *Disclosure of additional occupancy and transfer criteria.* A program may have additional occupancy or transfer criteria if the criteria are disclosed in the written occupancy agreement prior to the tenant's occupancy.

69.23(3) *Assistance with transfer from the program.* A program shall provide assistance to a tenant and the tenant's legal representative, if applicable, to ensure a safe and orderly transfer from the program when the tenant exceeds the program's criteria for admission and retention.

481—69.24(231C) Involuntary transfer from the program.

69.24(1) *Program initiation of transfer.* If a program initiates the involuntary transfer of a tenant and the action is not the result of a monitoring, including a complaint investigation or program-reported incident investigation, by the department and if the tenant or tenant's legal representative contests the transfer, the following procedures shall apply:

a. The program shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer the tenant, the reason for the transfer, and the contact information for the tenant advocate.

b. The program shall immediately provide to the tenant advocate, by certified mail, a copy of the notification.

c. Pursuant to statute, the tenant advocate shall offer the notified tenant or tenant's legal representative assistance with the program's internal appeal process. The tenant or tenant's legal representative is not required to accept the assistance of the tenant advocate.

d. If, following the internal appeal process, the program upholds the transfer decision, the tenant or tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

69.24(2) *Transfer pursuant to results of monitoring or complaint or program-reported incident investigation by the department.* If one or more tenants are identified as exceeding the admission and retention criteria for tenants and need to be transferred as a result of a monitoring or a complaint or incident investigation conducted by the department, the following procedures shall apply:

a. *Notification of the program.* Within 20 working days of the monitoring or complaint or program-reported incident investigation, the department shall notify the program, in writing, of the identification of any tenant who exceeds admission and retention criteria.

b. *Notification of others.* Each identified tenant, the tenant's legal representative, if applicable, and other providers of services to the tenant shall be notified of their opportunity to provide responses including: specific input, written comment, information and documentation directly addressing any agreement or disagreement with the identification. All responses shall be provided to the department within 10 days of receipt of the notice.

c. *Program agreement with the department's finding.* If the program agrees with the department's findings and the program begins involuntary transfer proceedings, the program's internal appeal process in subrule 69.24(1) shall be utilized for appeals.

d. *Program disagreement with the department's finding.* If the program does not agree with the department's finding that the tenant exceeds admission and retention criteria, the program may collect and submit all responses to the department, including those from other interested parties. In the program's response, the program shall identify the tenant, list the known responses from others, and note the program's agreement or disagreement with the responses from others. The program's response shall be submitted to the department within 10 working days of the receipt of the notice. Submission of a response does not eliminate the applicable requirements including submission of a plan of correction under 481—subrule 67.10(5). Other persons may also submit information directly to the department.

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(1) Consideration of response. Within 10 working days of receipt of the program's response for each identified tenant, the department shall consider the response and make a final finding regarding the continued retention of a tenant.

(2) Amending the regulatory insufficiency. If the department's determination is to amend the regulatory insufficiency based on the response, the department shall modify the report of findings.

(3) Retaining regulatory insufficiency. If the department retains the regulatory insufficiency, the department shall review the plan of correction in accordance with this chapter and 481—Chapter 67. The department shall notify the program of the opportunity to appeal the report findings as they relate to the admission and retention decision. In addition, the department shall provide to the tenant or the tenant's legal representative the contact information for the tenant advocate. A copy of the final report shall also be sent to the tenant advocate.

(4) Effect of the filing of an appeal. If an appeal is filed, the tenant who exceeds admission and retention criteria shall be allowed to continue living at the program until all administrative appeals have been exhausted. Appeals filed that relate to the tenant's exceeding admission and retention criteria shall be heard within 30 days of receipt, and appropriate services to meet the tenant's needs shall be provided during that period of time.

(5) Request for waiver of criteria for retention of a tenant in a program. To allow a tenant to remain in the program, the program may request a waiver of criteria for retention of a tenant pursuant to rule 481—67.7(231B,231C,231D) from the department within 10 working days of the receipt of the report.

481—69.25(231C) Tenant documents.

69.25(1) Documentation for each tenant shall be maintained by the program and shall include:

- a.* An occupancy record including the tenant's name, birth date, and home address; identification numbers; date of occupancy; name, address and telephone number of health professional(s); diagnosis; and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;
- b.* Application forms;
- c.* The initial evaluation and updates;
- d.* A nutritional assessment as necessary;
- e.* The initial individual service plan and updates;
- f.* Signed authorizations for permission to release medical information, photographs, or other media information as necessary;
- g.* A signed authorization for the tenant to receive emergency medical care if necessary;
- h.* A signed managed risk policy and signed managed risk consensus agreements, if any;
- i.* When any personal or health-related care is delegated to the program, the medical information sheet; documentation of health professionals' orders such as those for treatment, therapy, and medication; and anecdotal notes written by exception;
- j.* Medication lists, which shall be maintained in conformance with 481—subrule 67.5(4);
- k.* Advanced health care directives as applicable;
- l.* A complete copy of the tenant's occupancy agreement including any updates;
- m.* A written acknowledgment that the tenant or the tenant's legal representative, if applicable, has been fully informed of the tenant's rights;
- n.* A copy of guardianship, durable power of attorney for health care, power of attorney, or conservatorship or other documentation of a legal representative;
- o.* Incident reports involving the tenant, including but not limited to those related to medication errors, accidents, falls, and elopements;
- p.* A copy of waivers of admission or retention criteria, if any;
- q.* When the tenant is unable to advocate on the tenant's own behalf or the tenant has multiple service providers, including hospice care providers, accurate documentation of the completion of routine personal or health-related care is required on task sheets. If tasks are doctor-ordered, the tasks shall be part of the medication administration records (MARs); and
- r.* Authorizations for the release of information, if any.

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69.25(2) The program records relating to a tenant shall be retained for a minimum of three years after the transfer or death of the tenant.

69.25(3) All records shall be protected from loss, damage and unauthorized use.

481—69.26(231C) Service plans.

69.26(1) A service plan shall be developed for each tenant based on the evaluations conducted in accordance with subrules 69.22(1) and 69.22(2) and shall be designed to meet the specific service needs of the individual tenant. The service plan shall subsequently be updated at least annually and whenever changes are needed.

69.26(2) Prior to the tenant's signing the occupancy agreement and taking occupancy of a dwelling unit, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the tenant and, at the tenant's request, with other individuals identified by the tenant, and, if applicable, with the tenant's legal representative. All persons who develop the plan and the tenant or the tenant's legal representative shall sign the plan.

69.26(3) When a tenant needs personal care or health-related care, the service plan shall be updated within 30 days of the tenant's occupancy and as needed with significant change, but not less than annually.

a. If a significant change triggered the review and update of the service plan, the updated service plan shall be signed and dated by all parties.

b. If a significant change does not exist, the program may, after nurse review, add minor discretionary changes to the service plan without a comprehensive evaluation and without obtaining signatures on the service plan.

c. If a significant change relates to a recurring or chronic condition, a previous evaluation and service plan of the recurring condition may be utilized without new signatures being obtained. For example, with chronic exacerbation of a urinary tract infection, nurse review is adequate to institute the previously written evaluation and service plan.

69.26(4) The service plan shall be individualized and shall indicate, at a minimum:

a. The tenant's identified needs and preferences for assistance;

b. Any services and care to be provided pursuant to the occupancy agreement;

c. The service provider(s), if other than the program, including but not limited to providers of hospice care, home health care, occupational therapy, and physical therapy; and

d. For tenants who are unable to plan their own activities, including tenants with dementia, planned and spontaneous activities based on the tenant's abilities and personal interests.

481—69.27(231C) Nurse review. If a tenant does not receive personal or health-related care, but an observed significant change in the tenant's condition occurs, a nurse review shall be conducted. If a tenant receives personal or health-related care, the program shall provide for a registered nurse or a licensed practical nurse via nurse delegation:

69.27(1) To monitor, at least every 90 days, or after a change in condition, any tenant who receives program-administered prescription medications for adverse reactions to the medications and to make appropriate interventions or referrals, and to ensure that the prescription medication orders are current and that the prescription medications are administered consistent with such orders; and

69.27(2) To ensure that health care professionals' orders are current for tenants who receive health care professional-directed care from the program; and

69.27(3) To assess and document the health status of each tenant, to make recommendations and referrals as appropriate, and to monitor progress relating to previous recommendations at least every 90 days and whenever there are changes in the tenant's health status; and

69.27(4) To provide the program with written documentation of the activities under the service plan, as set forth in rule 481—69.26(231C), showing the time, date and signature.

NOTE: Refer to Table A at the end of this chapter. If the program does not provide personal or health-related care to a tenant, nurse review is not required.

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481—69.28(231C) Food service.

69.28(1) The program shall provide or coordinate with other community providers to provide hot or other appropriate meal(s) at least once a day or shall make arrangements for the availability of meals.

69.28(2) Meals and snacks provided by the program but not prepared on site shall be obtained from or provided by an entity that meets the standards of state and local health laws and ordinances concerning the preparation and serving of food.

69.28(3) Menus shall be planned to provide the following percentage of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences based on the number of meals provided by the program:

- a. A minimum of 33 $\frac{1}{3}$ percent if the program provides one meal per day;
- b. A minimum of 66 $\frac{2}{3}$ percent if the program provides two meals per day; and
- c. One hundred percent if the program provides three meals per day.

69.28(4) Therapeutic diets may be provided by a program. If therapeutic diets are provided, they shall be prescribed by a physician, physician assistant, or advanced registered nurse practitioner. A current copy of the Iowa Simplified Diet Manual published by the Iowa Dietetic Association shall be available and used in the planning and serving of therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and for reviewing procedures for food preparation and service for therapeutic diets.

69.28(5) Personnel who are employed by or contract with the program and who are responsible for food preparation or service, or both food preparation and service, shall have an orientation on sanitation and safe food-handling prior to handling food and shall have annual in-service training on food protection.

a. In addition to the requirements above, a minimum of one person directly responsible for food preparation shall have successfully completed a state-approved food protection program by:

- (1) Obtaining certification as a dietary manager; or
- (2) Obtaining certification as a food protection professional; or
- (3) Successfully completing a course meeting the requirements for a food protection program included in the Food Code adopted pursuant to Iowa Code chapter 137F. Another course may be substituted if the course's curriculum includes substantially similar competencies to a course that meets the requirements of the Food Code and the provider of the course files with the department a statement indicating that the course provides substantially similar instruction as it relates to sanitation and safe food-handling.

b. If the person is in the process of completing a course or certification listed in paragraph "a," the requirement relating to completion of a state-approved food protection program shall be considered to have been met.

69.28(6) Programs engaged in the preparation and service of meals and snacks shall meet the standards of state and local health laws and ordinances pertaining to the preparation and service of food and shall be licensed pursuant to Iowa Code chapter 137F.

69.28(7) Programs may have an on-site dietitian. Programs may secure menus and a dietitian through other methods.

481—69.29(231C) Staffing. In addition to the general staffing requirements in rule 481—67.9(231B,231C,231D), the following requirements apply to staffing in programs.

69.29(1) Each tenant shall have access to a 24-hour personal emergency response system that automatically identifies the tenant in distress and can be activated with one touch.

69.29(2) In lieu of providing access to a personal emergency response system, a program serving one or more tenants with cognitive disorder or dementia shall follow a system, program, or written staff procedures that address how the program will respond to the emergency needs of the tenant(s).

69.29(3) The owner or management corporation of the program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population.

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69.29(4) A dementia-specific assisted living program shall have one or more staff persons who monitor tenants as indicated in each tenant's service plan. The staff shall be awake and on duty 24 hours a day on site and in the proximate area. The staff shall check on tenants as indicated in the tenants' service plans.

69.29(5) All programs employing a new program manager after January 1, 2010, shall require the manager within six months of hire to attend an assisted living management class whose curriculum includes at least six hours of training specifically related to Iowa rules and laws on assisted living programs. Managers who have completed a similar training prior to January 1, 2010, shall not be required to complete additional training to meet this requirement.

481—69.30(231C) Dementia-specific education for program personnel.

69.30(1) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of eight hours of dementia-specific education and training within 30 days of either employment or the beginning date of the contract, as applicable.

69.30(2) The dementia-specific education or training shall include, at a minimum, the following:

- a. An explanation of Alzheimer's disease and related disorders;
- b. The program's specialized dementia care philosophy and program;
- c. Skills for communicating with persons with dementia;
- d. Skills for communicating with family and friends of persons with dementia;
- e. An explanation of family issues such as role reversal, grief and loss, guilt, relinquishing the care-giving role, and family dynamics;
- f. The importance of planned and spontaneous activities;
- g. Skills in providing assistance with instrumental activities of daily living;
- h. The importance of the service plan and social history information;
- i. Skills in working with challenging tenants;
- j. Techniques for simplifying, cueing, and redirecting;
- k. Staff support and stress reduction; and
- l. Medication management and nonpharmacological interventions.

69.30(3) All personnel employed by or contracting with a dementia-specific program shall receive a minimum of two hours of dementia-specific continuing education annually. Direct-contact personnel shall receive a minimum of six hours of dementia-specific continuing education annually.

69.30(4) An employee or contractor who provides documentation of completion of a dementia-specific education or training program within the past 12 months shall be exempt from the education and training requirement of subrule 69.30(1).

69.30(5) Dementia-specific training shall include a mixture of classroom instruction, hands-on training, Web-based training, and case studies of tenants in the program.

481—69.31(231C) Managed risk policy and managed risk consensus agreements. The program shall have a managed risk policy. The managed risk policy shall be provided to the tenant along with the occupancy agreement. The managed risk policy shall include the following:

69.31(1) An acknowledgment of the shared responsibility for identifying and meeting the needs of the tenant and the process for managing risk and for upholding tenant autonomy when tenant decision making results in poor outcomes for the tenant or others;

69.31(2) A consensus-based process to address specific risk situations. Participants include program staff and the tenant. The result of the consensus-based process may be a managed risk consensus agreement. The managed risk consensus agreement shall include the signatures of all participants, including the tenant. The managed risk consensus agreement shall be included in the tenant's file.

481—69.32(231C) Life safety—emergency policies and procedures and structural safety requirements.

69.32(1) The program shall submit to the department and follow written emergency policies and procedures, which shall include the following:

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- a. An emergency plan, which shall include procedures for natural disasters (identify where the plan is located for easy reference);
- b. Fire safety procedures;
- c. Other general or personal emergency procedures;
- d. Provisions for amending or revising the emergency plan;
- e. Provisions for periodic training of all employees;
- f. Procedures for fire drills;
- g. Regulations regarding smoking;
- h. Monitoring and testing of smoke-control systems;
- i. Tenant evacuation procedures; and
- j. Procedures for reporting and documentation.

69.32(2) An operating alarm system shall be connected to each exit door in a dementia-specific program. A program serving a person(s) with cognitive disorder or dementia, whether in a general or dementia-specific setting, shall have:

- a. Written procedures regarding alarm systems and appropriate staff response when a tenant's service plan indicates a risk of elopement or a tenant exhibits wandering behavior.
- b. Written procedures regarding appropriate staff response if a tenant with cognitive disorder or dementia is missing.

69.32(3) The program's structure and procedures and the facility in which a program is located shall meet the requirements adopted for assisted living programs in administrative rules promulgated by the state fire marshal. Approval of the state fire marshal indicating that the building is in compliance with these requirements is necessary for certification of a program.

69.32(4) The program shall have the means to control the maximum temperature of water at sources accessible by a tenant to prevent scalding and shall control the maximum water temperature for tenants with cognitive impairment or dementia or at a tenant's request.

481—69.33(231C) Transportation. When transportation services are provided directly or under contract with the program:

69.33(1) The vehicle shall be accessible and appropriate to the tenants who use it, with consideration for any physical disabilities and impairments.

69.33(2) Every tenant transported shall have a seat in the vehicle, except for a tenant who remains in a wheelchair during transport.

69.33(3) Vehicles shall have adequate seat belts and securing devices for ambulatory and wheelchair-bound passengers.

69.33(4) Wheelchairs shall be secured when the vehicle is in motion.

69.33(5) During loading and unloading of a tenant, the driver shall be in the proximate area of the tenants in a vehicle.

69.33(6) The driver shall have a valid and appropriate Iowa driver's license or commercial driver's license as required by law for the vehicle being utilized for transport. If the driver is licensed in another state, the license shall be valid and appropriate for the vehicle being utilized for transport. The driver shall meet any state or federal requirements for licensure or certification for the vehicle operated.

69.33(7) Each vehicle shall have a first-aid kit, fire extinguisher, safety triangles and a device for two-way communication.

481—69.34(231C) Activities.

69.34(1) The program shall provide appropriate activities for each tenant. Activities shall reflect individual differences in age, health status, sensory deficits, lifestyle, ethnic and cultural beliefs, religious beliefs, values, experiences, needs, interests, abilities and skills by providing opportunities for a variety of types and levels of involvement.

69.34(2) Activities shall be planned to support the tenant's service plan and shall be consistent with the program statement and occupancy policies.

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

69.34(3) A written schedule of activities shall be developed at least monthly and made available to tenants and their legal representatives.

69.34(4) Tenants shall be given the opportunity to choose their levels of participation in all activities offered in the program.

481—69.35(231C) Structural requirements.

69.35(1) General requirements.

- a. The structure of the program shall be designed and operated to meet the needs of the tenants.
- b. The buildings and grounds shall be well-maintained, clean, safe and sanitary.
- c. Programs shall have private dwelling units with a single-action, lockable entrance door.
- d. A program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the lock on an entrance door and shall disable or remove the lock if its presence presents a danger to the health and safety of the tenant.
- e. The structure in which a program is housed shall be built, at a minimum, of Type V (111) construction as provided in Section 22.3.1.3.3 and Sections 6.2.1A to 6.2.2 of NFPA 101, Life Safety Code, 2003 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471, or as required in administrative rules promulgated by the state fire marshal.
- f. Programs may have individual cooking facilities within the private dwelling units. Any program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or easily remove appliances and shall disable or remove them if their presence presents a danger to the health and safety of the tenant or others.

69.35(2) Programs certified prior to July 4, 2001. Facilities for programs certified prior to July 4, 2001, shall meet the following requirements:

- a. Each dwelling unit shall have at least one room that shall have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.
- b. Each dwelling unit shall have not less than 190 square feet of floor area, excluding bathrooms.
- c. A dwelling unit used for double occupancy shall have not less than 290 square feet of floor area, excluding bathrooms.
- d. The program shall have a minimum of 15 square feet of common area per tenant.

69.35(3) New construction built on or after July 4, 2001. Programs operated in new construction built on or after July 4, 2001, shall meet the following requirements:

- a. Each dwelling unit shall have at least one room that shall have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.
- b. Each dwelling unit used for single occupancy shall have a total square footage of not less than 240 square feet of floor area, excluding bathrooms and door swing.
- c. A dwelling unit used for double occupancy shall have a total square footage of not less than 340 square feet of floor area, excluding bathrooms and door swing.
- d. Each dwelling unit shall contain a bathroom, including but not limited to a toilet, sink and bathing facilities. A program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the sink or bathing facility water control and shall disable or remove the water control if its presence presents a danger to the health and safety of the tenant.
- e. The program shall have a minimum of 25 square feet of common space per tenant.
- f. Self-closing doors are not required for individual dwelling units, whether in a general or dementia-specific setting, unless the authority with jurisdiction determines that the level of hazard has increased to require the installation of closure hardware (for example, presence of a stove, range or oven).

69.35(4) Structure being converted to or remodeled for use by a program on or after July 4, 2001. A program operating in a structure that was converted or remodeled for use for a program on or after July 4, 2001, shall meet the following requirements:

- a. Each dwelling unit shall have at least one room that has not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

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

- b.* Each dwelling unit used for single occupancy shall have a total square footage of not less than 190 square feet of floor area, excluding bathrooms and door swing.
- c.* A dwelling unit used for double occupancy shall have a total square footage of not less than 290 square feet of floor area, excluding bathrooms and door swing.
- d.* The program shall have dedicated for use by tenants a minimum of 15 square feet of common area per tenant.
- e.* Each dwelling unit shall have a bathroom, including but not limited to a toilet, sink and bathing facility.
- f.* Each sleeping room shall have a minimum of 5.7 square feet of operable window. Waiver of this requirement may be granted by the state fire marshal or designee.

481—69.36(231C) Dwelling units in dementia-specific programs. Dementia-specific programs are exempt from the requirements in subrules 69.35(2) to 69.35(4) as follows:

69.36(1) For a program built in a family or neighborhood design:

- a.* Each dwelling unit used for single occupancy shall have a total square footage of not less than 150 square feet of floor area, excluding a bathroom; and
- b.* Each dwelling unit used for double occupancy shall have a total square footage of not less than 250 square feet of floor area, excluding a bathroom.

69.36(2) Dementia-specific programs may choose not to provide bathing facilities in the dwelling units.

481—69.37(231C) Landlord and tenant Act. Iowa Code chapter 562A, the uniform residential landlord and tenant Act, shall apply to programs under this chapter.

481—69.38(83GA,SF203) Identification of veteran's benefit eligibility.

69.38(1) Within 30 days of a tenant's admission to an assisted living program that receives reimbursement through the medical assistance program under Iowa Code chapter 249A, the program shall ask the tenant or the tenant's personal representative whether the tenant is a veteran or whether the tenant is the spouse, widow or dependent of a veteran and shall document the response.

69.38(2) If the program determines that the tenant may be a veteran or the spouse, widow, or dependent of a veteran, the program shall report the tenant's name along with the name of the veteran, if applicable, as well as the name of the contact person for this information, to the Iowa department of veterans affairs. When appropriate, the program may also report such information to the Iowa department of human services.

69.38(3) If a tenant is eligible for benefits through the U.S. Department of Veterans Affairs or other third-party payor, the program first shall seek reimbursement from the identified payor source before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

These rules are intended to implement Iowa Code chapter 231C.

ARC 7851B**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 16.181, the Iowa Finance Authority hereby gives Notice of Intended Action to amend Chapter 19, "State Housing Trust Fund," Iowa Administrative Code.

The purpose of this proposed amendment is to implement Iowa Code section 16.181 as amended by 2009 Iowa Acts, Senate File 207, by setting better parameters for the creation of local housing trust funds.

Chapter 19 does not provide for waivers. Persons seeking waivers of a rule contained in Chapter 19 must petition the Authority for a waiver in the manner set forth under Chapter 18.

The Authority will receive written comments on the proposed amendment until 4:30 p.m. on July 7, 2009. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to mark.thompson@iowa.gov. Persons who wish to comment orally should contact Mark Thompson at (515)725-4937.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 7850B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

This amendment is intended to implement Iowa Code section 16.5(1)"r" and section 16.181 as amended by 2009 Iowa Acts, Senate File 207.

ARC 7843B**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 16.40, the Iowa Finance Authority proposes to amend Chapter 29, "Jump-Start Housing Assistance Program," Iowa Administrative Code.

The purpose of these proposed amendments is to modify and clarify certain provisions of the program of housing assistance for persons affected by the natural disasters that occurred in Iowa in 2008.

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

The Authority will receive written comments on the proposed amendments until 4:30 p.m. on July 7, 2009. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to mark.thompson@iowa.gov.

IOWA FINANCE AUTHORITY[265](cont'd)

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

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 7842B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These amendments are intended to implement Iowa Code sections 16.5(1)“r” and 16.40 and 2009 Iowa Acts, Senate File 289.

ARC 7865B

LABOR SERVICES DIVISION[875]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board proposes to amend Chapter 90, “Administration of the Boiler and Pressure Vessel Program,” Iowa Administrative Code.

Subrule 90.7(2) currently sets a \$25 fee for a one-year certificate and a \$50 fee for a two-year certificate. This amendment updates the subrule to reflect statutory changes set forth in 2009 Iowa Acts, House File 720, by establishing a \$100 fee for a new, four-year certificate.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on July 9, 2009, a public hearing will be held on July 10, 2009, at 1:30 p.m. in the Stanley Room, 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than July 10, 2009, to the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 7863B**. The content of that submission is incorporated by reference.

The principal reason for this amendment is to implement legislative intent. No variance provision is included in these rules. Applicable variance procedures are set forth in 875—Chapter 81.

This amendment is intended to implement Iowa Code chapter 89 and 2009 Iowa Acts, House File 720.

ARC 7875B**LABOR SERVICES DIVISION[875]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 91C.6, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 150, "Construction Contractor Registration," Iowa Administrative Code.

This amendment updates a rule to reflect statutory changes set forth in 2009 Iowa Acts, Senate File 478, section 203. Effective July 1, 2009, 2009 Iowa Acts, Senate File 478, changes the contractor registration period from two years to one year and increases the registration fee from \$25 to \$50. This amendment proposes to rescind the rule that reflects the \$25 fee and two-year registration period; make technical changes; and adopt a new rule to assist with the transition to the new fee.

If requested in accordance with Iowa Code section 17A.4(1)"b" by the close of business on July 9, 2009, a public hearing will be held on July 10, 2009, at 3 p.m. in the Stanley Room at 1000 East Grand Avenue, Des Moines, Iowa. At the public hearing, interested persons may make oral statements and file documents concerning the proposed amendment.

The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than July 10, 2009, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@jwd.iowa.gov.

Except for the technical changes, these amendments were also Adopted and Filed Emergency and are published herein as **ARC 7876B**. The paragraphs that appear herein as subrules 150.6(1) and 150.6(2) appear in **ARC 7876B** as paragraphs 150.6(1)"a" and "b"; the language is identical.

The principal reason for adoption of this amendment is to implement legislative intent. No variance procedures are included in these rules because the variance procedures are set forth in 875—Chapter 1.

This amendment is intended to implement Iowa Code chapter 91C and 2009 Iowa Acts, Senate File 478.

The following amendment is proposed.

Rescind rule 875—150.6(91C) and adopt the following **new** rule in lieu thereof:

875—150.6(91C) Fee.

150.6(1) *New applications.* A new application deposited in the U.S. mail shall be accompanied by the fee effective on the date the application is postmarked. A new application delivered in any other manner shall be accompanied by the fee effective on the date the application is received by the division.

150.6(2) *Renewal applications.* A timely renewal application shall be accompanied by the fee effective on the expiration date of the contractor's expiring registration. An application for renewal deposited in the U.S. mail after the expiration date of the contractor's expiring registration shall be accompanied by the fee effective on the date the application is postmarked. An application for renewal delivered to the division in a manner other than U.S. mail and after the expiration date of the contractor's expiring registration shall be accompanied by the fee effective on the date the application is received by the division.

LABOR SERVICES DIVISION[875](cont'd)

150.6(3) *Fee exemption.* A contractor shall not be required to pay the fee if the application is submitted with a completed and accurate Fee Exemption Application Form. The Fee Exemption Application Form is available from the division.

150.6(4) *Amendments to applications.* A fee is not required for a permissible amendment to an application.

ARC 7856B**NATURAL RESOURCE COMMISSION[571]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 481B.3, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 77, "Endangered and Threatened Plant and Animal Species," Iowa Administrative Code.

The rules in Chapter 77 list plant and animal species whose continued existence within Iowa has been found to be endangered, threatened, or of special concern. The proposed amendments upgrade the status of the bald eagle and peregrine falcon from endangered to special concern species and correct a typographical error in the common name of the Forster's tern. It is proposed that the bald eagle be listed as special concern rather than being removed from the list because of the potential effects from lead poisoning. Additional monitoring will be conducted to ensure that the bald eagle and peregrine falcon continue to increase or remain stable before they will be removed from the special concern list. Information documenting the current status of these species in Iowa may be found on the Department's Web site at <http://www.iowadnr.gov/other/threatened.html>.

Any interested person may make written suggestions or comments on the proposed amendments on or before July 16, 2009. Such written materials should be directed to the Endangered Species Program, Department of Natural Resources, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Endangered Species Program at (515)281-8524 or at the Endangered Species Program offices on the fourth floor of the Wallace State Office Building.

A public hearing will be held on July 16, 2009, at 10 a.m. in the Fourth Floor East Conference Room, Wallace State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code chapter 481B.

The following amendments are proposed.

ITEM 1. Amend subrule **77.2(1)**, listing for "Birds," as follows:

Birds

Red-shouldered Hawk	Buteo lineatus
Northern Harrier	Circus cyaneus
Peregrine Falcon	Falco peregrinus
Piping Plover	Charadrius melodus
Common Barn Owl	Tyto alba

NATURAL RESOURCE COMMISSION[571](cont'd)

Least Tern	Sterna antillarum
Bald Eagle	Haliaeetus leucocephalus
King Rail	Rallus elegans
Short-eared Owl	Asio flammeus

ITEM 2. Amend subrule 77.2(3), listing for “Birds,” as follows:

Birds

Forester's Forster's Tern	Sterna forsteri
Black Tern	Chlidonias niger
<u>Peregrine Falcon</u>	<u>Falco peregrinus</u>
<u>Bald Eagle</u>	<u>Haliaeetus leucocephalus</u>

ARC 7858B**PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science hereby gives Notice of Intended Action to amend Chapter 5, “Fees,” and Chapter 31, “Licensure of Marital and Family Therapists and Mental Health Counselors,” Iowa Administrative Code.

These proposed amendments set the fee for a temporary license, define requirements for temporary licensure for marital and family therapists and mental health counselors, and further clarify the requirements for the supervised work experience.

Any interested person may make written comments on the proposed amendments no later than 4:30 p.m. on July 7, 2009, addressed to Judy Manning, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail jmanning@idph.state.ia.us.

A public hearing will be held on July 7, 2009, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, 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 proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154D and 272C.

The following amendments are proposed.

ITEM 1. Renumber subrules 5.3(2) to 5.3(8) as 5.3(3) to 5.3(9).

ITEM 2. Adopt the following **new** subrule 5.3(2):

5.3(2) Temporary license fee for license to practice marital and family therapy or mental health counseling is \$120.

ITEM 3. Rescind rule 645—31.2(154D) and adopt the following **new** rule in lieu thereof:

645—31.2(154D) Requirements for permanent and temporary licensure. The following criteria shall apply to licensure:

31.2(1) The applicant shall complete a board-approved application. Application forms may be obtained from the board’s Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

office. All applications shall be sent to the Board of Behavioral Science, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

31.2(2) The applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

31.2(3) Each application shall be accompanied by the appropriate fees payable to the Board of Behavioral Science. The fees are nonrefundable.

31.2(4) No application will be considered by the board until official copies of academic transcripts sent directly from the school to the board of behavioral science have been received by the board or an equivalency evaluation completed by the Center for Credentialing and Education, Inc. (CCE) has been received by the board. The applicant shall present proof of meeting the educational requirements. Documentation of such proof shall be on file in the board office with the application and include one of the following:

a. For licensure as a marital and family therapist, an official transcript verifying completion of a marital and family therapy program accredited by the Commission on Accreditation for Marriage and Family Therapy Education (COAMFTE) as defined in subrule 31.4(1) or an equivalency evaluation of the applicant's educational credentials completed by CCE as defined in subrule 31.4(2).

b. For licensure as a mental health counselor, an official transcript verifying completion of a mental health counseling program accredited by the Council on Accreditation of Counseling and Related Educational Programs (CACREP) as defined in subrule 31.6(1) or an equivalency evaluation of the applicant's educational credentials completed by CCE as defined in subrule 31.6(2).

31.2(5) The candidate for permanent licensure shall have the examination score sent directly from the testing service to the board. If the candidate for temporary licensure has not completed the examination prior to issuance of a temporary license, the candidate must successfully complete the examination before the temporary license expires.

31.2(6) The candidate for permanent licensure shall submit the required attestation of supervision forms documenting clinical experience as required in rule 645—31.5(154D) for marital and family therapy and rule 645—31.7(154D) for mental health counseling.

31.2(7) The candidate for temporary licensure for the purpose of fulfilling the postgraduate supervised clinical experience requirement must submit the Supervised Clinical Experience: Approval and Attestation form to the board and receive approval of the candidate's supervisor(s) prior to licensure. The temporary licensee must notify the board immediately in writing of any proposed change in supervisor(s) and obtain approval of any change in supervisor(s). Within 30 days of completion of the supervised clinical experience, the attestation of the completed supervised experience must be submitted to the board office.

31.2(8) A temporary license for the purpose of fulfilling the postgraduate supervised clinical experience requirement is valid for three years and may be renewed at the discretion of the board.

31.2(9) A licensee who was issued an initial permanent license within six months prior to the renewal shall not be required to renew the license until the renewal date two years later.

31.2(10) Incomplete applications that have been on file in the board office for more than two years shall be:

- a.* Considered invalid and shall be destroyed; or
- b.* Maintained upon written request of the applicant. The applicant is responsible for requesting that the file be maintained.

ITEM 4. Amend paragraphs **31.5(1)“a”** and **“b”** as follows:

a. Be a minimum of two years or the equivalent of full-time, postgraduate supervised clinical work experience in marital and family therapy;

b. Be completed following the practicum, internship, and all graduate coursework, with the exception of the thesis;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 5. Amend paragraphs 31.7(1)“a” and “b” as follows:

- a. Be a minimum of two years or the equivalent of full-time, postgraduate supervised professional work experience in mental health counseling;
- b. Be completed following completion of the practicum, internship, and all graduate coursework, with exception of the thesis;

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for June is 5.00%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective June 9, 2009, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .20%
32-89 days	Minimum .40%
90-179 days	Minimum .30%
180-364 days	Minimum .55%
One year to 397 days	Minimum .95%
More than 397 days	Minimum 1.35%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 7859B**UTILITIES DIVISION[199]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.4 and 476.1 and 2009 Iowa Acts, Senate File 279 [Iowa Code section 478.1(5)], the Utilities Board (Board) gives notice that on May 28, 2009, the Board issued an order in Docket No. RMU-2009-0006, In re: Requirements for Abbreviated Franchise Petition [199 IAC Chapter 11], "Order Commencing Rule Making," that establishes the requirements for a petition for an electric franchise that meets the requirements of Iowa Code section 478.1(5), which was passed by the General Assembly during this past legislative session as 2009 Iowa Acts, Senate File 279, and which has been signed by the Governor.

Iowa Code section 478.1(5) establishes an abbreviated process where an electric company proposes to upgrade a 34.5 kilovolt (kV) electric line to a line capable of operating at 69 kV that meets required safety standards, will be on substantially the same right-of-way, and will have substantially the same effect on the underlying properties. If these conditions are met, published notice will not be required for the upgrade and an informational meeting will not be required.

The legislation also provides that the Board may adopt rules defining relevant terms, setting forth the steps of the separate process, and specifying the requirements for the petition and landowner notification. In addition, the petitioner is required to provide written notice to the last-known address of the owners of record of the property where construction will occur or to persons residing on the property. Finally, the franchise may be granted if the Board finds the upgraded line is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.

The Board is proposing amendments to its franchise process in 199 IAC Chapter 11 to implement the abbreviated franchise process established in 2009 Iowa Acts, Senate File 279. The order commencing the rule making can be found on the Board's Web site at www.state.ia.us/iub.

Pursuant to Iowa Code section 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before July 7, 2009. The statement should be filed electronically through the Board's Electronic Filing System (EFS). Instructions for submitting an electronic filing can be found on the EFS Web site at <http://efs.iowa.gov>. Any person who does not have access to the Internet may file comments on paper pursuant to 199 IAC 14.4(5). An original and ten copies of paper comments shall be filed. Both electronic and written filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author's name and address and make specific reference to this docket. All paper communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

An oral presentation to receive oral comments on the proposed amendments will be held at 1:30 p.m. on July 28, 2009, in the Board's hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 at least five days in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code sections 17A.4 and 476.1 and 2009 Iowa Acts, Senate File 279.

The following amendments are proposed.

UTILITIES DIVISION[199](cont'd)

ITEM 1. Adopt the following **new** subrule 11.1(9):

11.1(9) Eligibility for abbreviated franchise process. Petitions for an electric franchise or an amendment to a franchise may be filed pursuant to the abbreviated franchise process set forth in 2009 Iowa Acts, Senate File 279 [Iowa Code section 478.1(5)], if the following requirements are met:

a. The project consists of the conversion, upgrading, or reconstruction of an existing electric line operating at 34.5 kV to a line capable of operating at 69 kV.

b. The project will be on substantially the same right-of-way as an existing 34.5 kV line. For purposes of this subrule, “substantially the same right-of-way” means that the new or additional interests in private property will be required for less than one mile of the proposed project length.

c. The project will have substantially the same effect on underlying properties as the existing 34.5 kV line.

d. The completed line will comply with the Iowa electrical safety code found in 199—Chapter 25.

e. Notice will be provided as required in subrule 11.5(11).

f. The petitioner does not request the power of eminent domain.

g. The petitioner agrees to pay all costs and expenses of the franchise proceeding.

Petitions that do not comply with the eligibility requirements in paragraphs 11.1(9) “a” through “g” shall be rejected.

ITEM 2. Adopt the following **new** subrule 11.2(3):

11.2(3) Form of petition for abbreviated franchise process. A petition for a new franchise or an amendment to a franchise filed pursuant to the abbreviated franchise process set forth in 2009 Iowa Acts, Senate File 279 [Iowa Code section 478.1(5)], shall be made on forms prescribed by the board, shall be notarized, and shall have all required exhibits attached. Exhibits in addition to those required by this subrule may be attached when appropriate. The exhibits that are required to be attached are as follows:

a. Exhibit A. A legal description of the route. The description shall include the name of the county, the maximum and nominal voltages, the beginning and ending points of the line, and whether the route is on public, private, or railroad right-of-way. The description shall identify any termini located in other counties.

b. Exhibit B. A map showing the route of the line drawn with reasonable accuracy considering the scale. The map may be to any scale appropriate for the level of detail to be shown, but not smaller than one inch to the mile. The following minimum information shall be provided:

(1) The route of the electric line which is the subject of the petition, including the starting and ending points and, when parallel to a road or railroad, the side on which the line is located. Line sections with double circuit construction or underbuild shall be designated. The nominal voltage and ownership of other circuits or underbuild shall be indicated.

(2) The name of the county, county and section lines, section numbers, and the township and range numbers.

(3) The location and identity of roads, railroads, major streams and bodies of water, and any other significant natural or man-made features or landmarks.

(4) The name and corporate limits of cities.

(5) If any deviation from the existing route is proposed, the original and proposed routes shall be shown and identified.

c. Exhibit C. Technical information and engineering specifications describing typical materials, equipment, and assembly methods as specified on forms provided by the board.

d. Exhibit D. The exhibit shall consist of written text containing the following:

(1) A listing of any existing franchises that would be terminated or amended in whole or in part by this petition, including the docket number, franchise number, date of issue, county of location, and to whom granted.

(2) An allegation, with supporting testimony, that the project is eligible for the abbreviated franchise process.

UTILITIES DIVISION[199](cont'd)

(3) An allegation, with supporting testimony, that the project is necessary to serve a public use and represents a reasonable relationship to an overall plan of transmitting electricity in the public interest.

(4) An explanation for any departures from the existing line route.

e. Exhibit E. A statement that the right of eminent domain is not being requested.

f. Exhibit F. The exhibit shall consist of:

(1) A showing of notice to other electric, pipeline, telephone, communication, cable television, rural water district, and railroad companies that are crossed by or in shared right-of-way with the proposed electric line.

(2) A showing of approval of the appropriate highway authority if the line is to be constructed over, across, or along a public highway.

g. Exhibit G. The exhibit shall consist of the form of notice mailed in accordance with subrule 11.5(11) to owners of and persons residing on property where construction shall occur.

ITEM 3. Adopt the following **new** paragraph **11.3(1)“g”**:

g. Petition for Franchise or Amendment to Franchise Under Abbreviated Franchise Process.

ITEM 4. Adopt the following **new** subrule 11.5(11):

11.5(11) *Notice of franchise or amendment to franchise under abbreviated franchise process.* The petitioner shall provide written notice concerning the anticipated construction to the last-known address of the owners of record of the property where construction will occur and to persons residing on such property. Notices may be served by ordinary mail, addressed to the last-known address, mailed not later than the date the petition is filed with the board. Petitioner must make a good-faith effort to identify and notify all owners of record and persons residing on the property. The notice shall include the following information:

a. A description of the purpose of the project and the nature of the work to be performed.

b. A copy of the Exhibit B map.

c. The estimated dates the construction or reconstruction will commence and end.

d. The name, address, telephone number, and E-mail address of a representative of the petitioner who can respond to inquiries concerning the anticipated construction.

e. For purposes of this subrule, a property where construction will occur is any property upon which entry will be required for the purposes of the project, or which will be overhung by structural elements or conductors.

ARC 7849B

UTILITIES DIVISION[199]

Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4, 17A.7, 476.1 and chapters 476B and 476C as amended by 2009 Iowa Acts, Senate File 456, the Utilities Board (Board) gives notice that on May 21, 2009, the Board issued an order in Docket No. RMU-2009-0005, In re: Wind Energy Tax Credits, “Order Commencing Rule Making.” The Board is noticing for public comment proposed amendments to 199 IAC 15.18(476B), 15.19(476C), 15.20(476B), and 15.21(476C). The proposed amendments reflect changes to Iowa Code chapters 476B and 476C contained in 2009 Iowa Acts, Senate File 456, which was signed by the Governor on April 23, 2009. The proposed amendments also clarify that tax credit applications made pursuant to chapters 476B and 476C are not subject to the Board’s electronic filing rules found in 199 IAC 14. However, written comments made about this rule making must be filed in compliance with the Board’s electronic filing rules.

UTILITIES DIVISION[199](cont'd)

2009 Iowa Acts, Senate File 456, made several changes to Iowa Code chapter 476B. The changes reduced the total amount of eligible capacity from 450 megawatts to 150 megawatts (which does not require a rule change); set a maximum nameplate capacity of 30 megawatts for eligibility applications filed after March 1, 2008; set a minimum nameplate application of $\frac{3}{4}$ of a megawatt, or 750 kilowatts, for eligibility applications filed after July 1, 2009, by listed educational institutions or hospitals; changed the requirements for seeking approval from the county board of supervisors; and removed a prohibition against receiving both property tax and sales tax exemptions. The proposed amendments to 199 IAC 15.18(476B) and 15.20(476B) reflect these changes.

2009 Iowa Acts, Senate File 456, also made changes to Iowa Code chapter 476C. The changes increased the total amount of eligible wind generation capacity from 180 megawatts to 330 megawatts (which does not require a rule change) and allow an eligible wind generation facility to apply for a 12-month extension of its 30-month operational deadline if the facility is not operational due to the unavailability of necessary equipment. The new statutory requirement for extensions is reflected in the proposed amendment to 199 IAC 15.19(4).

Regarding the change to Iowa Code chapter 476C allowing a 12-month extension of the operational deadline for wind generation facilities, the Board notes that the previous statutory wording (prior to 2009 Iowa Acts, Senate File 456) was ambiguous. Iowa Code section 476C.3(3) allowed a blanket 30 months for a facility to become operational, following Board approval of eligibility. However, Iowa Code section 476C.3(3) also provided wind generation facilities an initial 18 months to become operational, plus an additional 12 months if necessary equipment is unavailable (30 months total). In the previous rule making (Docket No. RMU-06-7 published in IAB Vol. XXIX, 12/20/06, as **ARC 5611B**), the Board resolved the ambiguity of these two statutory provisions by focusing on the first provision (the blanket 30 months), which superseded the second provision (18 months plus a 12-month extension for wind facilities). Based on this interpretation, the change in 2009 Iowa Acts, Senate File 456, that increases the existing 12-month extension for wind facilities by 12 months (i.e., from 12 months to 24 months) also increases the operational deadline for wind facilities by 12 months (i.e., from 30 months to 42 months) if necessary equipment is unavailable.

Pursuant to Iowa Code sections 17A.4(1)“a” and “b,” any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before July 7, 2009. The statement should be filed electronically through the Board’s Electronic Filing System (EFS). Instructions for making an electronic filing can be found on the EFS Web site at <http://efs.iowa.gov>. Any person who does not have access to the Internet may file comments on paper pursuant to 199 IAC 14.4(5). An original and ten copies of paper comments shall be filed. Both electronic and written filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author’s name and address and make specific reference to this docket. All paper communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on July 29, 2009, in the Board’s hearing room at the address listed above. Persons with disabilities who require assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board’s general waiver provision in 199 IAC 1.3(17A,474,476,78GA,HF2206) is applicable to these amendments.

These amendments are intended to implement Iowa Code section 476.1 and chapters 476B and 476C as amended by 2009 Iowa Acts, Senate File 456.

The following amendments are proposed.

ITEM 1. Amend subparagraph **15.18(1)“c”(2)** as follows:

(2) Total nameplate generating capacity rating. For applications filed on or after March 1, 2008, the facility must have a combined nameplate capacity of no less than 2 megawatts and no more than 30 megawatts. For applications filed on or after July 1, 2009, by a private college or university, community

UTILITIES DIVISION[199](cont'd)

college, institution under the control of the state board of regents, public or accredited nonpublic elementary and secondary school, or public hospital as defined in Iowa Code section 249J.3, the facility must have a combined nameplate capacity of no less than $\frac{3}{4}$ of a megawatt;

ITEM 2. Amend subrule 15.19(4) as follows:

15.19(4) *Loss of eligibility status.* Within 30 months following board approval of eligibility, the applicant shall file information demonstrating that the eligible facility is operational and producing usable energy. If the board determines that the eligible facility was not operational within 30 months of board approval, the facility will lose eligibility status. ~~However, the facility may reapply to the board for new eligibility.~~

However, if the facility is a wind energy conversion facility and is not operational within 18 months due to the unavailability of necessary equipment, the applicant may apply for a 12-month extension of the 30-month limit, attesting to the unavailability of necessary equipment. After granting the 12-month extension, if the board determines that the facility was not operational within 42 months of board approval, the facility will lose eligibility status.

If the facility loses eligibility status, the facility may reapply to the board for new eligibility.

ITEM 3. Amend subrule 15.20(1) as follows:

15.20(1) *Application process for wind energy tax credits.* A wind energy facility must be approved as eligible by the board under 199 IAC 15.18(476B) in order to qualify for wind energy tax credits.

~~The~~ If the facility is located in a city or county neither of which has enacted an ordinance under Iowa Code section 427B.26, or if the facility is not eligible for special valuation pursuant to an ordinance adopted by the city or county under Iowa Code section 427B.26, the wind energy facility must also be approved by the city council or county board of supervisors of the city or county in which the facility is located, in accordance with Iowa Code section 476B.6(1) as amended by 2009 Iowa Acts, Senate File 456, section 4. Once the owners receive approval from their city council or county board of supervisors, additional approval from the city council or county board of supervisors is not required for subsequent tax years.

~~Wind energy tax credits shall not be allowed for a facility for which the owners have claimed an exemption from property tax under Iowa Code sections 427B.26 or 441.21(8), or claimed an exemption from sales tax under Iowa Code section 423.3(54). The facility will be subject to the assessment of property tax in accordance with department of revenue rule 701 IAC 80.13(427B).~~

Tax credit applications for eligible facilities must be filed with the board no later than 30 days after the close of the tax year for which the credits are to be applied. The tax credit applications must be filed in paper format and are not subject to the electronic filing requirements of 199 IAC 14.2(17A,476). The tax credit applications will be held confidential by the board and the department of revenue as, among other things, documents containing customer-specific or personal information (199 IAC 1.9(5)“c”) and information related to tax returns (Iowa Code section 422.20). The information will be held confidential by the board upon filing, and by the department of revenue upon receipt from the board, and will be subject to the provisions of 199 IAC 1.9(8)“b”(3). Accordingly, the applicant should mark each of the pages of the tax credit application “CONFIDENTIAL” in bold or large letters.

a. If a facility is jointly owned, then owners applying for the tax credits must file their application jointly. For each application, an original and two copies must be filed according to the following format, including a cover letter that cites this rule (199 IAC 15.20(476B)), and the following ~~14~~ 13 information items separately identified by item number:

(1) A copy of the original application for facility eligibility under 199 IAC 15.18(476B), plus any subsequent amendments to the application.

(2) A copy of the board’s determination approving the facility as eligible for tax credits under 199 IAC 15.18(476B).

(3) ~~A~~ Either a copy of the city council’s or county board of supervisors’ approval, from the city or county in which the facility is located, issued pursuant to Iowa Code section 476B.6(1) as amended by 2009 Iowa Acts, Senate File 456, section 4; or a statement explaining why such approval is not required under Iowa Code section 476B.6(1) as amended by 2009 Iowa Acts, Senate File 456, section 4.

UTILITIES DIVISION[199](cont'd)

~~(4)~~ A statement attesting that the owners have not claimed an exemption for the facility from property tax under Iowa Code section 427B.26 or 441.21(8), or from sales tax under Iowa Code section 423.3(54).

~~(5)~~ (4) A statement attesting that neither the owners nor the purchaser have received renewable energy tax credits for the facility under 199 IAC 15.21(476C).

~~(6)~~ (5) For any electricity sold, a copy of the executed power purchase agreement or other agreement to purchase electricity. Alternatively, a copy of an executed interconnection agreement or transmission service agreement is acceptable if the owners have elected to sell electricity from the facility directly or indirectly to a wholesale power pool market.

~~(7)~~ (6) For any electricity sold, the owner must provide a statement attesting that the electricity for which tax credits are sought has been generated by the eligible facility and sold to an unrelated purchaser. For purposes of the wind energy tax credits, the definition of “related person” is the same as specified in department of revenue subrules 701 IAC 42.25(2) and 52.26(2). That is, the definition of “related person” uses the same criteria set forth in Section 45(e)(4) of the Internal Revenue Code relating to the federal renewable electricity production credit. Persons shall be treated as related to each other if such persons are treated as a single employer under Treasury Regulation §1.52-1. In the case of a corporation that is a member of an affiliated group of corporations filing a federal consolidated return, such corporation shall be treated as selling electricity to an unrelated person if such electricity is sold to the person by another member of the affiliated group.

For any electricity used for on-site consumption, the owner must provide a signed statement attesting under penalty of perjury that the electricity for which tax credits are sought was generated by the eligible facility and not sold.

~~(8)~~ (7) The date that the eligible facility was placed in service (that is, between July 1, 2005, and July 1, 2012).

~~(9)~~ (8) The total number of kilowatt-hours of electricity generated by the facility during the tax year.

~~(10)~~ (9) For any electricity sold, invoices or other information that documents the number of kilowatt-hours of electricity generated by the eligible facility and sold to an unrelated purchaser during the tax year.

For any electricity used for on-site consumption, the number of kilowatt-hours of electricity generated by the eligible facility during the tax year and not sold.

~~(11)~~ (10) Information regarding the facility owners, including the name, address, and tax identification number of each owner, and the percentage of equity interest held by each owner during the period for which wind energy tax credits will be sought under Iowa Code chapter 476B as amended by 2009 Iowa Acts, Senate File 456. If an owner is other than a natural person, information regarding the equity owners must also be provided. This information shall be consistent with information provided in the original application for facility eligibility, as amended, under 199 IAC 15.18(476B).

~~(12)~~ (11) The type of tax for which the credits will be applied and the first tax year in which the credits will be applied.

~~(13)~~ (12) Identification of any applicants that are eligible to receive renewable electricity production credits authorized under Section 45 of the Internal Revenue Code. This identification should include a statement from the applicant attesting to the applicant’s eligibility and any available supporting documentation.

~~(14)~~ (13) If any of the applicants is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division II or III, the application shall include a list of the partners, members, shareholders, or beneficiaries of the entity. This list shall include the name, address, tax identification number, and pro-rata share of earnings from the entity, for each of the partners, members, shareholders, or beneficiaries of the entity. The wind energy tax credits will flow through to the entity’s partners, shareholders, or members in accordance with their pro-rata share of earnings from the entity.

UTILITIES DIVISION[199](cont'd)

If the entity is also eligible to receive renewable electricity production credits authorized under Section 45 of the Internal Revenue Code, the entity may designate specific partners if the business is a partnership, shareholders if the business is an S corporation, or members if the business is a limited liability company, to receive the wind energy tax credits issued under Iowa Code chapter 476B as amended by 2009 Iowa Acts, Senate File 456, and the percentage allocable to each. Such an entity may also designate a percentage of the tax credits allocable to an equity holder or beneficiary as a liquidating distribution or portion thereof, of a holder or beneficiary's interest in the applicant entity. Otherwise, in the absence of such designations, the wind energy tax credits will flow through to the entity's partners, shareholders, or members in accordance with their pro-rata share of earnings from the entity.

Alternatively, the tax credits will be issued directly to the entity if the entity is a partnership, limited liability company, S corporation, estate, trust, or any other reporting entity, all of whose income is taxed directly to its equity holders or beneficiaries for taxes imposed under Iowa Code chapter 422, division V, or under Iowa Code chapter 423, 432, or 437A.

b. No change.

ITEM 4. Amend subrule 15.21(1), introductory paragraph, as follows:

15.21(1) *Application process for renewable energy tax credits.* A renewable energy facility must be approved as eligible by the board under 199 IAC 15.19(476C) in order to qualify for renewable energy tax credits. Tax credit applications must be filed with the board no later than 30 days after the close of the tax year for which the credits are to be applied. The tax credit applications must be filed in paper format and are not subject to the electronic filing requirements of 199 IAC 14.2(17A,476). The tax credit applications will be held confidential by the board and the department of revenue as, among other things, documents containing customer-specific or personal information (199 IAC 1.9(5) "c") and information related to tax returns (Iowa Code section 422.20). The information will be held confidential by the board upon filing, and by the department of revenue upon receipt from the board, and will be subject to the provisions of 199 IAC 1.9(8) "b"(3). Accordingly, the applicant should mark each of the pages of the tax credit application "CONFIDENTIAL" in bold or large letters.

ARC 7848B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 71, "Targeted Jobs Withholding Tax Credit Program," Iowa Administrative Code.

The IDED Board adopted previous amendments to the Targeted Jobs Withholding Tax Credit Program (TJWTC) on January 15, 2009. These amendments were to become effective on March 18, 2009. However, at its March 6, 2009, meeting, the Administrative Rules Review Committee (ARRC) voted to delay the effective date for 70 days until May 26, 2009, to allow the Department to work through the legislative process and any pending legislation that would impact TJWTC.

2009 Iowa Acts, Senate File 304, was passed during the 2009 legislative session and will become effective on July 1, 2009. 2009 Iowa Acts, Senate File 304, makes substantive changes to TJWTC.

These amendments bring the rules into compliance with 2009 Iowa Acts, Senate File 304. These amendments will become effective on July 1, 2009, and will apply to all requests submitted by the pilot project cities on or after that date. These amendments:

- Add definitions of "employer's taxable capital investment" and "local financial support."
- Require the total amount of awarded withholding tax credits to be stated in the withholding agreement.
- Establish a limit on the total amount of withholding tax credits awarded based upon the total dollar amount of qualifying investment in the project.
- Prohibit the entering of a withholding agreement by an employer not located within a pilot project city when another Iowa community competes for the same project.
- Extend until 2013 the ability of a pilot project city to enter into a withholding agreement.
- Clarify required components of a withholding agreement and local match requirements.
- Require base employment to be established by the business at the time of submission of an application.
- Establish the Department's review authority to approve a withholding agreement application.
- Modify reporting requirements of pilot project cities and require annual verification by the Department.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest as there is a need to have rules in effect on July 1, 2009, the start of the state fiscal year. The amendments update the program rules to correspond with the requirements of 2009 Iowa Acts, Senate File 304.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments should be waived and the amendments be made effective on July 1, 2009. These amendments confer a benefit on the public by ensuring that the program rules are consistent with 2009 Iowa Acts, Senate File 304, which becomes effective on July 1, 2009. The pilot project cities and eligible businesses will benefit if the Department is able to have program rules in effect at the start of the fiscal year. The pilot project cities will be able to continue processing applications from eligible businesses, and the pilot project cities will know what procedures must be followed to request Department approval of withholding agreements.

These amendments are also published herein under Notice of Intended Action as **ARC 7846B** to allow for public comment.

These amendments will become effective on July 1, 2009.

These amendments are intended to implement Iowa Code section 403.19A as amended by 2009 Iowa Acts, Senate File 304.

The following amendments are adopted.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

ITEM 1. Adopt the following new definitions of “Employer's taxable capital investment” and “Local financial support” in rule ~~261—~~**71.1(403)**:

“*Employer's taxable capital investment*” means a capital investment in real property, including but not limited to the purchase of land and existing buildings and building construction included in the project, that is subject to taxation by the local taxing authority.

“*Local financial support*” or “*local match*” means cash or in-kind contributions to the project from a private donor, a business, or the pilot project city. “Cash” includes but is not limited to loans, forgivable loans or grants. “In-kind contributions” includes but is not limited to the construction of private or public infrastructure or other amenities and improvements directly related to a project.

ITEM 2. Amend subrule 71.4(2) as follows:

71.4(2) *Entering into ~~a~~ a withholding agreement.*

a. Agreement between pilot project city and business. A pilot project city may enter into a withholding agreement with a business locating to the community from another state that is creating or retaining targeted jobs in an urban renewal area. The pilot project city may enter into a withholding agreement with a business currently located in Iowa only if the business is creating at least ten new jobs or making a qualifying investment of at least \$500,000 within the urban renewal area.

b. Total amount of withholding tax credits. The withholding agreement shall provide for the total amount of withholding tax credits awarded. An agreement shall not provide for an amount of withholding tax credits that exceeds the amount of qualifying investment made in the project.

c. Ineligibility if there is competition between pilot project city and non-pilot project city. A withholding agreement shall not be entered into with an employer not already located in a pilot project city when another Iowa community is competing for the same project and both the pilot project city and the other Iowa community are seeking assistance from the department.

d. Option of a business to enter into withholding agreement. A business shall not be obligated to enter into a withholding agreement with a pilot project city.

e. 2013 sunset date. A pilot project city shall not enter into a withholding agreement with a business after June 30, ~~2010~~ 2013.

f. Department approval of withholding agreements. Prior to entering into a withholding agreement with a business, a pilot project city shall request department approval of the withholding agreement. The process for requesting approval from the department is described in subrule 71.5(1).

ITEM 3. Amend subrule 71.4(3) as follows:

71.4(3) *Required components of a withholding agreement.* A withholding agreement shall be disclosed to the public and shall contain all of the following:

a. A copy of the adopted development agreement between the pilot project city and employer, including how withholding funds generated by the city will be used.

b. A list of all other incentives or financial assistance the business has requested or is receiving from other federal, state, or local economic development programs including loans, grants, forgivable loans, and tax credits.

c. The amount of assistance provided by the pilot project city for the project.

d. Documentation of the approval of the project by local participating authorities.

e. The total amount of withholding tax credits awarded.

f. The total number of created and retained jobs included in the project.

g. The required countywide average wage.

h. The total qualifying investment included in the project.

i. The total required matching local financial support for the project.

ITEM 4. Amend subrule 71.4(7) as follows:

71.4(7) *Local match requirement.* ~~A pilot project city entering into a withholding agreement shall arrange for a match of at least one dollar for each withholding dollar received by the city. The local match may come from the pilot project city, a private donor, or the employer or a combination of the three. Local matches may be in the form of cash or in-kind contributions to be used for the project.~~

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

a. A pilot project city entering into a withholding agreement shall arrange for matching local financial support for the project. The local match required shall be in an amount equal to one dollar for every one dollar of withholding tax credit received by the pilot project city.

b. If the project, when completed, will increase the amount of an employer's taxable capital investment by an amount equal to at least 10 percent of the amount of withholding tax credit dollars received by the pilot project city, then the pilot project city shall itself contribute at least 10 percent of the local match amount computed under paragraph "a."

c. If the project, when completed, will not increase the amount of the employer's taxable capital investment by an amount equal to at least 10 percent of the amount of withholding tax credit dollars received by the pilot project city, then the pilot project city shall not be required to make a contribution to the local match.

d. A pilot project city's contribution, if any, to the local match may include the dollar value of any new tax abatement provided by the city to the business for new construction. For purposes of this paragraph, new construction includes building additions, remodeling, renovations, and updates.

ITEM 5. Amend subrule 71.5(1) as follows:

71.5(1) ~~Application for project approval.~~ Request for department approval of withholding agreement.

a. Request for approval form. Prior to entering into a withholding agreement with an employer, a pilot project city must receive approval from the department. ~~The department shall develop a standardized application for project approval and shall make the application available to eligible pilot project cities. The application for project approval shall include, but not be limited to, the following information regarding a project:~~ The department shall develop and make available to the pilot project cities a standardized form to request department approval of a proposed withholding agreement. To request department approval of a proposed withholding agreement, a pilot project city shall provide the department with the following information:

(1) A general description of the project, including how the pilot project city will utilize withholding funds generated by the project.

(2) Base employment of the number of full-time equivalent positions at a business as established by the department and the pilot project city, using the business's payroll records, as of the date that a business files an application with a pilot project city for financial assistance under the program.

~~(2)~~ (3) Information regarding the number of targeted jobs in the project, the wages of the targeted jobs, and the types of jobs created by the project.

~~(3)~~ (4) A budget for the project, showing the total project cost, the amount of local matching funds committed to the project, and the amount of withholding funds the pilot project city will receive from the project.

~~(4)~~ (5) A copy of the proposed withholding agreement to be entered into between the pilot project city and the employer.

~~(5)~~ (6) A letter or resolution of support from the local government showing support for the project.

b. Timing of submittal. ~~Applications for project approval for the targeted jobs withholding tax credit program~~ Requests for department approval of a proposed withholding agreement may be submitted at any time. The department will review ~~applications for projects~~ requests for approval of a proposed withholding agreement in as timely a manner as possible.

c. Department action on requests for approval. The department may approve, deny, or suggest changes to a withholding agreement. The department shall only deny an agreement if the agreement fails to meet the requirements as stated in subrule 71.4(2) or the local match requirement as stated in subrule 71.4(7) or if an employer is not in good standing as to prior or existing agreements with the department. A pilot project city will be notified in writing of the department's decision regarding the ~~project~~ proposed withholding agreement.

ITEM 6. Amend subrule 71.6(1) as follows:

71.6(1) Required reports.

a. No change.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

b. The pilot project city shall provide information documenting the total amount of payments and receipts from the special fund under the withholding agreement, including all agreements with an employer to suspend, abate, exempt, rebate, refund, or reimburse property taxes, to provide a grant for property taxes, a grant not related to property taxes, or to make a direct payment of taxes. The pilot project city shall submit this information to the department annually by September 1 covering the prior fiscal year (July 1 to June 30). The department shall verify the information provided by the pilot project city. The department will verify job creation or retention using the method described in 261—Chapter 188.

~~b. c.~~ The department may request additional reports from pilot project cities as necessary to determine the status of the targeted jobs withholding tax credit program.

d. The department shall make, at minimum, an annual on-site monitoring visit to each pilot project city to verify the documented information. The pilot project city shall provide the following:

(1) Payroll records that correspond to the quarterly report provided by the pilot project city for the department of revenue;

(2) Information substantiating the total amount of qualifying investment made in the project;

(3) Information substantiating the total amount of local financial support made in the project;

(4) Payments and receipts as described in paragraph 71.6(1)“b.”

ITEM 7. Amend subrule 71.6(2) as follows:

~~71.6(2) Annual report. The department shall prepare an annual report for the governor, the general assembly, and the legislative services agency on the targeted jobs withholding tax credit program. As required by Iowa Code section 15.104(9)“k,” the department includes in its annual report information about the targeted jobs withholding tax credit program. This report shall be is due on January 31 of each year. The report shall include but not be limited to the following:~~

~~a. — The amount of withholding funds each project received.~~

~~b. — The number of new and retained jobs resulting from the program.~~

~~c. — The average wage of jobs resulting from the program.~~

~~d. — An evaluation of the investment made by the state, including but not limited to the terms in paragraphs “a” to “c” of this subrule.~~

[Filed Emergency 5/22/09, effective 7/1/09]

[Published 6/17/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/17/09.

ARC 7847B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts amendments to Chapter 71, “Targeted Jobs Withholding Tax Credit Program,” Iowa Administrative Code.

The IDED Board adopted previous amendments to the Targeted Jobs Withholding Tax Credit (TJWTC) Program on January 15, 2009. These amendments were to become effective on March 18, 2009. However, at its March 6, 2009, meeting, the Administrative Rules Review Committee (ARRC) voted to delay the effective date for 70 days until May 26, 2009, to allow the Department to work through the legislative process and any pending legislation that would impact TJWTC.

2009 Iowa Acts, Senate File 304, was passed during the 2009 legislative session and will become effective on July 1, 2009. 2009 Iowa Acts, Senate File 304, makes substantive changes to TJWTC.

IDED has determined that the most recent amendments should not apply to the program. However, the revisions in 2009 Iowa Acts, Senate File 304, do not become effective until July 1, 2009. There is a gap that the Department wants to correct between the effective date of the most recent amendments and

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

the effective date of 2009 Iowa Acts, Senate File 304. This rule making adopts amendments that will govern the program from May 21, 2009, through June 30, 2009.

These amendments effectively undo the recent changes and restore the rules that existed before any revisions were proposed. The result is that the original program rules are in effect from May 21, 2009, through June 30, 2009. On July 1, 2009, 2009 Iowa Acts, Senate File 304, becomes effective, and the Adopted and Filed Emergency amendments that implement 2009 Iowa Acts, Senate File 304, published herein as **ARC 7848B**, also become effective on that date.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest because the existing program rules are not consistent with new legislation that will become effective on July 1, 2009. These emergency amendments will apply to applications submitted on or after May 21, 2009, through June 30, 2009.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and the amendments be made effective on May 21, 2009, upon filing with the Administrative Rules Coordinator. The pilot project cities will be able to continue processing applications from eligible businesses through the end of this fiscal year. These amendments allow the pilot project cities to know what procedures they must follow now and until July 1, 2009, when 2009 Iowa Acts, Senate File 304, takes effect.

These amendments became effective on May 21, 2009.

These amendments are intended to implement Iowa Code section 403.19A as amended by 2009 Iowa Acts, Senate File 304.

The following amendments are adopted.

ITEM 1. Amend subrule 71.4(2) as follows:

71.4(2) *Entering into an agreement.* A pilot project city may enter into a withholding agreement with a business locating to the community from another state that is creating or retaining targeted jobs in an urban renewal area. The pilot project city may enter into a withholding agreement with a business currently located in Iowa only if the business is creating at least ten new jobs or making a qualifying investment of at least \$500,000 within the urban renewal area. ~~The total award amount of withholding tax credits cannot exceed the total amount of land and site preparation costs and capital investment of depreciable assets in the project.~~ A business shall not be obligated to enter into a withholding agreement with a pilot project city. A pilot project city shall not enter into a withholding agreement with a business after June 30, 2010.

ITEM 2. Amend subrule 71.4(7) as follows:

71.4(7) *Local match requirement.* A pilot project city entering into a withholding agreement shall arrange for a match of at least one dollar for each withholding dollar received by the city. The local match may come from the pilot project city, a private donor, or the employer or a combination of the three. Local matches may be in the form of cash or in-kind contributions to be used for the project. ~~Additionally, the pilot project city is required to provide local financial support to the project in one of the two following forms or their equivalent values:~~

- ~~a. — Tax abatement for the project, as provided under Iowa Code chapter 427B.~~
- ~~b. — Local participation in the form of a cash grant or in-kind grant that is equal to the value of tax abatement under Iowa Code chapter 427B, under the established five-year sliding scale, or 10 percent of the total award amount of withholding tax credits, whichever is less.~~

ITEM 3. Amend subrule 71.5(1) as follows:

71.5(1) *Application for project approval.*

- a. No change.
- b. Applications for project approval for the targeted jobs withholding tax credit program may be submitted at any time. The department will review applications for projects in as timely a manner as

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

possible. ~~All applications will be presented to the IDEED board for comment prior to the department's approval.~~ A pilot project city will be notified in writing of the department's decision regarding the project.

[Filed Emergency 5/21/09, effective 5/21/09]

[Published 6/17/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/17/09.

ARC 7879B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 426B.5(2)(f), the Department of Human Services amends Chapter 25, "Disability Services Management," Iowa Administrative Code.

These amendments update provisions for operations of the Risk Pool Board to conform to changes enacted in 2009 Iowa Acts, Senate File 478, section 181. Notwithstanding the deadlines provided in Iowa Code section 426B.5(2), that legislation provides that for state fiscal year 2010:

- Applications for risk pool funding are due to the Department by July 1, instead of October 31;
- Risk Pool Board decisions on those applications shall be made by August 15, instead of December 15; and
- The Department shall distribute risk pool funds by September 15, instead of January 1.

These amendments also make technical changes to correct an address, cross-reference relevant statutory provisions, and clarify language.

These amendments do not provide for waivers in specified situations. The Department does not have authority to waive statutory provisions.

The Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission adopted these amendments on May 27, 2009.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary because the amendments merely conform the rules to the legislation and make technical changes to correct errors. The Department also finds that notice and public participation are impracticable because the July 1 deadline for applications does not allow time for notice and public participation.

The Department finds that these amendments confer a benefit by clarifying instructions to counties seeking risk pool funding. 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 are intended to implement 2009 Iowa Acts, Senate File 478, section 181.

These amendments became effective June 1, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule 25.62(5) as follows:

25.62(5) Board meetings.

a. The board shall meet in ~~November~~ August of each year and may hold special meetings at the call of the chairperson or at the request of a majority of the voting members.

b. Any county making application for risk pool funds must be represented at the board meeting for awarding funds when that request is considered.

(1) The division shall notify the county of the date, time and location of the meeting.

(2) Any other persons with questions about the date, time or location of the meeting may contact the Administrator, Division of Mental Health and Disability Services, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut Street, Des Moines, Iowa ~~50309-0114~~ 50319-0114, telephone (515)281-7277.

c. The board shall comply with applicable provisions of Iowa's open meetings law, Iowa Code chapter 21.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend subparagraph **25.63(1)“b”(2)** as follows:

(2) To avoid the need for reduction or elimination of:

1. Critical services, creating risk to a consumer’s health or safety;
2. Critical emergency or mobile crisis services, creating risk to the public’s health or safety;
3. and 4. No change.

ITEM 3. Amend paragraph **25.63(2)“b”** as follows:

b. Deadline. The division must receive the application no later than 4:30 p.m. on ~~October 31~~ July 1 of each year; or, if ~~October 31~~ July 1 is a holiday, Saturday or Sunday, the division must receive the application no later than 4:30 p.m. on the first working day thereafter.

ITEM 4. Amend subrule 25.63(3) as follows:

25.63(3) Request for additional information. Staff shall review all applications for completeness. If an application is not complete, staff of the division shall contact the county within four working days after ~~October 31 or the first working day thereafter, if October 31 is a holiday, Saturday or Sunday,~~ July 1 to request the information needed to complete the application. If July 1 is a holiday, Saturday or Sunday, the division shall make this contact within five working days after July 1. The county shall submit the required information within five working days from the date of the division’s request for the additional information.

ITEM 5. Amend rule 441—25.64(426B) as follows:

441—25.64(426B) Methodology for awarding risk pool funding. The risk pool board shall make an eligibility decision on each application within 45 days after receiving the application and shall make a funding decision no later than ~~December 15~~ August 15.

25.64(1) No change.

25.64(2) Distribution of funds. The total amount of the risk pool shall be limited to the available pool for a fiscal year.

a. If the total dollar amount of the approved applications exceeds the available pool, the board shall prorate the amount paid for an approved application. The funds will be prorated to each county based upon the proportion of each approved county’s request to the total amount of all approved requests.

b. The division shall authorize the issuance of warrants payable to the county treasurers for the amounts due. The warrants shall be issued on or before September 15.

ITEM 6. Amend subrule 25.65(2) as follows:

25.65(2) Year-end report. Each county granted risk pool funds shall complete a year-end financial report as required by Iowa Code section 225C.6A(2)(c)(3). The division shall review the accrual information and notify the mental health risk pool board if any county that was granted assistance in the prior year received more than the county’s actual need based on the submitted financial report.

[Filed Emergency 5/29/09, effective 6/1/09]

[Published 6/17/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/17/09.

ARC 7850B

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 16.181, the Iowa Finance Authority hereby amends Chapter 19, “State Housing Trust Fund,” Iowa Administrative Code.

The purpose of this amendment is to implement Iowa Code section 16.181 as amended by 2009 Iowa Acts, Senate File 207, by setting better parameters for the creation of local housing trust funds.

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.

IOWA FINANCE AUTHORITY[265](cont'd)

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 the normal notice and public participation process would delay implementation of the changes and could possibly interfere with the operation of the state housing trust fund at a time when funds are badly needed for disaster recovery in many parts of the state. The Authority is also simultaneously publishing a Notice of Intended Action as **ARC 7851B** herein to allow for public comment.

The Authority finds that adoption of this amendment confers a benefit on the public in that the amendment promotes more standardized, viable local housing trust funds and eases and speeds the administration of an important program which benefits persons in need of low-income housing. The Authority finds that this amendment should be implemented as soon as feasible in order to facilitate the awarding of allocations 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 May 26, 2009.

This amendment became effective May 26, 2009.

This amendment is intended to implement Iowa Code section 16.5(1)“r” and section 16.181 as amended by 2009 Iowa Acts, Senate File 207.

The following amendment is adopted.

Amend rule 265—19.1(16) as follows:

265—19.1(16) Trust fund allocation plans. The trust fund allocation plan entitled Iowa Finance Authority State Housing Trust Fund Allocation Plan for the Local Housing Trust Fund Program dated May ~~2008~~ 2009 shall be the allocation plan for the award, pursuant to the local housing trust fund program, of funds held within the state housing trust fund established in Iowa Code section 16.181. The trust fund allocation plan entitled Iowa Finance Authority State Housing Trust Fund Allocation Plan for the Project-Based Housing Program dated September 2008 shall be the allocation plan for the distribution, pursuant to the project-based housing program, of funds held within the state housing trust fund. The trust fund allocation plans for the local housing trust fund program and the project-based housing program include the plans, applications, and application instructions. The trust fund allocation plans for the local housing trust fund program and the project-based housing program are incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

[Filed Emergency 5/26/09, effective 5/26/09]

[Published 6/17/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/17/09.

ARC 7842B

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 16.40, the Iowa Finance Authority hereby amends Chapter 29, “Jump-Start Housing Assistance Program,” Iowa Administrative Code.

The purpose of these amendments is to modify and clarify certain provisions of the program of housing assistance for persons affected by the natural disasters that occurred in Iowa in 2008.

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 the victims of the natural disasters is needed immediately, and the normal notice and public participation process would delay implementation of the changes. The Authority is also simultaneously publishing a Notice of Intended Action as **ARC 7843B** herein to allow for public comment.

IOWA FINANCE AUTHORITY[265](cont'd)

The Authority finds that these amendments confer a benefit on those persons adversely affected by the natural disasters, in that the amendments ease and speed the administration of an important program benefiting such persons. For this reason, these amendments should be implemented as soon as feasible in order to facilitate the provision of assistance under the program and to avoid confusion. 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.

The Authority adopted these amendments on May 14, 2009.

These amendments became effective May 14, 2009.

These amendments are intended to implement Iowa Code sections 16.5(1)“r” and 16.40 and 2009 Iowa Acts, Senate File 289.

The following amendments are adopted.

ITEM 1. Amend subrule 29.5(2) as follows:

29.5(2) *Interim mortgage assistance loans.* An eligible resident whose disaster-affected home is proposed, or is located in an area proposed, by a municipality or county to the Iowa homeland security and emergency management division for property acquisition under the hazard mitigation grant program set forth in Iowa Code chapter 29C (or any other comparable program implemented in whole or in part to assist in recovery from the natural disasters of 2008) may receive financial assistance equivalent to an amount of up to \$1,000 per month for the purpose of paying mortgage payments and other eligible property-carrying costs for the disaster-affected home for a period not to exceed 12 months. An eligible resident who receives assistance pursuant to this subrule shall not be eligible for assistance under paragraph 29.5(1)“a.” If, however, it subsequently is determined by the Iowa homeland security and emergency management division that the disaster-affected home of the eligible resident will not be acquired under the hazard mitigation grant program, then the eligible resident shall be eligible for assistance under paragraph 29.5(1)“a” on the condition that the amount of assistance available under that paragraph shall be reduced by the amount of assistance received by the eligible resident under subrule 29.5(2). Financial assistance provided pursuant to this subrule shall be in the form of a forgivable loan.

a. Notwithstanding the foregoing, with the approval of the applicable local government participant, an eligible resident may receive financial assistance under this subrule for up to an additional 6 months (beyond the usual 12-month limit set forth above), provided that all of the following conditions are met:

(1) The eligible resident must reapply for or request an extension of financial assistance on forms to be provided by the applicable local government participant;

(2) The disaster-affected home for which an extension of financial assistance is sought must continue to be on the current hazard mitigation grant program (or comparable program) property acquisition list (i.e., it must continue to be proposed for buyout);

(3) The disaster-affected home for which an extension of financial assistance is sought must have been destroyed or damaged beyond reasonable repair such that the eligible resident is displaced from the home;

(4) The eligible resident must have contacted or must agree to contact the mortgage holder or an Iowa Mortgage Help counseling agency (Web site: www.iowamortgagehelp.com) to discuss the situation and, if possible, negotiate better terms.

b. Local government participants may fund extensions of financial assistance only from funds already allocated to their region. Local government participants shall give priority for extensions of financial assistance to those eligible residents who are supporting the costs of both the disaster-affected home and a new primary residence through a second mortgage payment or a rental payment.

ITEM 2. Amend subrule 29.6(1) as follows:

29.6(1) *Forgivability.* Forgivable loans made pursuant to the program shall be forgivable over a ~~ten~~ five-year period. ~~One-tenth~~ fifth of the total principal amount loaned shall be forgiven following each full year the eligible resident owns the home for which the loan was made, beginning on the date of the final disbursement of forgivable loan proceeds.

IOWA FINANCE AUTHORITY[265](cont'd)

ITEM 3. Amend subrule 29.6(3) as follows:

29.6(3) ~~Ten~~ Five-year term. All loans made pursuant to the program shall be for a term of ~~ten~~ five years.

[Filed Emergency 5/14/09, effective 5/14/09]

[Published 6/17/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/17/09.

ARC 7863B

LABOR SERVICES DIVISION[875]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board amends Chapter 90, "Administration of the Boiler and Pressure Vessel Program," Iowa Administrative Code.

Subrule 90.7(2) currently sets a \$25 fee for a one-year certificate and a \$50 fee for a two-year certificate. This amendment updates the subrule to reflect statutory changes set forth in 2009 Iowa Acts, House File 720, by establishing a \$100 fee for a new, four-year certificate.

In compliance with Iowa Code section 17A.4(3), the Board finds that notice and public participation are unnecessary because this amendment merely changes the administrative rule to coincide with the statutory change. The Board finds that notice and public participation are impracticable because the statutory change allowing internal inspections every four years is effective July 1, 2009.

Pursuant to Iowa Code section 17A.5, subsection 2, paragraph "b," subparagraph (2), the Board finds the normal effective date of the amendment should be waived and this amendment should be made effective July 1, 2009, because this change confers a benefit by implementing the four-year inspection schedule described in 2009 Iowa Acts, House File 720.

The Board also submitted this amendment under Notice of Intended Action as **ARC 7865B** to allow for public comment.

The principal reason for adoption of this amendment is to implement legislative intent. No variance provision is included in these rules. Applicable variance procedures are set forth in 875—Chapter 81.

This amendment is intended to implement Iowa Code chapter 89 and 2009 Iowa Acts, House File 720.

This amendment will become effective July 1, 2009.

The following amendment is adopted.

Amend subrule 90.7(2) as follows:

90.7(2) *Certificate fee*. A \$25 fee shall be paid for each one-year certificate, ~~and~~ a \$50 fee shall be paid for each two-year certificate, and a \$100 fee shall be paid for each four-year certificate.

[Filed Emergency 5/28/09, effective 7/1/09]

[Published 6/17/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/17/09.

ARC 7876B

LABOR SERVICES DIVISION[875]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 91C.6, the Labor Commissioner hereby amends Chapter 150, "Construction Contractor Registration," Iowa Administrative Code.

This amendment updates a rule to reflect statutory changes set forth in 2009 Iowa Acts, Senate File 478, section 203. Effective July 1, 2009, 2009 Iowa Acts, Senate File 478, increases the registration fee and changes the registration period. This amendment rescinds a subrule that reflects the prior registration

LABOR SERVICES DIVISION[875](cont'd)

fee and registration period and adopts new language to assist in the transition from the old fee to the new fee.

2009 Iowa Acts, Senate File 478, section 206, gives the Labor Commissioner authority to “adopt emergency rules under section 17A.4, subsection 3, and section 17A.5, subsection 2, paragraph ‘b.’” Therefore, pursuant to Iowa Code section 17A.4(3), the Labor Commissioner finds that notice and public participation are unnecessary because this amendment changes the administrative rule to coincide with the statutory provisions. The Labor Commissioner finds that notice and public participation are impracticable because the statutory changes are effective July 1, 2009.

Pursuant to Iowa Code section 17A.5, subsection 2, paragraph “b,” subparagraph (1), the Labor Commissioner finds that the normal effective date of the amendment should be waived and this amendment should be made effective July 1, 2009, based on the statutory authority of 2009 Iowa Acts, Senate File 478, section 206.

This amendment is also published herein under Notice of Intended Action as **ARC 7875B** to allow for public comment. The paragraphs that appear herein as 150.6(1)“a” and “b” appear as subrules 150.6(1) and 150.6(2) in **ARC 7875B**. The language is identical.

The principal reason for adoption of this amendment is to implement legislative intent. No variance procedures are included in these rules because the variance procedures are set forth in 875—Chapter 1.

This amendment is intended to implement Iowa Code chapter 91C and 2009 Iowa Acts, Senate File 478.

This amendment will become effective July 1, 2009.

The following amendment is adopted.

Rescind subrule 150.6(1) and adopt the following new subrule in lieu thereof:

150.6(1) Applications.

a. New applications. A new application deposited in the U.S. mail shall be accompanied by the fee effective on the date the application is postmarked. A new application delivered in any other manner shall be accompanied by the fee effective on the date the application is received by the division.

b. Renewal applications. A timely renewal application shall be accompanied by the fee effective on the expiration date of the contractor’s expiring registration. An application for renewal deposited in the U.S. mail after the expiration date of the contractor’s expiring registration shall be accompanied by the fee effective on the date the application is postmarked. An application for renewal delivered to the division in a manner other than U.S. mail and after the expiration date of the contractor’s expiring registration shall be accompanied by the fee effective on the date the application is received by the division.

[Filed Emergency 5/29/09, effective 7/1/09]

[Published 6/17/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 6/17/09.

ARC 7845B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.105 and 15.106, the Iowa Department of Economic Development hereby adopts new Chapter 27, "Neighborhood Stabilization Program," Iowa Administrative Code.

These rules are intended to implement the newly authorized Neighborhood Stabilization Program through the U.S. Department of Housing and Urban Development. The Neighborhood Stabilization Program funds were authorized by the Housing and Economic Recovery Act of 2008 as an adjunct to the Community Development Block Grant Program.

The rules describe eligibility requirements, establish application review and approval procedures, and describe fund allocation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 8, 2009, as **ARC 7710B**. These rules were also Adopted and Filed Emergency and published on that same date as **ARC 7709B**.

A public hearing was held on April 28, 2009, to receive comments on these rules. The Department did not receive any written or oral comments on the new rules. These rules are identical to those published under Notice.

The Iowa Economic Development Board adopted these rules on May 21, 2009.

These rules will become effective on July 22, 2009, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement Iowa Code sections 15.108(11) and 15.109 and the Housing and Economic Recovery Act of 2008.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 27] is being omitted. These rules are identical to those published under Notice as **ARC 7710B** and Adopted and Filed Emergency as **ARC 7709B**, IAB 4/8/09.

[Filed 5/21/09, effective 7/22/09]

[Published 6/17/09]

[For replacement pages for IAC, see IAC Supplement 6/17/09.]

ARC 7844B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104, 15.106 and 15.295, the Iowa Department of Economic Development amends Chapter 65, "Brownfield Redevelopment Program," Iowa Administrative Code.

These amendments implement recent legislative changes as authorized in 2008 Iowa Acts, chapter 1173. The amendments update Iowa Code citations; add new definitions for "council," "grayfield site," "green development," "qualifying investment," "qualifying investor," "qualifying redevelopment project," and "sustainable design"; amend the definition of "brownfield site"; and describe the eligibility requirements and application procedures for the new redevelopment tax credits.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 8, 2009, as **ARC 7706B**.

A public hearing was held on April 28, 2009, to receive comments on these amendments. The Department did not receive any written or oral comments about these amendments.

Since publication of the Notice of Intended Action, Iowa Code references have been updated in two existing definitions found in rule 261—65.2(15).

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

The Iowa Economic Development Board adopted these amendments on May 21, 2009.
 These amendments will become effective on July 22, 2009.
 These amendments are intended to implement Iowa Code sections 15.291 to 15.295.

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 [65.1 to 65.10] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 7706B**, IAB 4/8/09.

[Filed 5/21/09, effective 7/22/09]

[Published 6/17/09]

[For replacement pages for IAC, see IAC Supplement 6/17/09.]

ARC 7869B

EDUCATIONAL EXAMINERS BOARD[282]

Adopted and Filed

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

This amendment removes the requirement that teacher preparation programs be accredited by NCATE. NCATE has changed its criteria for approval of programs, and the criteria are in conflict with the system used by the Board of Educational Examiners.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 25, 2009, as **ARC 7600B**. A public hearing on the amendment was held on Wednesday, March 18, 2009. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice.

This amendment is intended to implement Iowa Code chapter 272.

This amendment will become effective July 22, 2009.

The following amendment is adopted.

Rescind and reserve rule **282—13.19(272)**.

[Filed 5/28/09, effective 7/22/09]

[Published 6/17/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/17/09.

ARC 7866B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Adopted and Filed

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

Iowa Code chapter 68A provides that media organizations that discuss candidates and public affairs do not trigger the campaign laws. Iowa Code section 68A.503(2)"d" directs the Iowa Ethics and Campaign Disclosure Board to adopt a rule prohibiting the owner, publisher, or editor of a sham newspaper from using the newspaper to promote that person's candidacy for public office. The amendment establishes the factors the Board will use in determining whether a publication should be entitled to the press exception or should be treated as a sham newspaper that triggers the campaign laws.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 8, 2009, as **ARC 7705B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on May 28, 2009.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

This amendment is intended to implement Iowa Code section 68A.503(2)“d.”
This amendment will become effective on July 22, 2009.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [4.48] is being omitted. This amendment is identical to that published under Notice as **ARC 7705B**, IAB 4/8/09.

[Filed 5/28/09, effective 7/22/09]

[Published 6/17/09]

[For replacement pages for IAC, see IAC Supplement 6/17/09.]

ARC 7880B**INSURANCE DIVISION[191]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 514F.6, the Insurance Division hereby amends Chapter 70, “Utilization Review,” Iowa Administrative Code.

The amendment provides for the retrospective payment of clean claims for covered physician services during the credentialing period.

Notice of Intended Action was published in the January 28, 2009, Iowa Administrative Bulletin as **ARC 7525B**. Revisions to the Notice of Intended Action include clarifying the definition of “application date” to reflect submission of a completed application and adding the phrase “or other entity responsible for credentialing physicians on behalf of the health insurer” to the definition and elsewhere throughout the rule for consistency. The proposed amendment was also modified to clarify that standards for timely submission of claims shall not prevent the payment of covered services after a physician is credentialed. The Division did not accept the request to make the new rule retroactive to July 1, 2008, the effective date of the enabling legislation, for lack of agreement among interested parties.

This amendment will become effective July 22, 2009.

This amendment is intended to implement Iowa Code section 514F.6.

The following amendment is adopted.

Adopt the following **new** rule 191—70.10(514F):

191—70.10(514F) Credentialing—retrospective payment.

70.10(1) Purpose. This rule implements Iowa Code section 514F.6 [2008 Iowa Acts, House File 2555, section 28] which requires the commissioner to adopt rules to provide for the retrospective payment of clean claims for covered services provided by a physician during the credentialing period, once the physician is credentialed.

70.10(2) Definitions. For purposes of this rule, the definitions found in Iowa Code section 514F.6 [2008 Iowa Acts, House File 2555, section 28] shall apply. In addition, the following definitions shall apply:

“*Application date*” means the date on which the health insurer or other entity responsible for the credentialing of physicians on behalf of the health insurer receives the physician’s completed application for credentialing.

“*Clean claim*” means clean claim as defined in Iowa Code section 507B.4A(2)“b.”

“*Health insurer*” means the same as a carrier, as defined in Iowa Code section 513B.2(4), that provides health insurance coverage, as defined in Iowa Code section 513B.2(12).

70.10(3) Retrospective payment of clean claims. A health insurer shall make retrospective payment for all clean claims submitted by a physician after the credentialing period for covered services provided by the physician during the credentialing period subject to all of the following:

a. The credentialing period shall begin on the application date and end on the date the health insurer or other entity responsible for credentialing physicians on behalf of the health insurer makes a final determination approving the physician’s application to be credentialed.

INSURANCE DIVISION[191](cont'd)

b. The health insurer or other entity responsible for credentialing physicians on behalf of the health insurer shall notify an applicant of its determination regarding a properly completed application for credentialing within 90 days of receipt of an application containing all information required by the health insurer's credentialing form.

c. The physician shall not submit any claims to the health insurer during the credentialing period.

d. A health insurer shall not be required to pay any claims submitted by a physician during the credentialing period.

e. The health insurer's time period for timely submission of claims shall not start until the credentialing period has ended. The health insurer's rules pertaining to timely submission shall not be used to deny payment of any clean claims for medical services provided by a physician during the credentialing period, so long as the physician submits all such claims within the time period required by the health insurer's rules beginning on the date the physician is credentialed.

f. After the physician has been credentialed, the physician shall submit all claims to the health insurer for covered services provided by the physician during the credentialing period.

g. After the physician has been credentialed, a health insurer shall pay all clean claims submitted by the physician for covered services provided by the physician during the credentialing period within the time periods specified in 191—15.32(507B).

70.10(4) Applicability.

a. This rule shall not apply to services provided by a physician that are covered by Medicaid, Medicare, TRICARE, or other health care benefit programs subject to federal regulations regarding eligibility and provider payments.

b. Nothing contained in this rule shall require a health insurer or other entity responsible for credentialing physicians on behalf of the health insurer to take any action in violation of the requirements of the National Committee for Quality Assurance (NCQA) or Utilization Review Accreditation Commission (URAC).

c. Nothing contained in this rule shall require a health insurer or other entity responsible for credentialing physicians on behalf of the health insurer to credential a physician or to permit a noncredentialed physician to participate in the health insurer's provider network.

70.10(5) Effective date. This rule shall become effective on July 22, 2009.

[Filed 6/1/09, effective 7/22/09]

[Published 6/17/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/17/09.

ARC 7840B

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board rescinds Chapter 71, "Administration," and adopts a new Chapter 71, "Administration of the Conveyance Safety Program"; amends Chapter 72, "New Installations," and Chapter 73, "Existing Conveyances"; and rescinds Chapter 75, "Fees," and Chapter 76, "Permits," Iowa Administrative Code.

These amendments rescind unnecessary and obsolete provisions; reorganize many existing rules; significantly change the rules governing safety tests; adopt a procedure to verify that hazards have been corrected without the need for reinspection in some cases; allow a controller upgrade permit in certain, narrowly defined circumstances; make technical and editorial corrections; establish rules for the extension of installation and alteration permits; adopt new provisions for the inspection of moving walks and escalators; increase the fees for inspection of moving walks and escalators; and change the rules concerning inspection scheduling.

The purposes of these amendments are to protect the safety of the public, facilitate the upgrading of older elevator controls, make more efficient use of inspectors' time, make the rules more current and

LABOR SERVICES DIVISION[875](cont'd)

easier to read, enhance conveyance safety by improving inspection and safety test procedures, align the language concerning inspection scheduling with the statutory authority, and implement legislative intent.

The principal reasons for adoption of these rules are to protect safety and health and to implement legislative intent. No variance provision is included in these rules as 875—Chapter 66 sets forth applicable variance procedures.

Notice of Intended Action was published in the April 8, 2009, Iowa Administrative Bulletin as **ARC 7696B**. No public comment was received on the proposed amendments. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 89A.

These amendments shall become effective on July 22, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [adopt Ch 71; amend Chs 72, 73; rescind Chs 75, 76] is being omitted. These amendments are identical to those published under Notice as **ARC 7696B**, IAB 4/8/09.

[Filed 5/14/09, effective 7/22/09]

[Published 6/17/09]

[For replacement pages for IAC, see IAC Supplement 6/17/09.]

ARC 7841B**LABOR SERVICES DIVISION[875]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 89A.3, the Labor Commissioner hereby amends Chapter 71, "Administration of the Conveyance Safety Program," Iowa Administrative Code. (See **ARC 7840B** herein.)

The amendment governs the issuance, denial, probation, revocation, and suspension of special inspector commissions. The new rule is more current and provides more detail than the existing rule.

The principal reasons for adoption of this amendment are to implement Iowa Code chapter 89A and to protect the public safety and health.

No waiver provision is included in these rules as waiver provisions are set forth in 875—Chapter 1.

Notice of Intended Action for this amendment was published in the April 8, 2009, Iowa Administrative Bulletin as **ARC 7697B**. A public hearing was scheduled on April 29, 2009. No member of the public commented on the amendment. No changes have been made from the Notice of Intended Action.

This amendment is intended to implement Iowa Code chapters 89A, 252J, 261 and 272D.

This amendment will become effective on July 22, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [71.12] is being omitted. This amendment is identical to that published under Notice as **ARC 7697B**, IAB 4/8/09.

[Filed 5/14/09, effective 7/22/09]

[Published 6/17/09]

[For replacement pages for IAC, see IAC Supplement 6/17/09.]

ARC 7852B**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby rescinds Chapter 15, "General License Regulations," Iowa Administrative Code, and adopts a new Chapter 15 with the same title.

The amendment replaces current Chapter 15 with a new chapter in order to make the rules pertaining to license sales, refunds, and administration consistent with the new electronic license sales contract for the Electronic Licensing System of Iowa (ELSI) 2 and the associated equipment upgrades and to present the rules in an order that is more intuitive and that allows for future changes. The rules in new Divisions II, III, and IV, which pertain to violations and the wildlife violator compact, special licenses, and education and certification programs, have been reorganized, but the content of the rules remains largely unchanged. Changes to the substance of those rules will be proposed in a future rule making. No fee changes have been made.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 11, 2009, as **ARC 7617B**. These rules have been changed since the Notice of Intended Action. The term "license seller" in rule 571—15.2(483A), Definitions, has been changed to "license agent" to be consistent with the definition and terminology used in Iowa Code chapter 483A. This revision included replacing "license seller" and "license depository" throughout the chapter with "license agent." Subrule 15.8(6) has been revised to include a cross reference to rule 571—15.2(483A), and rule 571—15.41(483A) has been expanded to include a numbered list referencing types of hunting licenses. Rule 571—15.41(483A) now reads as follows:

"571—15.41(483A) Hunter safety and ethics education program. This division clarifies the term "hunting license" as used in Iowa Code section 483A.27 in relation to the hunter safety and ethics education course requirement, clarifies the need for exhibiting a hunter safety and ethics education course certificate when applying for a deer or wild turkey license, and explains the requirements for individuals who wish to demonstrate their knowledge of hunter safety and ethics to qualify for purchase of an Iowa hunting license. For the purpose of this division, a hunting license, pursuant to Iowa Code sections 483A.1 and 483A.24, includes:

- "1. Hunting licenses for legal residents except as otherwise provided. (Iowa Code section 483A.1(1))
- "2. Hunting licenses for nonresidents. (Iowa Code section 483A.1(2))
- "3. Hunting preserve license.
- "4. Free annual hunting and fishing licenses for persons who are disabled or are 65 years of age or older and qualify for low-income status as defined in Iowa Code section 483A.24.
- "5. Veteran's lifetime hunting and fishing license as defined in Iowa Code section 483A.24."

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

These rules shall become effective on July 22, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 15] is being omitted. With the exception of the changes noted above, these rules are identical to those published under Notice as **ARC 7617B**, IAB 3/11/09.

[Filed 5/27/09, effective 7/22/09]

[Published 6/17/09]

[For replacement pages for IAC, see IAC Supplement 6/17/09.]

ARC 7857B**NATURAL RESOURCE COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6) and section 455A.13, the Natural Resource Commission hereby amends Chapter 71, "Nursery Stock Sale to the Public," Iowa Administrative Code.

The adopted amendments to Chapter 71 increase the price of certain nursery stock sold by the Department to the public. In addition, aspen trees have been added to the hardwoods category of subrule 71.3(1). Pursuant to Iowa Code section 455A.13, the Commission is authorized to adopt rules that establish a range of prices for plant material grown at State Nurseries to cover expenses related to the growing of the plants. The amended prices are necessary to cover the Department's increased labor and production costs.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 11, 2009, as **ARC 7615B**. No public hearings were held on this rule making. One comment was received in support of the amendments.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 456A.20 and 461A.2 and 1989 Iowa Acts, chapter 311, section 16.

These amendments will become effective July 22, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [71.3(1) to 71.3(5)] is being omitted. These amendments are identical to those published under Notice as **ARC 7615B**, IAB 3/11/09.

[Filed 5/27/09, effective 7/22/09]

[Published 6/17/09]

[For replacement pages for IAC, see IAC Supplement 6/17/09.]

ARC 7870B**REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 17A and sections 421.14 and 422.68, the Department of Revenue hereby adopts new Chapter 226, "Agricultural Rules," Iowa Administrative Code.

The new chapter is intended to implement Iowa Code chapter 423, otherwise known as the Streamlined Sales and Use Tax Act. The newly drafted chapter is intended to accomplish three things: (1) to explain the changes to Iowa sales and use tax law made by the Streamlined Sales and Use Tax Act; (2) to preserve the existing interpretation of portions of Iowa sales and use tax law which the Streamlined Sales and Use Tax Act does not change; and (3) to remove from the new rules as many references as possible to sales and use tax law as it existed prior to July 1, 2004, the effective date of the Streamlined Sales and Use Tax Act.

Rule 701—226.1(423) also incorporates changes to Iowa sales and use tax law as a result of 2008 Iowa Acts, Senate File 2400, sections 55 and 56, which pertain to the sales and use tax exemption for replacement parts used in the repair or reconstruction of farm machinery used in certain activities related to agricultural production.

Notice of Intended Action was published in IAB Vol. XXXI, No. 22, p. 2349, on April 22, 2009, as **ARC 7725B**. These rules are identical to those published under Notice of Intended Action.

These rules will become effective July 22, 2009, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

REVENUE DEPARTMENT[701](cont'd)

These rules are intended to implement Iowa Code chapter 423.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 226] is being omitted. These rules are identical to those published under Notice as **ARC 7725B**, IAB 4/22/09.

[Filed 5/29/09, effective 7/22/09]

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[For replacement pages for IAC, see IAC Supplement 6/17/09.]