



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

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CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2009

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
4	Friday, July 24, 2009	August 12, 2009
5	Friday, August 7, 2009	August 26, 2009
6	Wednesday, August 19, 2009	September 9, 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
CULTURAL AFFAIRS DEPARTMENT[221]		
Iowa cultural trust, ch 13 IAB 7/1/09 ARC 7925B	Tone Board Room, Third Floor West Historical Building 600 E. Locust St. Des Moines, Iowa	July 21, 2009 10 a.m.
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Financial assistance programs, amend chs 1, 23, 53, 57, 59 to 61, 68, 69, 165, 173 to 175, 187, 189; adopt chs 74, 75 IAB 7/15/09 ARC 7971B (See also ARC 7970B herein)	ICN Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	August 5, 2009 2 to 4 p.m.
Film, television, and video project promotion program, amendments to ch 36 IAB 7/15/09 ARC 7955B (See also ARC 7956B herein)	ICN/Main Conference Room 200 E. Grand Ave. Des Moines, Iowa	August 4, 2009 3 to 4 p.m.
Aggregate tax credit limit for certain economic development programs, ch 76 IAB 7/15/09 ARC 7953B (See also ARC 7954B herein)	Iowa Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	August 6, 2009 11 a.m. to 12 noon
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 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.
Wastewater discharge from well drilling sites, 64.3(1), 64.4(2), 64.6, 64.15(6), 64.16(5) IAB 7/15/09 ARC 7945B	Cedar Falls Utilities Training Room 1 Utility Parkway Cedar Falls, Iowa	August 4, 2009 10 a.m.
	Public Library 123 S. Linn St. Iowa City, Iowa	August 4, 2009 4 p.m.
	Rooms 180E & F Muse Norris Conference Center North Iowa Area Community College 500 College Dr. Mason City, Iowa	August 5, 2009 1 p.m.
	Conference Rooms North & South DNR Water Supply Offices, Suite M 401 SW 7th St. Des Moines, Iowa	August 5, 2009 6 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)		
	Cherokee Community Center 530 W. Bluff St. Cherokee, Iowa	August 11, 2009 9 a.m.
	Municipal Utilities Conference Room 15 W. 3rd St. Atlantic, Iowa	August 12, 2009 10 a.m.
Hearing procedures regarding preliminary decisions on construction permit applications, 65.10 IAB 7/15/09 ARC 7961B	Board Room Clay County Administration Building 300 W. 4th St. Spencer, Iowa	August 4, 2009 1 p.m.
	Fifth Floor East Conference Room Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa	August 5, 2009 1 p.m.
	Washington County Conservation Board Education Center-Marr Park 2943 Highway 92 Ainsworth, Iowa	August 6, 2009 1 p.m.
HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]		
Continuing education requirements for local emergency management coordinators, 7.4(4)“a” IAB 7/15/09 ARC 7951B	Division Conference Room Building W-4, Camp Dodge 7105 N.W. 70th Ave. Johnston, Iowa	August 6, 2009 10:30 a.m.
Update of fees charged for division services, 11.6 IAB 7/15/09 ARC 7958B	Division Conference Room Building W-4, Camp Dodge 7105 N.W. 70th Ave. Johnston, Iowa	August 6, 2009 10 a.m.
INSPECTIONS AND APPEALS DEPARTMENT[481]		
Dependent adult abuse in facilities and programs, ch 52 IAB 7/1/09 ARC 7939B (See also ARC 7828B , IAB 6/3/09) (ICN Network)	ICN Room, Sixth Floor Lucas State Office Bldg. 321 E. 12th St. Des Moines, Iowa	July 24, 2009 3 p.m.
	Room 118, Iowa Lakes Community College 1900 N. Grand Ave. Spencer, Iowa	July 24, 2009 3 p.m.
	Room 112, Looft Hall Iowa Western Community College 2700 College Rd. Council Bluffs, Iowa	July 24, 2009 3 p.m.
	Room 110, Tama Hall Hawkeye Community College 1501 E. Orange Rd. Waterloo, Iowa	July 24, 2009 3 p.m.
	Rm. 117, Kirkwood Community College 1816 Lower Muscatine Rd. Iowa City, Iowa	July 24, 2009 3 p.m.

AGENCY	HEARING LOCATION	DATE AND TIME
INSPECTIONS AND APPEALS DEPARTMENT[481] (Cont'd)		
(ICN Network)	Room 528, Trustee Hall (north campus) Southeastern Community College 1500 West Agency West Burlington, Iowa	July 24, 2009 3 p.m.
Elder group homes, ch 68 IAB 7/15/09 ARC 7960B (Joint hearing with ARC 7959B) (ICN Network)	ICN Room, Sixth Floor Lucas State Office Bldg. 321 E. 12th St. Des Moines, Iowa	August 14, 2009 3 p.m.
	Room 113, Galva-Holstein High School 519 E. Maple Holstein, Iowa	August 14, 2009 3 p.m.
	Room 110, Tama Hall Hawkeye Community College 1501 E. Orange Rd. Waterloo, Iowa	August 14, 2009 3 p.m.
	Meeting Room D, Public Library 123 S. Linn St. Iowa City, Iowa	August 14, 2009 3 p.m.
Adult day services programs, ch 70 IAB 7/15/09 ARC 7959B (Joint hearing with ARC 7960B) (ICN Network)	ICN Room, Sixth Floor Lucas State Office Bldg. 321 E. 12th St. Des Moines, Iowa	August 14, 2009 3 p.m.
	Room 113, Galva-Holstein High School 519 E. Maple Holstein, Iowa	August 14, 2009 3 p.m.
	Room 110, Tama Hall Hawkeye Community College 1501 E. Orange Rd. Waterloo, Iowa	August 14, 2009 3 p.m.
	Meeting Room D, Public Library 123 S. Linn St. Iowa City, Iowa	August 14, 2009 3 p.m.
INSURANCE DIVISION[191]		
Conduit derivative transactions—exemptions from reporting requirements, 93.6(3) IAB 7/1/09 ARC 7914B	Lobby Conference Room 330 Maple St. Des Moines, Iowa	July 21, 2009 10 a.m.
Accounting practices for certain derivative assets and indexed products, ch 97 IAB 7/1/09 ARC 7915B	Lobby Conference Room 330 Maple St. Des Moines, Iowa	July 21, 2009 10 a.m.
IOWA FINANCE AUTHORITY[265]		
Iowa jobs program, ch 32 IAB 7/15/09 ARC 7942B (See also ARC 7941B herein)	2015 Grand Ave. Des Moines, Iowa	August 4, 2009 1:30 to 3:30 p.m.

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Water quality financial assistance program, ch 33 IAB 7/1/09 ARC 7896B	Presentation Conference Room 2015 Grand Ave. Des Moines, Iowa	July 22, 2009 10 a.m.
LABOR SERVICES DIVISION[875]		
OSHA regulations—adoption by reference, 10.20 IAB 7/1/09 ARC 7927B	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	July 21, 2009 1:30 p.m.
Civil penalties, 34.3(2) IAB 7/15/09 ARC 7952B	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	August 5, 2009 1:30 p.m. (If requested)
NATURAL RESOURCE COMMISSION[571]		
Licenses—administration fees, 15.4 IAB 7/1/09 ARC 7923B	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	July 21, 2009 1:30 p.m.
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.
PUBLIC HEALTH DEPARTMENT[641]		
Reportable diseases, poisonings and conditions, and quarantine and isolation, ch 1 IAB 7/15/09 ARC 7966B (ICN Network)	ICN Room, Sixth Floor Lucas State Office Bldg. 321 E. 12th St. Des Moines, Iowa	August 5, 2009 1 to 3 p.m.
	Public Library 507 Poplar Atlantic, Iowa	August 5, 2009 1 to 3 p.m.
	Fairfield High School 605 E. Broadway Fairfield, Iowa	August 5, 2009 1 to 3 p.m.
	Kirkwood Community College 1816 Lower Muscatine Rd. Iowa City, Iowa	August 5, 2009 1 to 3 p.m.
	North Iowa Area Community College – 2 500 College Dr. Mason City, Iowa	August 5, 2009 1 to 3 p.m.
	Public Library 529 Pierce St. Sioux City, Iowa	August 5, 2009 1 to 3 p.m.
Early hearing detection and intervention, amendments to ch 3 IAB 7/15/09 ARC 7967B	Public Hearing by Conference Call: To participate, call 1-866-685-1580 and enter Pass Code 0009990487 followed by the # key.	August 4, 2009 9 to 10 a.m.
TRANSPORTATION DEPARTMENT[761]		
Close-clearance warning signs along railroad tracks, ch 813 IAB 7/1/09 ARC 7885B	Materials Conference Room 800 Lincoln Way Ames, Iowa	July 23, 2009 10 a.m.

AGENCY	HEARING LOCATION	DATE AND TIME
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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 Soil Conservation Division[27]
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BEEF INDUSTRY COUNCIL, IOWA[101]
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CAPITAL INVESTMENT BOARD, IOWA[123]
CITIZENS’ AIDE[141]
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COMMERCE DEPARTMENT[181]
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 Banking Division[187]
 Credit Union Division[189]
 Insurance Division[191]
 Professional Licensing and Regulation Bureau[193]
 Accountancy Examining Board[193A]
 Architectural Examining Board[193B]
 Engineering and Land Surveying Examining Board[193C]
 Landscape Architectural Examining Board[193D]
 Real Estate Commission[193E]
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ARC 7971B**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 proposes to amend Chapter 1, "Organization," Chapter 23, "Iowa Community Development Block Grant Program," Chapter 53, "Community Economic Betterment Account (CEBA) Program," Chapter 57, "Value-Added Agricultural Products and Processes Financial Assistance Program (VAAPFAP)," Chapter 59, "Enterprise Zone (EZ) Program," Chapter 60, "Entrepreneurial Ventures Assistance (EVA) Program," Chapter 61, "Physical Infrastructure Assistance Program (PIAP)," Chapter 68, "High Quality Job Creation (HQJC) Program," and Chapter 69, "Loan and Credit Guarantee Program"; adopt Chapter 74, "Grow Iowa Values Financial Assistance Program," and Chapter 75, "Opportunities and Threats Program"; and amend Chapter 165, "Allocation of Grow Iowa Values Fund," Chapter 173, "Standard Definitions," Chapter 174, "Wage, Benefit, and Investment Requirements," Chapter 175, "Application Review and Approval Procedures," Chapter 187, "Contracting," and Chapter 189, "Annual Reporting," Iowa Administrative Code.

These amendments are intended to implement 2009 Iowa Acts, Senate File 344. This rule making amends 15 existing chapters and adopts 2 new chapters. 2009 Iowa Acts, Senate File 344, simplifies four state financial assistance programs (CEBA, PIAP, VAAPFAP, EVA), three funding sources ("old money," IVF (FES), IVF (2005)), and two tax credit programs (HQJC, EZ). These legislative changes will make it easier for the Department to report on program results, easier for the public to evaluate performance, easier for the state to administer, and easier for businesses to understand performance expectations.

2009 Iowa Acts, Senate File 344, standardizes and simplifies the Department's state financial assistance requirements. The amendments accomplish the following:

- Provide that awards will be based on the creation or retention of high-quality jobs;
- Provide that award amounts will be based on the Fiscal Impact Ratio (FIR);
- Provide that awards are negotiable and tied to the Fiscal Impact Ratio (FIR);
- Establish standard qualifying wage thresholds (100 percent or 130 percent of county or regional wage, whichever is lower; 90 percent in Enterprise Zone and EDSA projects that do not receive awards from multiple programs);
- Establish a standard benefit package requirement (company must pay 80 percent of single or 50 percent of family coverage or a monetary equivalent for medical and dental coverage) for which the company will receive a 10 percent credit toward its wage threshold calculation (the benefits credit is only applicable to the 130 percent wage component and HQJP);
- Establish a standard project completion period (three years from project award date) and project maintenance period (two years from project completion date);
- Provide that all requests for assistance will be acted upon by the IDED Board; and
- Provide that businesses receiving more than one type of financial assistance will contract for and be measured on the highest wage requirement of the program components awarded.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on August 5, 2009. Interested persons may submit written or oral comments by contacting Melanie Johnson, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3018.

The Department will hold a public hearing on Wednesday, August 5, 2009, from 2 to 4 p.m. to receive comments on these amendments. The public hearing will be held in the ICN Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

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

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 7970B**. The content of that submission is incorporated by reference.

These amendments are intended to implement 2009 Iowa Acts, Senate File 344.

ARC 7955B

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 proposes amendments to Chapter 36, "Film, Television, and Video Project Promotion Program," Iowa Administrative Code.

These amendments are intended to implement 2009 Iowa Acts, Senate File 480, which makes several changes to the Film, Television, and Video Project Promotion Program. These amendments:

1. Establish application deadlines. Due to numerous program changes, including a credit amount cap, notice of procedural deadlines will be clearly posted in advance.
2. Require a minimum amount of funding prior to application approval. This new requirement will delay projects that are not yet financially viable from entering the process until they are better financed.
3. Allow the Department to charge a registration fee. 2009 Iowa Acts, Senate File 480, allows the Department to charge applicants a registration fee, which will be used to support industry training, to sponsor industry events and to market the program.
4. Allow the Department to negotiate the percentage used to calculate the benefit with a producer and investor. This provision will allow the Department to negotiate a percentage which is less than the full amount possible.
5. Allow portions of compensation paid to the principal producer, principal director, and principal cast members to become eligible expenditures. Presently, the compensation paid to the principal producer, principal director, and principal cast members cannot be considered a qualified expenditure. This change will allow portions of moneys paid to the principal producer, principal director, and principal cast members to become qualified expenditures if, and only if, new spending thresholds are met.
6. Require the principal producer, principal director, and principal cast members to become Iowa taxpayers. This change applies the same criteria for becoming a qualified vendor to the principal producer, principal director, and principal cast members as are applied to other vendors.
7. Limit the qualifying amount of compensation paid to all other labor and personnel. In addition to limiting the amount of qualifying compensation for the principal producer, principal director, and principal cast members, these amendments establish limits for all other labor and personnel so that these other qualified expenditures do not exceed the qualified expenditures for principal producer, principal director, and principal cast members.
8. Allow the Department and the Department of Revenue to establish a list of negotiable expenditure items. Presently, most spending items besides compensation paid to the principal producer, principal director, and principal cast members are qualified expenditures. This change will increase the benefit to the state by allowing some spending items to qualify if, and only if, new spending thresholds are met.
9. Remove a reference to obsolete documentation. As the program has evolved, the requirement that producers use the Department's documentation was loosened to allow producers to use their own reporting documentation if the documentation is approved in advance. This change removes a reference to the original documentation requirement.

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

10. Spread the vendor benefit, the income exclusion, over four years. Under the existing program, qualified vendors are allowed to exclude all qualified income from their Iowa income tax liability in the year that it is earned. The change will spread the exclusion over four years at 25 percent per year. The benefit is additive so that vendors will be able to exclude 25 percent in each year of qualified earnings.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on August 4, 2009. Interested persons may submit written or oral comments by contacting: Tom Wheeler, Iowa Film Office, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; or by telephone at (515)242-4726.

A public hearing to receive comments about the proposed amendments will be held from 3 to 4 p.m. on August 4, 2009, at the above address in the ICN/Main Conference Room.

These amendments are intended to implement Iowa Code sections 15.391 to 15.393 as amended by 2009 Iowa Acts, Senate File 480.

These amendments were also filed as Adopted and Filed Emergency and are published herein as **ARC 7956B**. The content of that submission is incorporated by reference.

ARC 7953B**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 proposes to adopt new Chapter 76, "Aggregate Tax Credit Limit for Certain Economic Development Programs," Iowa Administrative Code.

These rules implement the new program authorized by 2009 Iowa Acts, Senate File 483. The rules describe the tax credit cap, the programs subject to the cap, the procedures for allocating the cap, and the reporting requirements.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on August 6, 2009. Interested persons may submit written or oral comments by contacting Amy Johnson, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3112.

The Department will hold a public hearing on Thursday, August 6, 2009, from 11 a.m. to 12 noon to receive comments on these rules. The public hearing will be held in the Iowa Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 7954B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2009 Iowa Acts, Senate File 483.

ARC 7945B

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(3) and 455B.198, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code.

The purpose of this rule making is to amend Chapter 64 to meet the requirements of Iowa Code section 455B.198. These amendments will allow for the use of a new General Permit to authorize discharge through the use of best management practices (BMPs), require the monitoring of the wastewater effluent to determine compliance of the BMPs, and take enforcement action against dischargers that fail to establish or maintain the required BMPs or meet the water quality standards. The General Permit referenced in the proposed rule amendments will not be printed in the Iowa Administrative Bulletin but can be obtained for review by submitting a request to the contact listed in the paragraph below.

Any interested person may file written comments on the proposed amendments on or before August 14, 2009. Written comments or questions regarding the proposed action should be directed to Russell Tell, Water Supply Section, Iowa Department of Natural Resources, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309-4611; via fax at (515)725-0348; or via E-mail at Russell.Tell@dnr.iowa.gov.

Oral or written comments will also be accepted at the six public hearings that will be held as follows:

- August 4, 2009 10 a.m. Cedar Falls Utilities' Training Room
1 Utility Parkway
Cedar Falls, Iowa
[Observe posted "Event" signs for Public Hearing parking area and entrance information.]
- August 4, 2009 4 p.m. Iowa City Public Library
123 S. Linn Street
Iowa City, Iowa
[Parking is available in the ramp at the corner of Linn and Burlington; the Library will validate the parking stub for one hour.]
- August 5, 2009 1 p.m. North Iowa Area Community College
Muse Norris Conference Center Rooms 180E & F
500 College Drive
Mason City, Iowa
- August 5, 2009 6 p.m. Iowa DNR Water Supply Offices
Conference Rooms North and South
401 SW 7th Street, Suite M
Des Moines, Iowa
- August 11, 2009 9 a.m. Cherokee Community Center
530 W. Bluff Street
Cherokee, Iowa
- August 12, 2009 10 a.m. Atlantic Municipal Utilities' Conference Room
15 West Third Street
Atlantic, Iowa
[Parking is available in the municipal lot south of the building.]

At each 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.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

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 to advise of specific needs.

These amendments are intended to implement Iowa Code section 455B.198.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code section 17A.4(4) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Adopt the following **new** paragraph **64.3(1)“e”**:

e. Water well construction and well services related discharge that does not reach a water of the United States.

ITEM 2. Amend paragraph **64.4(2)“a”** as follows:

a. The director may issue general permits which are consistent with 64.4(2)“*b*” and the requirements specified in 64.6(455B), 64.7(455B), 64.8(2), and 64.9(455B) for the following activities:

(1) Storm water point sources requiring an NPDES permit pursuant to Section 402(p) of the federal Clean Water Act and 40 CFR 122.26 (as amended through June 15, 1992).

(2) Private sewage disposal system discharges permitted under IAC 567—Chapter 69 where subsoil discharge is not possible as determined by the administrative authority.

(3) Discharges from water well construction and related well services where the discharge will reach a water of the United States.

~~(3)~~ (4) For any discharge, except a storm water only discharge, from a mining or processing facility.

ITEM 3. Amend subrule 64.6(1), introductory paragraph, as follows:

64.6(1) *Contents of a complete Notice of Intent.* An applicant proposing to conduct activities covered by a general permit shall file a complete Notice of Intent by submitting to the department materials required in paragraphs “*a*” to “*c*” of this subrule except that a Notice of Intent is not required for discharges authorized under General Permit No. 6.

ITEM 4. Adopt the following **new** paragraph **64.6(3)“c”**:

c. The department finds that water well construction and well service discharge is not managed in a manner consistent with the conditions specified in General Permit No. 6.

ITEM 5. Adopt the following **new** subrule 64.15(6):

64.15(6) “Discharge Associated with Well Construction Activities” NPDES General Permit No. 6, effective [insert effective date of rule].

ITEM 6. Adopt the following **new** subrule 64.16(5):

64.16(5) “Discharge Associated with Well Construction Activities” NPDES General Permit No. 6. No fees shall be assessed.

ARC 7961B

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 459.103, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

The proposed amendment would modify the filing and hearing procedures when an applicant or county demands a hearing before the Commission regarding the Department's preliminary decision on a construction permit application.

Any interested person may make written suggestions or comments on the proposed amendment on or before August 6, 2009. Written comments should be directed to Randy Clark, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; E-mail Randy.Clark@dnr.iowa.gov.

Also, there will be public hearings as follows, at which time persons may present their views either orally or in writing:

August 4, 2009	1 p.m.	Clay County Administration Building Board Room 300 W. 4th Street Spencer, Iowa
August 5, 2009	1 p.m.	Wallace State Office Building 5th Floor East Conference Room 502 E. 9th Street Des Moines, Iowa
August 6, 2009	1 p.m.	Washington County Conservation Board Education Center-Marr Park 2943 Highway 92 Ainsworth, Iowa

At the hearings, 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.

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.

This amendment is intended to implement Iowa Code sections 459.103 and 459.304.

The following amendment is proposed.

Rescind subrules 65.10(7), 65.10(8) and 65.10(9) and adopt the following **new** subrules in lieu thereof:

65.10(7) *County board of supervisors' demand for hearing.*

a. A county board of supervisors that has submitted an adopted recommendation to the department may contest the department's preliminary decision to approve or disapprove an application for permit by filing a written demand for a hearing before the commission. Due to the need for expedited scheduling, the county board of supervisors shall, as soon as possible but not later than 14 days following receipt of the department's notice of preliminary decision, notify the chief of the department's water quality bureau by facsimile transmission to (515)281-8895 that the board intends to file a demand for hearing. The demand for hearing shall be sent to Director, Department of Natural Resources, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319, and must be postmarked no later than 14 days following the board's receipt of the department's notice of preliminary decision.

b. The demand for hearing shall include a statement setting forth all of the county board of supervisors' reasons why the application for a permit should be approved or disapproved, all supporting documentation, and a further statement indicating whether an oral presentation before the commission is requested.

65.10(8) *Applicant's demand for hearing.* The applicant may contest the department's preliminary decision to approve or disapprove an application for permit by filing a written demand for a hearing. The applicant may elect, as part of the written demand for hearing, to have the hearing conducted before the commission pursuant to paragraph 65.10(8) "a" or before an administrative law judge pursuant to paragraph 65.10(8) "b." If no such election is made, the demand for hearing shall be considered to be a request for hearing before the commission. If both the applicant and the county board of supervisors are

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

contesting the department's preliminary decision, the applicant may request that the commission conduct the hearing on a consolidated basis.

a. Applicant demand for hearing before the commission. Due to the need for expedited scheduling, the applicant shall, as soon as possible but not later than 14 days following receipt of the department's notice of preliminary decision, notify the chief of the department's water quality bureau by facsimile transmission to (515)281-8895 that the applicant intends to file a demand for hearing. The demand for hearing shall be sent to Director, Department of Natural Resources, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319, postmarked no later than 14 days following the board's receipt of the department's notice of preliminary decision. The demand for hearing shall include a statement setting forth all of the applicant's reasons why the application for permit should be approved or disapproved, all supporting documentation, and a further statement indicating whether an oral presentation before the commission is requested.

b. Applicant contested case appeal before an administrative law judge. The applicant may contest the department's preliminary decision to approve or disapprove an application according to the contested case procedures set forth in 561—Chapter 7; however, if the county board of supervisors has demanded a hearing pursuant to subrule 65.10(7), the applicant shall, as soon as possible but not later than 14 days following receipt of the department's notice of preliminary decision, notify the chief of the department's water quality bureau by facsimile transmission to (515)281-8895 that the applicant intends to contest the department's preliminary decision according to contested case procedures. In that event, the applicant may request that the hearings be consolidated and conducted as a contested case. It is the responsibility of the applicant to communicate with the department to determine if a county demand for hearing has been filed.

65.10(9) Hearing and decision by the commission.

a. Hearing before the commission.

(1) All hearings before the commission requested pursuant to subrules 65.10(7) and 65.10(8) shall be handled as other agency action and not as a contested case.

(2) Upon receipt of a timely demand for a hearing before the commission pursuant to subrule 65.10(7) or subrule 65.10(8), the director shall set a hearing during a regular meeting of the commission scheduled no more than 35 days from the date the director receives the first such request. However, if the next regular meeting of the commission will take place more than 35 days after receipt of the demand for hearing, the director shall schedule a special in-person meeting or an electronic meeting of the commission pursuant to Iowa Code section 21.8.

(3) No later than 5 days from the date the director receives a demand for hearing, the director shall post on the department's Web site the demand for hearing and associated documents, letters notifying the parties of the hearing date, and the department's complete file on the application under review. The director shall provide hard copies of these documents to members of the commission as requested by each member. The director shall contact the applicant and the county board of supervisors and provide copies of documents they request.

(4) No later than 15 days from the date set for hearing, the applicant, the county board of supervisors and the department shall, if any chooses to do so, send one copy of a brief and any written documents claimed to support their respective positions to the department. The director shall post the briefs and associated written documents on the department's Web site and provide hard copies to members of the commission as requested by each member. No further briefs or documents shall be permitted except upon request and permission of the commission.

(5) The commission shall use the following hearing procedures:

1. All written material accepted by the chairperson of the commission for inclusion in the record at the hearing shall be marked as coming from the person or entity presenting the document.

2. Objections to submitted written material shall be noted for the record.

3. Oral participation before the commission shall be limited to time periods specified by the chairperson of the commission and, unless otherwise determined by the commission, to presentations by representatives for the applicant, the county board of supervisors and the department and by technical consultants or experts designated by the commission. Representatives of the department shall not

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

advocate for either the county board of supervisors or the applicant but may summarize the basis for the department's preliminary decision and respond to questions by members of the commission.

4. Members of the commission, and the commission's legal counsel, may ask questions of the representatives for the applicant, the county board of supervisors and the department and of technical consultants or experts designated by the commission. The members and counsel may also ask questions of any other person or entity appearing at the hearing. No other persons or entities may ask questions of anyone making a presentation or comment at the hearing except upon request and permission by the chairperson of the commission.

(6) The commission shall use the following hearing format:

1. Announcement by the chairperson of the commission of the permit application under review.

2. Receipt into the hearing record of the demand or demands for hearing, a copy of the department's complete file on the application under review and the briefs and written documents previously provided by the applicant and county board of supervisors pursuant to subparagraph 65.10(9) "a"(4).

3. Oral presentation, if any, by the applicant if that party timely requested the hearing. If the applicant did not timely request the hearing, then the county board of supervisors shall make the first presentation.

4. Oral presentation, if any, by the applicant or county board of supervisors, whichever party did not have the opportunity to make the first presentation.

5. Oral presentation, if any, by the department.

6. Oral presentation, if any, by technical consultants or experts designated by the commission to assist in its establishment of a record at the hearing. To the extent possible, the commission shall notify the applicant and the board prior to the hearing of the names, addresses and professional capacity of any such technical experts or consultants.

7. Discussion by the commission, motion and final decision on whether the application for permit is approved or disapproved.

(7) Only the issues submitted by the parties in the demand for hearing and responses shall be considered by the commission as a basis for its decision.

b. Decision by the commission. The decision by the commission shall be stated on the record and shall be final agency action pursuant to Iowa Code chapter 17A. If the commission reverses or modifies the department's decision, the department shall issue the appropriate permit or letter of denial to the applicant. The letter of decision shall contain the reasons for the action regarding the permit.

ARC 7951B

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

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 and 29C.8(3)"c," the Homeland Security and Emergency Management Division proposes to amend Chapter 7, "Local Emergency Management," Iowa Administrative Code.

The Homeland Security and Emergency Management Division proposes to amend paragraph 7.4(4)"a" to update continuing education requirements for local emergency management coordinators. This proposed amendment changes the course numbers to accurately reflect the current Federal

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

Emergency Management Agency training catalog. This amendment was developed in consultation with the Iowa Emergency Management Association.

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before August 4, 2009. Such written materials should be sent to the Administrative Rules Coordinator, Iowa Homeland Security and Emergency Management Division, 7105 N.W. 70th Ave., Camp Dodge, Building W-4, Johnston, Iowa 50131; fax (515)725-3260.

There will be a public hearing on August 6, 2009, at 10:30 a.m. in the Homeland Security and Emergency Management Division Conference Room at Camp Dodge, Johnston, Iowa, Building W-4, 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 amendment.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Homeland Security and Emergency Management Division and advise of specific needs.

This amendment is intended to implement Iowa Code chapter 29C.

The following amendment is proposed.

Amend paragraph 7.4(4)“a” as follows:

a. Within five years of appointment as an emergency management coordinator, the person must complete the following ten independent study courses as prescribed by the Federal Emergency Management Agency:

- (1) Citizens Guide to Disaster Assistance IS-7.
- (2) The EOC's Role in Community Preparedness, Response and Recovery Activities IS- ~~275~~ 775.
- (3) Emergency Manager: An Orientation to the Position IS-1.
- (4) Are You Ready? An In-depth Guide to Citizen Preparedness IS-22.
- (5) An Introduction to Hazardous Materials IS-5A.
- (6) Introduction to Incident Command System IS-100a.
- (7) ICS for Single Resources and Initial Action Incidents IS-200a.
- (8) Radiological Emergency Management IS-3.
- (9) Introduction to Hazard Mitigation IS-393Aa.
- (10) Emergency Management Program Development.

ARC 7958B

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

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, 23A.2(10)“m,” and 29C.8(5), the Homeland Security and Emergency Management Division proposes to amend Chapter 11, “Repair, Calibration, and Maintenance of Radiological Monitoring, Detection, and Survey Equipment,” Iowa Administrative Code.

The Homeland Security and Emergency Management Division proposes to amend rule 605—11.6(29C) to update the fees charged for the various services that the Division provides under Chapter 11. This increase in fees reflects the increased costs associated with performing the services set forth within this chapter.

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605](cont'd)

Consideration will be given to all written suggestions or comments on the proposed amendment received on or before August 4, 2009. Such written materials should be sent to the Administrative Rules Coordinator, Iowa Homeland Security and Emergency Management Division, 7105 N.W. 70th Ave., Camp Dodge, Building W-4, Johnston, Iowa 50131; fax (515)725-3260.

There will be a public hearing on August 6, 2009, at 10 a.m. in the Homeland Security and Emergency Management Division Conference Room at Camp Dodge, Johnston, Iowa, Building W-4, 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 amendment.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Homeland Security and Emergency Management Division and advise of specific needs.

This amendment is intended to implement Iowa Code chapter 29C.

The following amendment is proposed.

Amend rule 605—11.6(29C) as follows:

605—11.6(29C) Fees. Unless otherwise specified by contract, the division will charge the following fees for the performance of its services:

Calibration Fees:

One radiation instrument and one radiation detector	\$50 <u>70</u>
Each additional radiation detector	\$15 <u>20</u>
Each dosimeter	\$10

Repair Fees:

Hourly rate	\$40 <u>70</u>
Parts	Cost plus 15 percent

The division will also assess a fee to recover actual shipping expenses, to include insurance coverage for the equipment being shipped.

Estimates will be given for instruments that are in need of repair. The customer will have the option of having the instrument repaired at the established rates or may have the instrument returned, at which time shipping expenses will be charged.

The division may offer to replace equipment with like equipment that is fully functional and that has been properly calibrated, in lieu of making calibrations or the necessary repairs. If the customer accepts this offer, the fee charged is the fee that would normally be charged for the calibration or repair of the instrument or dosimeter.

ARC 7960B

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 231B.2, the Department of Inspections and Appeals hereby gives Notice of Intended Action to adopt new Chapter 68, "Elder Group Homes," 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 proposed in this Notice of Intended Action. The work with stakeholder groups included a conference call in which all elder group homes were invited to participate. In addition, a Notice of Intended Action proposing new Chapter 67, which contains general provisions for elder group homes, assisted living programs, and adult day services, was submitted by the Department and published in the June 17, 2009, Iowa Administrative Bulletin as **ARC 7877B**. The rules in Chapter 68, however, relate specifically to elder group homes and will supersede the Department of Elder Affairs' (now the Department on Aging) current chapter on elder group homes, 321—Chapter 29.

Any interested person may make written suggestions or comments on these proposed rules on or before August 10, 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 proposed rules published herein under Notice of Intended Action as **ARC 7959B** for adult day services programs will be held on August 14, 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 113, Galva-Holstein High School, 519 E. Maple, Holstein (Please use the entrance on the west side of the building.)
- 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 231B.

The following amendment is proposed.

Adopt the following **new** 481—Chapter 68:

CHAPTER 68
ELDER GROUP HOMES

481—68.1(231B) Definitions. In addition to the definitions in 481—Chapter 67 and Iowa Code chapter 231B, the following definitions apply.

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

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

“*Committee*” means a resident advocate committee established by 321—Chapter 9.

“*Elder*” means a person 60 years of age or older.

“*Elder group home*” or “*EGH*” means a single-family residence that is operated by a person who is providing room, board, and personal care and may provide health-related services to three through five elders who are not related to the person providing the service within the third degree of consanguinity or affinity and that is staffed by an on-site manager 24 hours per day seven days per week.

“*Household occupant*” means a tenant and all others who reside in the EGH.

“*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.

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

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

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

“*On-site manager*” means the person on duty responsible for direct supervision or provision of tenant care. The on-site manager may be any household occupant over 18 years of age, except a tenant, who is qualified to perform the necessary duties.

“*Personal care provider*” means an individual who, in return for remuneration, assists with the essential activities of daily living which the tenant can perform personally only with difficulty.

“*Program*” means an elder group home.

“*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.

“*Usable floor space*” means open floor space that is not under fixtures, furniture or other barriers and is available for walking or wheelchair use.

481—68.2(231B) Program certification and posting requirements.

68.2(1) *Certification requirements.* A program may obtain certification by meeting all applicable requirements. For the purpose of these rules, certification is equivalent to licensure.

68.2(2) *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.

481—68.3(231B) Certification—application process.

68.3(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.

68.3(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.

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68.3(3) The appropriate fee as stated in Iowa Code section 231B.17 shall accompany each application and be payable by check or money order to the Department of Inspections and Appeals. Fees are nonrefundable.

68.3(4) The department shall consider the application when all supporting documents and fees are received.

481—68.4(231B) Certification—application content. An application for certification or recertification of an EGH shall include the following:

68.4(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.

68.4(2) A statement affirming that the individuals listed in subrule 68.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

68.4(3) A statement disclosing whether any of the individuals listed in subrule 68.4(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 tenants to prevent abuse or neglect.

68.4(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 shall be included.

68.4(5) The policy and procedure for service plans.

68.4(6) The policy and procedure for addressing medication needs of tenants.

68.4(7) The policy and procedure for accidents and emergency response.

68.4(8) The policies and procedures for food service, including those relating to staffing, nutrition, menu planning, therapeutic diets, and food preparation, service and storage.

68.4(9) The policy and procedure for transportation.

68.4(10) The policy and procedure for staffing and training.

68.4(11) 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.

68.4(12) 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.

68.4(13) The tenant occupancy agreement and all attachments.

68.4(14) 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.

68.4(15) 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.

68.4(16) The fee set forth in Iowa Code section 231B.17.

481—68.5(231B) Initial certification process.

68.5(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.

68.5(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.

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68.5(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.

68.5(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.

68.5(5) The department shall make a final certification decision based on the results of the monitoring and review of an acceptable plan of correction.

68.5(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.

68.5(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.

481—68.6(231B) Expiration of program certification.

68.6(1) Unless conditionally issued, suspended or revoked, certification of a program shall expire at the end of the time period specified on the certificate.

68.6(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—68.7(231B) Recertification process. To obtain recertification, a program shall:

68.7(1) Submit one copy of the completed application, including the information required in rule 481—68.4(231B), associated documentation, and the recertification fee as listed in Iowa Code section 231B.17 to the department at the address stated in subrule 68.3(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.

68.7(2) Submit additional documentation that each of the following has been inspected and found to be maintained in conformance with the 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—68.8(231B) Notification of recertification.

68.8(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.

68.8(2) The department shall conduct a monitoring of the program between 60 and 90 days prior to expiration of the program's certification.

68.8(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.

68.8(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.

68.8(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.

68.8(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).

68.8(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.

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481—68.9(231B) 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—68.10(231B) Transfer of certification.

68.10(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 must receive approval from the department prior to transfer of the certification.

68.10(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.

68.10(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.

481—68.11(231B) Cessation of program operation.

68.11(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.

68.11(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.

68.11(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 68.11(2).

68.11(4) The department may conduct monitoring during the 90-day period to ensure the safety of tenants during the transfer process.

68.11(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—68.12(231B) Occupancy agreement.

68.12(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 for the tenant or the tenant’s legal representative to understand.

68.12(2) In addition to the requirements of Iowa Code section 231B.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 program will notify the tenant at least 90 days in advance of any planned program cessation, except in cases of emergency.
- f. A copy of the program’s admission and transfer criteria.

68.12(3) The occupancy agreement shall be reviewed and updated as necessary to reflect any change in services or financial arrangements.

481—68.13(231B) Evaluation of tenant.

68.13(1) *Evaluation prior to occupancy.* A program shall evaluate each prospective tenant’s functional, cognitive and health status prior to the tenant’s signing the occupancy agreement and

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becoming a household occupant 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.

68.13(2) *Evaluation within 30 days of occupancy and with significant change.* 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.

481—68.14(231B) Criteria for admission and retention of tenants.

68.14(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, one-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
- 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; or
- j. Is physically or mentally unable to immediately and without aid of another travel a normal path to safety, including the ascent and descent of stairs from the tenant's bedroom or bathroom.

68.14(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.

68.14(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—68.15(231B) Involuntary transfer from the program.

68.15(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 and of the reason for the transfer and shall include 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.

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68.15(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 program-reported 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 finding and the program begins involuntary transfer proceedings, the program's internal appeal process in subrule 68.15(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.

(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 in the EGH 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—68.16(231B) Tenant documents.

68.16(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 beginning participation; 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;

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- 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 as 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.* Advance 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.

68.16(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.

68.16(3) All records shall be protected from loss, damage and unauthorized use.

481—68.17(231B) Service plans.

68.17(1) A service plan shall be developed for each tenant based on the evaluations conducted in accordance with subrules 68.13(1) and 68.13(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.

68.17(2) Prior to the tenant's signing the occupancy agreement and becoming a household occupant, 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.

68.17(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.

68.17(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; and

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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.

481—68.18(231B) 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:

68.18(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

68.18(2) To ensure that health care professionals' orders are current for tenants who receive health care professional-directed care from the program; and

68.18(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

68.18(4) To provide the program with written documentation of the activities under the service plan, as set forth in rule 481—68.17(231B), 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.

481—68.19(231B) Staffing. In addition to the general staffing requirements in rule 481—67.9(231B,231C,231D), the following requirements apply to staffing in programs.

68.19(1) The program shall be staffed by an on-site manager 24 hours per day, seven days per week.

68.19(2) Personal care providers shall have completed, at minimum, a home care aid training program that meets the requirements and criteria established in 641—Chapter 80.

68.19(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.

68.19(4) Personal care providers and nursing staff may be employed by the program or obtained through a contract with a home health agency or other service provider. Regardless of the source, the staff must meet all applicable requirements.

481—68.20(231B) 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:

68.20(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;

68.20(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—68.21(231B) Transportation. When transportation services are provided directly or under contract with the program:

68.21(1) The vehicle shall be accessible and appropriate to the tenants who use it, with consideration for any physical disabilities and impairments.

68.21(2) Every tenant transported shall have a seat in the vehicle, except for a tenant who remains in a wheelchair during transport.

68.21(3) Vehicles shall have adequate seat belts and securing devices for ambulatory and wheelchair-bound passengers.

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68.21(4) Wheelchairs shall be secured when the vehicle is in motion.

68.21(5) During loading and unloading of a tenant, the driver shall be in the proximate area of the tenants in a vehicle.

68.21(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.

481—68.22(231B) Identification of veteran's benefit eligibility.

68.22(1) Within 30 days of a tenant's participation in an elder group home 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.

68.22(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.

68.22(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.

481—68.23(231B) Resident advocate committees. Resident advocate committees for EGHs shall be governed by 321—Chapter 9 unless otherwise required in this chapter.

68.23(1) Committee placement. A resident advocate committee shall be established by the commission on aging for each program certified in accordance with this chapter.

68.23(2) Committee visitations. The committee shall visit the program assigned to it within one month of the admission of the first tenant as well as a minimum of once and maximum of four times annually thereafter.

481—68.24(231B) Life safety—emergency policies and procedures and structural safety requirements.

68.24(1) The program shall submit to the department and follow written emergency policies and procedures, which shall include the following:

- 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.

68.24(2) The program's structure and procedures and the facility in which a program is located shall meet the requirements adopted for elder group homes 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.

68.24(3) 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.

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481—68.25(231B) Structural standards.

68.25(1) The EGH shall be safe, sanitary, well-ventilated, and properly lighted, heated, and cooled; and shall comply with all applicable state and local housing ordinances for family residences and with fire safety rules promulgated by the state fire marshal.

68.25(2) In addition to meeting the requirements in subrule 68.25(1), the EGH shall meet the following standards:

a. General.

(1) The home, furnishings and fixtures shall be clean, in good repair and appropriate for the tenants.
(2) Stairways shall have handrails of a circumference, length, texture, strength and stability that can reasonably be expected to provide tenant support.

(3) A functioning light shall be provided in each room, stairway and exit; all light bulbs shall be protected from breakage or removal with appropriate covers.

(4) The yard, fire exits and exterior steps shall be kept free of obstructions and shall be accessible and appropriate to the condition of the tenants.

(5) There shall be at least 150 square feet of common living space and sufficient furniture in the home to accommodate the recreational and socialization needs of all the tenants at one time; common space shall not be located in the basement or garage, unless such space was constructed for that purpose. Additional common living space may be required if wheelchairs, walkers or other durable medical equipment is to be accommodated. For an EGH constructed or remodeled after July 1, 2005, there shall be 300 square feet of usable floor space.

(6) Interior and exterior doorways used by tenants shall be wide enough to accommodate wheelchairs and walkers if tenants with impaired mobility are in residence.

(7) Hot and cold water at each tub, shower, and sink shall be in sufficient supply to meet the needs of the tenants and staff.

(8) Grab bars shall be present for each toilet, tub and shower. Access to toilet and bathing facilities shall be barrier-free. Toilet and bathing facilities shall provide individual privacy.

(9) A telephone shall be available and accessible for tenants' use in a manner that allows for privacy for all calls.

b. Safety.

(1) All combustion appliances shall be used and maintained properly and shall be inspected annually by a qualified technician for carbon monoxide emissions and any other hazards to health and safety;

(2) Extension cord wiring shall not be used in place of permanent electrical fixtures or outlets.

c. Sanitation requirements.

(1) A public water supply shall be utilized if available. If a nonmunicipal water source is used, the owner or on-site manager must show documentation from the state laboratory that the water supply is potable and is tested as required by the rules of the environmental protection commission of the department of natural resources.

(2) Septic tanks or other nonmunicipal wastewater disposal systems shall be in good working order and shall comply with state and local regulations for wastewater treatment.

(3) Garbage and refuse shall be suitably stored and disposed of by a sanitation company providing service in the area.

(4) If laundry service is provided, soiled linens and clothing shall be stored in containers in an area separate from food storage, kitchen and dining areas.

(5) Sanitation for household pets and other domestic animals shall be adequate to prevent health and safety hazards.

(6) There shall be adequate control of insects and rodents.

(7) Reasonable and prudent precautions for infection control shall be taken, including washing hands and exposed portions of arms with soap and hot water immediately before engaging in food preparation and meal service and before and after providing personal care.

(8) There shall be at least one toilet and one sink for every four household occupants. A minimum of one sink and toilet is required on each floor occupied by tenants. A sink shall be located near each

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toilet. For an EGH constructed or remodeled after July 1, 2005, there shall be at least one toilet and one sink for every two household occupants, with a minimum of one toilet and one sink on each floor occupied by tenants.

(9) At least one tub or shower is required for each six household occupants. For an EGH constructed or remodeled after July 1, 2005, there shall be at least one tub or one shower for every four household occupants.

d. Bedroom requirements.

(1) Each tenant bedroom shall:

1. Have a door that opens directly to a hallway or common use area without passage through another bedroom or common bathroom;

2. Be adequately ventilated, heated, cooled and lighted;

3. Have at least 70 square feet of usable floor space, excluding any area where a sloped ceiling does not allow a person to stand upright. For an EGH constructed or remodeled after July 1, 2005, each tenant bedroom shall have at least 100 square feet of usable floor space;

4. Provide individual privacy and be occupied by one tenant, unless an alternative arrangement is agreed to in the occupancy agreement by the tenant, or the tenant's legal representative;

5. Be on ground level for tenants with impaired mobility;

6. Be in sufficiently close proximity to the on-site manager to ensure that tenants are able to alert the on-site manager to nighttime needs or emergencies, or be equipped with a call system.

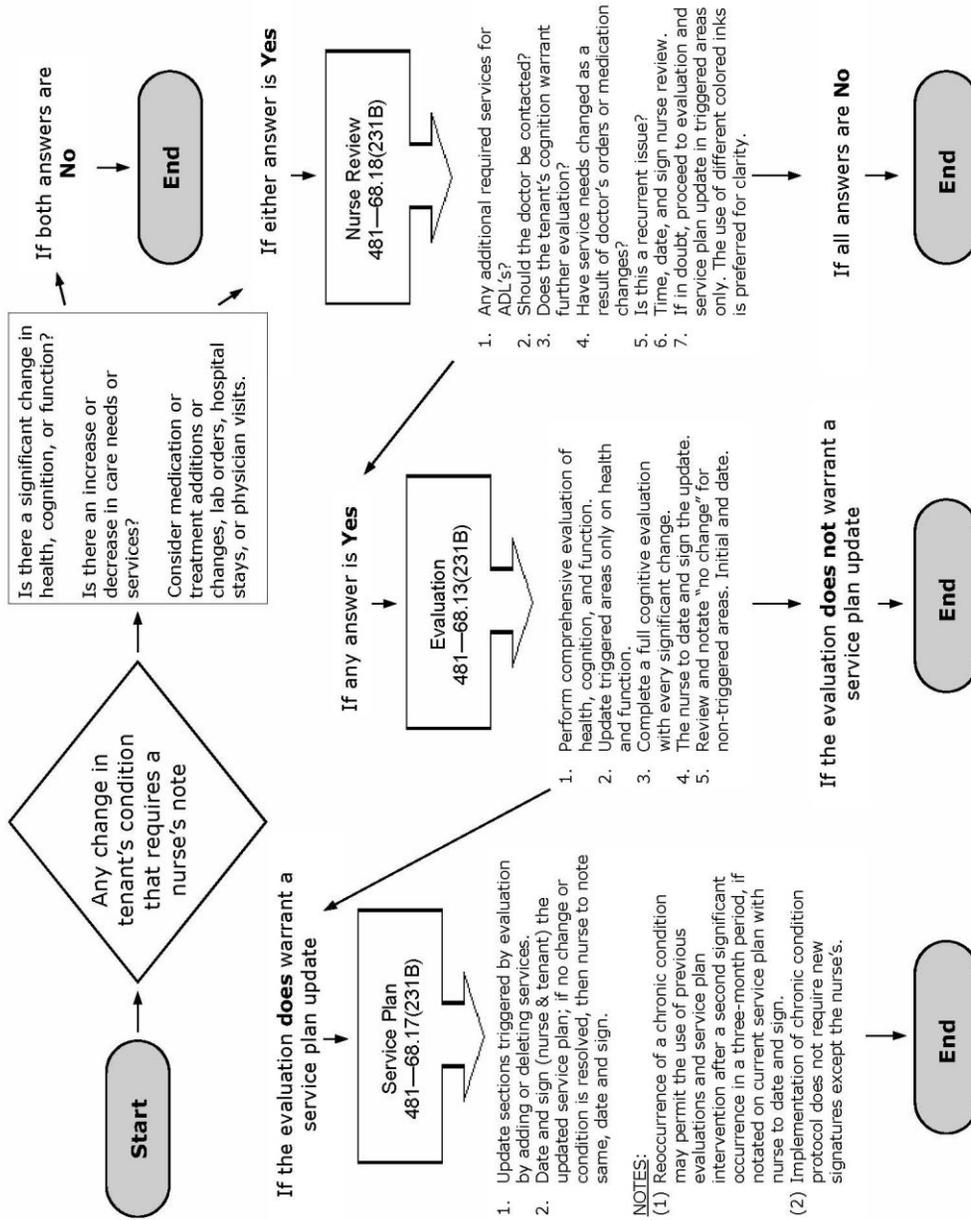
(2) Owners, operators, on-site managers, their family members, and personal care providers shall not use as bedrooms areas that are designated as living areas or as tenant bedrooms;

(3) Common living space and tenant bedrooms shall not be used for storage areas.

481—68.26(231B) Landlord and tenant Act. Iowa Code chapter 562A, the uniform residential landlord and tenant Act, shall apply to all EGHs under this chapter.

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

Table A



ARC 7959B

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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 231D.2, the Department of Inspections and Appeals hereby gives Notice of Intended Action to adopt new Chapter 70, "Adult Day Services Programs," 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 proposed in this Notice of Intended Action. The work with stakeholder groups has included visits to adult day services programs and meeting with the leadership of the adult day services trade association. In addition, a Notice of Intended Action proposing new Chapter 67, which contains general provisions for adult day services programs, elder group homes and assisted living programs, was submitted by the Department and published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7877B**. The rules in Chapter 70, however, relate specifically to adult day services programs and will supersede the Department of Elder Affairs' (now the Department on Aging) current chapter on assisted living programs, 321—Chapter 24.

Any interested person may make written suggestions or comments on these proposed rules on or before August 10, 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 proposed rules published herein under Notice of Intended Action as **ARC 7960B** for elder group homes will be held on August 14, 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 113, Galva-Holstein High School, 519 E. Maple, Holstein (Please use the entrance on the west side of the building.)
- 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 231D.

The following amendment is proposed.

Adopt the following **new** 481—Chapter 70:

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CHAPTER 70
ADULT DAY SERVICES PROGRAMS

481—70.1(231D) Definitions. In addition to the definitions in 481—Chapter 67 and Iowa Code chapter 231D, the following definitions apply.

“*Accredited*” means that the program has received accreditation from an accreditation entity recognized in subrule 70.14(1).

“*Adult day services*” or “*adult day services program*” or “*program*” means an organized program providing a variety of health-related care, social services, and other related support services for 16 hours or less in a 24-hour period to two or more persons with a functional impairment on a regularly scheduled, contractual basis.

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

“*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 criteria for dementia, delirium, or amnesic disorder.

“*Contractual agreement*” means a written agreement between the program and the participant or legal representative.

“*Dementia-specific adult day services program*” means an adult day services program certified under this chapter that:

1. Serves fewer than 55 participants and has 5 or more participants who have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
2. Serves 55 or more participants and 10 percent or more of the participants 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.

“*Functional impairment*” means a psychological, cognitive, or physical impairment that creates an inability to perform personal and instrumental activities of daily living and associated tasks and that necessitates some form of supervision or assistance or both.

“*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.

“*Medically unstable*” means that a participant 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 participant for more than 21 days by a registered nurse.

For example, a participant who has a condition such as congestive heart failure which results in three or more significant hospitalizations during a quarter and which requires that the participant 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 the accreditation entity recognized in subrule 70.14(1).

“*Participant*” means an individual who is the recipient of services provided by an adult day services program.

“*Participant’s legal representative*” means a person appointed by the court to act on behalf of a participant, or a person acting pursuant to a power of attorney.

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

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

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“*Visiting day(s)*” means up to 16 hours in a two-day period during which a person may visit a program prior to admission for the purpose of assessing eligibility for the program and personal satisfaction.

481—70.2(231D) 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.

70.2(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.

70.2(2) Dementia-specific programs and door alarms. If a program meets the definition of a dementia-specific adult day services 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—70.30(231D) and in subrule 70.32(2), which includes the requirements relating to door alarms.

481—70.3(231D) Certification of a nonaccredited program—application process.

70.3(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.

70.3(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.

70.3(3) The appropriate fee as stated in Iowa Code section 231D.4 shall accompany each application and be payable by check or money order to the Department of Inspections and Appeals. Fees are nonrefundable.

70.3(4) The department shall consider the application when all supporting documents and fees are received.

481—70.4(231D) Nonaccredited program—application content. An application for certification or recertification of a nonaccredited program shall include the following:

70.4(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.

70.4(2) A statement affirming that the individuals listed in subrule 70.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

70.4(3) A statement disclosing whether any of the individuals listed in subrule 70.4(1) have or have had an ownership interest in an adult day services program, assisted living 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.

70.4(4) The policy and procedure for evaluation of each participant. A copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each participant shall be included.

70.4(5) The policy and procedure for service plans.

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70.4(6) The policy and procedure for addressing medication needs of participants.

70.4(7) The policy and procedure for accidents and emergency response.

70.4(8) The policies and procedures for food service, including those relating to staffing, nutrition, menu planning, therapeutic diets, and food preparation, service and storage.

70.4(9) The policy and procedure for activities.

70.4(10) The policy and procedure for transportation.

70.4(11) The policy and procedure for staffing and training.

70.4(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.

70.4(13) The policy and procedure for managing risk and upholding participant autonomy when participant decision making may result in poor outcomes for the participant or others.

70.4(14) The participant contractual agreement and all attachments.

70.4(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.

70.4(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.

70.4(17) The fee set forth in Iowa Code section 231D.4.

481—70.5(231D) Initial certification process for a nonaccredited program.

70.5(1) Upon receipt of all completed documentation, including state fire marshal approval and structural and evacuation review approval, the department shall determine whether the proposed program meets applicable requirements.

70.5(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 participants.

70.5(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.

70.5(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.

70.5(5) The department shall make a final certification decision based on the results of the monitoring and review of an acceptable plan of correction.

70.5(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.

70.5(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.

481—70.6(231D) Expiration of the certification of a nonaccredited program.

70.6(1) Unless conditionally issued, suspended or revoked, certification of a program shall expire at the end of the time period specified on the certificate.

70.6(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—70.7(231D) Recertification process for a nonaccredited program. To obtain recertification, a program shall:

70.7(1) Submit one copy of the completed application, including the information required in rule 481—70.4(231D), associated documentation, and the recertification fee as listed in Iowa Code section 231D.4 to the department at the address stated in subrule 70.3(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

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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.

70.7(2) Submit additional documentation that each of the following has been inspected by a qualified professional and found to be maintained in conformance with the 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—70.8(231D) Notification of recertification for a nonaccredited program.

70.8(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.

70.8(2) The department shall conduct a monitoring of the program between 60 and 90 days prior to expiration of the program's certification.

70.8(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.

70.8(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.

70.8(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.

70.8(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).

70.8(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—70.9(231D) Certification or recertification of an accredited program—application process.

70.9(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 231D.4.

70.9(2) The department shall not consider an application until it is complete and includes all supporting documentation and the appropriate fees.

481—70.10(231D) Certification or recertification of an accredited program—application content. An application for certification or recertification of an accredited program shall include the following:

70.10(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.

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70.10(2) A statement affirming that the individuals listed in subrule 70.10(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

70.10(3) A statement disclosing whether any of the individuals listed in subrule 70.10(1) have or have had an ownership interest in an adult day services program, assisted living 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 participants to prevent abuse or neglect.

70.10(4) A copy of the current accreditation outcome from the recognized accrediting entity.

481—70.11(231D) Initial certification process for an accredited program.

70.11(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 the accredited program meets applicable requirements and whether certification will be issued.

70.11(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.

70.11(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).

70.11(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—70.12(231D) Recertification process for an accredited program.

70.12(1) The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.

70.12(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 231D.4 to the department at the address stated in subrule 70.9(1) at least 90 calendar days prior to the expiration of the program's certification.

70.12(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.

70.12(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).

70.12(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—70.13(231D) 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—70.14(231D) Recognized accrediting entity.

70.14(1) The department designates CARF as a recognized accrediting entity for programs.

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70.14(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.

70.14(3) The designation shall remain in effect for as long as the accreditation standards continue to meet, at minimum, the applicable requirements for programs.

70.14(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—70.15(231D) Requirements for an accredited program. Each accredited program that is certified by the department shall:

70.15(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.

70.15(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.

70.15(3) Notify the department immediately of the expiration, suspension, revocation or other loss of the program's accreditation.

481—70.16(231D) Maintenance of program accreditation.

70.16(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—70.15(231D).

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

70.16(2) A program that does not maintain its voluntary accreditation status must become certified by the department prior to any lapse in accreditation.

70.16(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—70.17(231D) Transfer of certification.

70.17(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 must receive approval from the department prior to transfer of the certification.

70.17(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.

70.17(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.

481—70.18(231D) Structural and life safety reviews of a building for a new program.

70.18(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.

70.18(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 231D.4 to the Department of Public Safety, State Fire Marshal Division, 215 E. 7th Street, Third Floor, Des Moines, Iowa 50319.

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70.18(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.

70.18(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.

70.18(5) The Iowa-licensed architect or Iowa-licensed engineer shall respond to the department to state how any noncompliance will be resolved.

70.18(6) Upon final notification by the department that the blueprints meet structural and life safety requirements, construction or remodeling of the building may commence.

70.18(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—70.19(231D) Structural and life safety review prior to the remodeling of a building for a certified program.

70.19(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—70.35(231D). 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.

70.19(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 231D.4 to the Department of Public Safety, State Fire Marshal Division, 215 E. 7th Street, Third Floor, Des Moines, Iowa 50319.

70.19(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.

70.19(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.

70.19(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.

70.19(6) Upon final notification by the department that the blueprints meet structural and life safety requirements, remodeling of the building may commence.

70.19(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—70.20(231D) Cessation of program operation.

70.20(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.

70.20(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.

70.20(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 discharge of all participants within the 90-day period specified by subrule 70.20(2).

70.20(4) The department may conduct monitoring during the 90-day period to ensure the safety of participants during the discharge process.

70.20(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.

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481—70.21(231D) Contractual agreement.

70.21(1) The contractual 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 for the participant or the participant's legal representative to understand.

70.21(2) In addition to the requirements of Iowa Code section 231D.17, the written contractual 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 participants' rights.
- e. A statement that the program will notify the participant at least 90 days in advance of any planned program cessation, except in cases of emergency.
- f. A copy of the program's admission and discharge criteria.

70.21(3) The contractual agreement shall be reviewed and updated as necessary to reflect any change in services or financial arrangements.

481—70.22(231D) Evaluation of participant.

70.22(1) *Evaluation prior to participation.* A program shall evaluate each prospective participant's functional, cognitive and health status prior to the participant's signing the contractual agreement and participating in the program, with the exception of visiting day(s), to determine the participant's eligibility for the program, including whether the services needed are available. The cognitive evaluation shall be appropriate to the population served. When the cognitive evaluation indicates moderate cognitive decline and risk, the Global Deterioration Scale shall be used at all subsequent intervals, if applicable. The evaluation shall be conducted by a health care professional or human service professional.

70.22(2) *Evaluation within 30 days of participation and with significant change.* A program shall evaluate each participant's functional, cognitive and health status within 30 days of the participant's beginning participation in the program and as needed with significant change, but not less than annually, to determine the participant'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 participant has not exhibited a significant change.

70.22(3) *Requirements for visiting day(s).* Evaluation of the participant is not required during visiting day(s), but the program shall provide the participant or the participant's legal representative with a written explanation of the expectations for the visiting day(s).

481—70.23(231D) Criteria for admission and retention of participants.

70.23(1) *Persons who may not be admitted or retained.* A program shall not knowingly admit or retain a participant who:

- a. Is bed-bound; or
- b. Requires routine, three-person assistance with standing, transfer or evacuation; or
- c. Is dangerous to self or other participants or staff, including but not limited to a participant 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 participant at risk; or
- 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.

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

70.23(2) *Disclosure of additional participation and discharge criteria.* A program may have additional participation or discharge criteria if the criteria are disclosed in the written contractual agreement prior to the participant's participation in the program.

70.23(3) *Assistance with discharge from the program.* A program shall provide assistance to a participant and the participant's legal representative, if applicable, to ensure a safe and orderly discharge from the program when the participant exceeds the program's criteria for admission and retention.

481—70.24(231D) Involuntary discharge from the program.

70.24(1) *Program initiation of discharge.* If a program initiates the involuntary discharge of a participant 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 participant or participant's legal representative contests the discharge, the following procedures shall apply:

a. The program shall notify the participant or participant's legal representative, in accordance with the contractual agreement, of the need to discharge the participant and of the reason for the discharge and shall include 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 participant or participant's legal representative assistance with the program's internal appeal process. The participant or participant'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 discharge decision, the participant or participant's legal representative may utilize other remedies authorized by law to contest the discharge.

70.24(2) *Discharge pursuant to results of monitoring or complaint or program-reported incident investigation by the department.* If one or more participants are identified as exceeding the admission and retention criteria for participants and need to be discharged as a result of a monitoring or a complaint or program-reported 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 participant who exceeds admission and retention criteria.

b. Notification of others. Each identified participant, the participant's legal representative, if applicable, and other providers of services to the participant 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 finding and the program begins involuntary discharge proceedings, the program's internal appeal process in subrule 70.24(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 participant 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 participant, 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.

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

(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.

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

(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 participant or the participant'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 participant who exceeds admission and retention criteria shall be allowed to continue to participate in the program until all administrative appeals have been exhausted. Appeals filed that relate to the participant's exceeding admission and retention criteria shall be heard within 30 days of receipt, and appropriate services to meet the participant's needs shall be provided during that period of time.

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

481—70.25(231D) Participant documents.

70.25(1) Documentation for each participant shall be maintained by the program and shall include:

- a. A participation record including the participant's name, birth date, and home address; identification numbers; date of beginning participation; 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 participant to receive emergency medical care as 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. Advance health care directives as applicable;
- l. A complete copy of the participant's contractual agreement, including any updates;
- m. A written acknowledgment that the participant or the participant's legal representative, if applicable, has been fully informed of the participant'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 participant, 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 participant is unable to advocate on the participant's own behalf or the participant 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.

70.25(2) The program records relating to a participant shall be retained for a minimum of three years after the discharge or death of the participant.

70.25(3) All records shall be protected from loss, damage and unauthorized use.

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

481—70.26(231D) Service plans.

70.26(1) A service plan shall be developed for each participant based on the evaluations conducted in accordance with subrules 70.22(1) and 70.22(2) and shall be designed to meet the specific service needs of the individual participant. The service plan shall subsequently be updated at least annually and whenever changes are needed.

70.26(2) Prior to the participant's signing the contractual agreement and participating in the program, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the participant and, at the participant's request, with other individuals identified by the participant, and, if applicable, with the participant's legal representative. All persons who develop the plan and the participant or the participant's legal representative shall sign the plan.

70.26(3) When a participant needs personal care or health-related care, the service plan shall be updated within 30 days of the participant's participation 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.

70.26(4) The service plan shall be individualized and shall indicate, at a minimum:

a. The participant's identified needs and preferences for assistance;

b. Any services and care to be provided pursuant to the contractual 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 participants who are unable to plan their own activities, including participants with dementia, planned and spontaneous activities based on the participant's abilities and personal interests.

481—70.27(231D) Nurse review. If a participant does not receive personal or health-related care, but an observed significant change in the participant's condition occurs, a nurse review shall be conducted. If a participant receives personal or health-related care, the program shall provide for a registered nurse or a licensed practical nurse via nurse delegation:

70.27(1) To monitor, at least every 90 days, or after a change in condition, any participant 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

70.27(2) To ensure that health care professionals' orders are current for participants who receive health care professional-directed care from the program; and

70.27(3) To assess and document the health status of each participant, 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 participant's health status; and

70.27(4) To provide the program with written documentation of the activities under the service plan, as set forth in rule 481—70.26(231D), 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 participant, nurse review is not required.

481—70.28(231D) Food service.

70.28(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, unless otherwise noted in the contractual agreement.

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

70.28(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.

70.28(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.

70.28(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.

70.28(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.

70.28(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.

70.28(7) Programs may have an on-site dietitian. Programs may secure menus and a dietitian through other methods.

481—70.29(231D) Staffing. In addition to the general staffing requirements in rule 481—67.9(231B,231C,231D), the following requirements apply to staffing in programs.

70.29(1) No fewer than two staff persons who monitor participants shall be awake and on duty during all hours of operation when two or more participants are participating in the program.

70.29(2) 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.

70.29(3) A program that serves one or more participants with cognitive disorders or dementia shall follow written procedures that address how the program will respond to the emergency needs of the participants.

481—70.30(231D) Dementia-specific education for program personnel.

70.30(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.

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

70.30(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 participants;
- j. Techniques for simplifying, cueing, and redirecting;
- k. Staff support and stress reduction; and
- l. Medication management and nonpharmacological interventions.

70.30(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.

70.30(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 70.30(1).

70.30(5) Dementia-specific training shall include a mixture of classroom instruction, hands-on training, Web-based training, and case studies of participants in the program.

481—70.31(231D) 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 participant along with the contractual agreement. The managed risk policy shall include the following:

70.31(1) An acknowledgment of the shared responsibility for identifying and meeting the needs of the participant and the process for managing risk and for upholding participant autonomy when participant decision making results in poor outcomes for the participant or others;

70.31(2) A consensus-based process to address specific risk situations. Program staff and the participant shall participate in the process. The result of the consensus-based process may be a managed risk consensus agreement. The managed risk consensus agreement shall include the signature of the participant and the signatures of all others who participated in the process. The managed risk consensus agreement shall be included in the participant's file.

481—70.32(231D) Life safety—emergency policies and procedures and structural safety requirements.

70.32(1) The program shall submit to the department and follow written emergency policies and procedures, which shall include the following:

- 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. Participant evacuation procedures; and
- j. Procedures for reporting and documentation.

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

70.32(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 participant's service plan indicates a risk of elopement or a participant exhibits wandering behavior.

b. Written procedures regarding appropriate staff response if a participant with cognitive disorder or dementia is missing.

70.32(3) The program's structure and procedures and the facility in which a program is located shall meet the requirements adopted for adult day services 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.

70.32(4) The program shall have the means to control the maximum temperature of water at sources accessible by a participant to prevent scalding and shall control the maximum water temperature for participants with cognitive impairment or dementia or at a participant's request.

481—70.33(231D) Transportation. When transportation services are provided directly or under contract with the program:

70.33(1) The vehicle shall be accessible and appropriate to the participants who use it, with consideration for any physical disabilities and impairments.

70.33(2) Every participant transported shall have a seat in the vehicle, except for a participant who remains in a wheelchair during transport.

70.33(3) Vehicles shall have adequate seat belts and securing devices for ambulatory and wheelchair-bound passengers.

70.33(4) Wheelchairs shall be secured when the vehicle is in motion.

70.33(5) During loading and unloading of a participant, the driver shall be in the proximate area of the participants in a vehicle.

70.33(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.

70.33(7) Each vehicle shall have a first-aid kit, fire extinguisher, safety triangles and a device for two-way communication.

481—70.34(231D) Activities.

70.34(1) The program shall provide appropriate activities for each participant. 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.

70.34(2) Activities shall be planned to support the participant's service plan and shall be consistent with the program statement and participation policies.

70.34(3) A written schedule of activities shall be developed at least monthly and made available to participants and their legal representatives.

70.34(4) Participants shall be given the opportunity to choose their levels of participation in all activities offered in the program.

481—70.35(231D) Structural requirements.

70.35(1) The structure, equipment and physical environment of the program shall be designed and operated to meet the needs of the participants. The building, grounds and equipment shall be well-maintained, clean, safe and sanitary.

70.35(2) There shall be at least one toilet for every ten participants and staff members.

70.35(3) Toilets and bathing and toileting appliances shall be equipped for use by participants with multiple disabilities.

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

70.35(4) There shall be a ratio of at least one hand-washing sink for every two toilets. The sink(s) shall be proximate to the toilets. Hand-washing facilities shall be readily accessible to participants and staff.

70.35(5) Shower and tub areas, if provided, shall be equipped with grab bars and slip-resistant surfaces.

70.35(6) Signaling emergency call devices shall be installed or placed in all bathroom areas, restroom stalls and showers, if any.

70.35(7) A telephone shall be available to participants to make and receive calls in a private manner and for emergency purposes.

70.35(8) A storage area(s) shall be provided for storage of program supplies and participants' possessions, which shall be stored in such a manner that, when not in use, will prevent personal injury to participants and staff.

70.35(9) The program shall provide a separate area to permit privacy for evaluations and to isolate participants who become ill.

70.35(10) The program shall meet other building and public safety codes, including:

- a. The Americans with Disabilities Act.
- b. Applicable regulations of the Occupational Safety and Health Administration.
- c. Rules pertaining to accessibility contained in the State Building Code in 661—Chapter 302 and provisions of the State Building Code relating to persons with disabilities.
- d. Other applicable provisions of the State Building Code and local building codes.

70.35(11) The program shall meet the requirements in subrule 70.32(4).

481—70.36(231D) Identification of veteran's benefit eligibility.

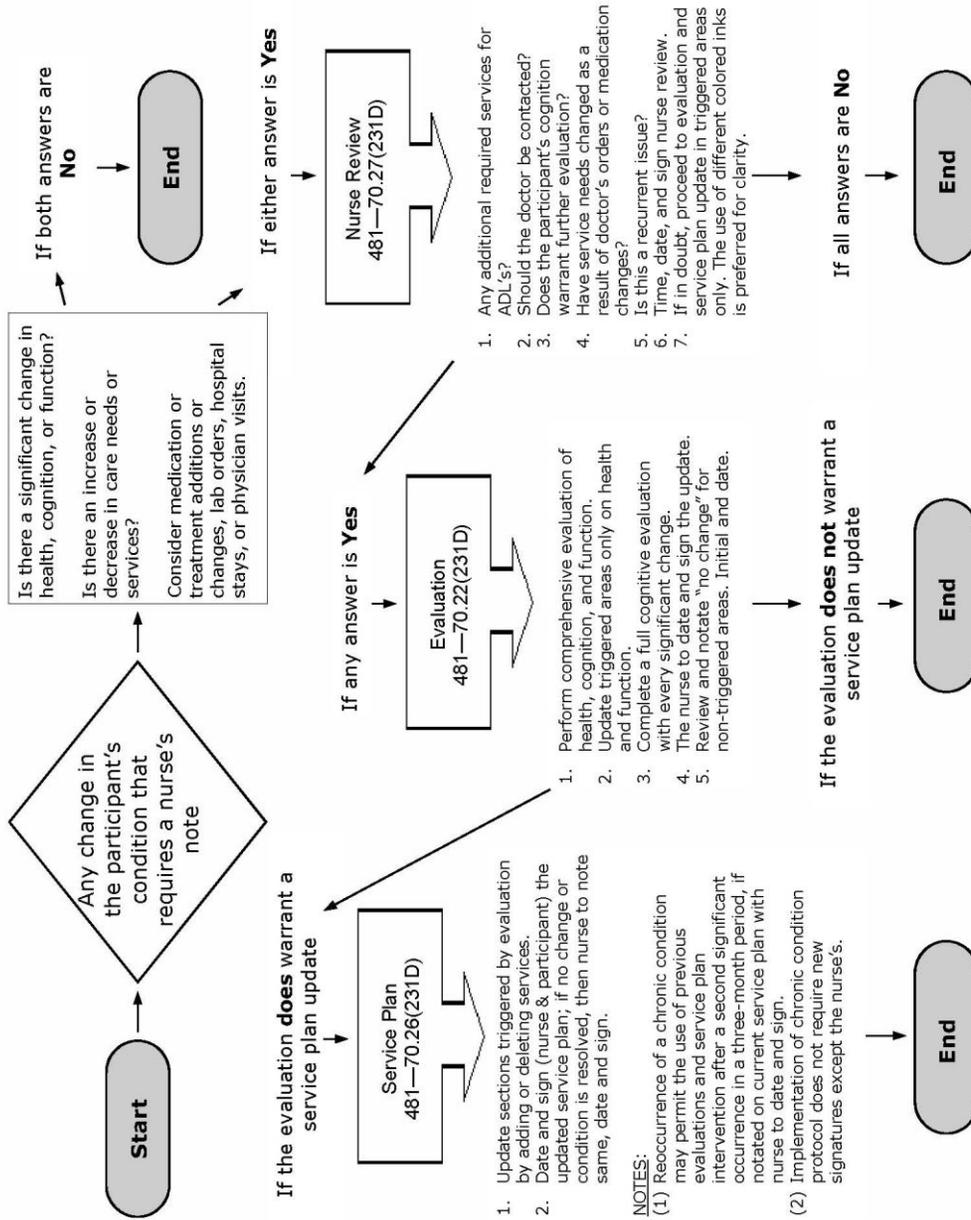
70.36(1) Within 30 days of a participant's participation in an adult day services program that receives reimbursement through the medical assistance program under Iowa Code chapter 249A, the program shall ask the participant or the participant's personal representative whether the participant is a veteran or whether the participant is the spouse, widow or dependent of a veteran and shall document the response.

70.36(2) If the program determines that the participant may be a veteran or the spouse, widow, or dependent of a veteran, the program shall report the participant'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.

70.36(3) If a participant 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 231D.

Table A



ARC 7942B**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" and 16.5(1)"r" and 2009 Iowa Acts, Senate File 376, sections 5 to 12, the Iowa Finance Authority proposes to adopt new Chapter 32, "Iowa Jobs Program," Iowa Administrative Code.

The purpose of these rules is to implement 2009 Iowa Acts, Senate File 376, sections 5 to 12, by regulating the operation of the Iowa Jobs Program.

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

The Authority will receive written comments on the proposed rules until 4:30 p.m. on August 4, 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.

The Authority will hold a public hearing on August 4, 2009, to receive public comments on these proposed rules. The public hearing will be held from 1:30 to 3:30 p.m. at the Authority's offices at 2015 Grand Avenue, Des Moines, Iowa, telephone (515)725-4900.

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

These proposed rules were also Adopted and Filed Emergency and are published herein as **ARC 7941B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

These rules are intended to implement Iowa Code section 16.5(1)"r" and 2009 Iowa Acts, Senate File 376, sections 5 to 12.

ARC 7952B**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 91A.9, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 34, "Civil Penalties," Iowa Administrative Code.

The principal reason for adoption of this amendment is to implement Iowa Code chapter 91A and 2009 Iowa Acts, House File 618, by increasing the civil penalty for violations of Iowa Code chapter 91A.

Written data, views, or arguments to be considered in adoption shall be submitted no later than August 5, 2009, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

If requested in accordance with Iowa Code section 17A.4(1)"b" by the close of business on August 4, 2009, a public hearing will be held on August 5, 2009, at 1:30 p.m. in the Stanley Room at Iowa

LABOR SERVICES DIVISION[875](cont'd)

Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. The public will be given the opportunity to make oral statements and submit documents. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

This amendment is intended to implement 2009 Iowa Acts, House File 618, and Iowa Code chapter 91A.

The following amendment is proposed.

Amend subrule 34.3(2), introductory paragraph, as follows:

34.3(2) The gross penalty for each distinguishable violation shall be ~~\$400~~ \$500. The following are examples of distinguishable violations:

ARC 7966B

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby gives Notice of Intended Action to rescind Chapter 1, "Notification and Surveillance of Reportable Communicable and Infectious Diseases," and adopt new Chapter 1, "Reportable Diseases, Poisonings and Conditions, and Quarantine and Isolation," Iowa Administrative Code.

The proposed rules identify diseases, poisonings and conditions, and incidents that are to be reported to the Department in accordance with Iowa Code chapters 135, 136A, 139A, 141A, and 144. These rules clarify what information to report, how and when to report, and who is to report. This chapter also provides for disease control through quarantine and isolation.

The proposed new chapter groups information about similar topics such as reportable communicable and infectious diseases, reportable poisonings and conditions that are noncommunicable, investigation, isolation and quarantine, specific noncommunicable conditions, and confidentiality to make the content easier to access; whereas, the existing rules scatter information about each topic throughout the chapter. The changes also reduce the number of reportable poisonings and conditions by six and clarify the reporting process to make compliance easier for the end user.

Any interested person may make written comments or suggestions on the proposed amendments on or before August 5, 2009. Such written comments should be directed to Judy Goddard, Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to jgoddard@idph.state.ia.us.

There will also be a public hearing on August 5, 2009, from 1 to 3 p.m. utilizing the Iowa Communications Network (ICN). The hearing will be conducted from six sites. The hearing will originate from the Department of Public Health ICN Room, Sixth Floor, Lucas State Office Building, 321 East 12th, Des Moines, and will be accessible from the following ICN sites:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Atlantic Public Library
507 Poplar
Atlantic

Fairfield High School
605 East Broadway
Fairfield

Kirkwood Community College
1816 Lower Muscatine Road
Iowa City

North Iowa Area Community College – 2
500 College Drive
Mason City

Sioux City Public Library
529 Pierce Street
Sioux City

These rules are intended to implement Iowa Code chapters 135, 136A, 139A, 141A, and 144.
The following amendment is proposed.

Rescind 641—Chapter 1 and adopt the following **new** chapter in lieu thereof:

CHAPTER 1
REPORTABLE DISEASES, POISONINGS AND CONDITIONS, AND
QUARANTINE AND ISOLATION

641—1.1(139A) Definitions. For the purpose of these rules, the following definitions shall apply:

“Acute or chronic respiratory conditions due to fumes, vapors or dusts” means acute chemical bronchitis; any acute, subacute, or chronic respiratory condition due to inhalation of a chemical fume or vapor; or pneumoconioses not specifically listed elsewhere in these rules. (ICD-10 codes J63.0 to J64, J66, and J68.0 to J68.9) *“Acute or chronic respiratory conditions due to fumes, vapors or dusts”* excludes those respiratory conditions related to tobacco smoke exposure.

“Agriculturally related injury” means any nonhousehold injury to a farmer, farm worker, farm family member, or other individual, which occurred on a farm, or in the course of handling, producing, processing, transporting or warehousing farm commodities.

“AIDS” means AIDS as defined in Iowa Code section 141A.1.

“Area quarantine” means prohibiting ingress to and egress from a building or buildings, structure or structures, or other definable physical location, or portion thereof, to prevent or contain the spread of a suspected or confirmed quarantinable disease or to prevent or contain exposure to a suspected or known chemical, biological, radioactive, or other hazardous or toxic agent.

“Business” means and includes every trade, occupation, or profession.

“Care provider” means an individual who is trained and authorized by federal or state law to provide health care services or services of any kind in the course of the individual’s official duties, for compensation or in a voluntary capacity, who is a health care provider, emergency medical care provider as defined in Iowa Code section 147A.1, firefighter, or peace officer. *“Care provider”* also means an individual who renders emergency care or assistance in an emergency or due to an accident as described in Iowa Code section 613.17.

“Case” means an individual who has confirmatory evidence of disease.

“Clinical laboratory” means any laboratory performing analyses on specimens taken from the body of a person in order to assess that person’s health status.

“Communicable disease” means any disease spread from person to person or animal to person.

“Congenital or inherited disorder” means congenital or inherited disorder as defined in Iowa Code section 136A.2.

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“Contagious or infectious disease” means hepatitis in any form, meningococcal disease, tuberculosis, and any other disease, with the exception of AIDS or HIV infection as defined in Iowa Code section 141A.1, determined to be life-threatening to a person exposed to the disease based upon a determination by the state public health medical director and epidemiologist and in accordance with guidelines of the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

“Department” means the Iowa department of public health.

“Designated officer” means a person who is designated by a department, agency, division, or service organization to act as an infection control liaison officer.

“Director” means the director of the Iowa department of public health.

“Exposure” means the risk of contracting disease.

“Fetal death” means an unintended death occurring after a gestation period of 20 completed weeks, or an unintended death of a fetus with a weight of 350 or more grams. “Fetal death” is synonymous with stillbirth.

“HBV” means hepatitis B virus.

“Health care facility” means a health care facility as defined in Iowa Code section 135C.1, an ambulatory surgical center, or a clinic.

“Health care provider” means a person licensed to practice medicine and surgery, osteopathic medicine and surgery, osteopathy, chiropractic, podiatry, nursing, dentistry, optometry, or licensed as a physician assistant, dental hygienist, or acupuncturist.

“HIV” means HIV as defined in Iowa Code section 141A.1.

“Hospital” means hospital as defined in Iowa Code section 135B.1.

“Hypersensitivity pneumonitis” means a disease in which the air sacs (alveoli) of the lungs become inflamed when certain dusts are inhaled to which the person is sensitized or allergic. “Hypersensitivity pneumonitis” includes but is not limited to farmer’s lung, silo filler’s disease, and toxic organic dust syndrome.

“IDSS” means the Iowa disease surveillance system, a secure Web-based statewide disease reporting and surveillance system.

“Infectious disease” means a disease caused by the entrance into the body of organisms, including but not limited to bacteria, protozoans, fungi, prions, or viruses which grow and multiply.

“Infectious tuberculosis” means pulmonary or laryngeal tuberculosis as evidenced by:

1. Isolation of *M. tuberculosis* complex (positive culture) from a clinical specimen or positive nucleic acid amplification test, or
2. Both radiographic evidence of tuberculosis, such as an abnormal chest X-ray, and clinical evidence, such as a positive skin test or whole blood assay test for tuberculosis infection, coughing, sputum production, fever, or other symptoms compatible with infectious tuberculosis that lead a physician to diagnose infectious tuberculosis according to currently acceptable standards of medical practice and to initiate treatment for tuberculosis.

“Injury” means physical damage or harm to the body as the result of an act or event.

“Investigation” means an inquiry conducted to determine the specific source, mode of transmission, and cause of a disease or suspected disease occurrence and to determine the specific incidence, prevalence, and extent of the disease in the affected population. “Investigation” may also include the application of scientific methods and analysis to institute appropriate control measures.

“Isolation” means the separation of persons or animals presumably or actually infected with a communicable disease, or that are disease carriers, for the usual period of communicability of that disease. Isolation shall be in such places, marked by placards if necessary, and under such conditions to prevent the direct or indirect conveyance of the infectious agent or contagion to susceptible persons.

“Local board” means the local board of health.

“Local department” means the local health department.

“Noncommunicable respiratory illnesses” means an illness indicating prolonged exposure or overexposure to asbestos, silica, silicates, aluminum, graphite, bauxite, beryllium, cotton dust or other

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textile material, or coal dust. “Noncommunicable respiratory illnesses” includes, but is not limited to asbestosis, coal worker’s pneumoconiosis, and silicosis.

“*Occupationally related asthma, bronchitis or respiratory hypersensitivity reaction*” means any extrinsic asthma or acute chemical pneumonitis due to exposure to toxic agents in the workplace. (ICD-10 codes J67.0 to J67.9)

“*Pesticide*” means (1) any substance or mixture of substances intended for preventing, destroying, repelling, or mitigating directly or indirectly any insects, rodents, nematodes, fungi, weeds, and other forms of plant or animal life or viruses, except viruses on or in living persons, which the Iowa secretary of agriculture shall declare to be a pest; and (2) any substances intended for use as a plant growth regulator, defoliant, or desiccant. Pesticides include active and inert ingredients of herbicides, insecticides, rodenticides, repellants, fumigants, fungicides, wood treatment products, and disinfectants as well as adjuvants that are added to a pesticide formulation to improve or change properties such as deposition, persistence, or mixing ability.

“*Pesticide poisoning*” means any acute or subacute systemic, ophthalmologic, or dermatologic illness or injury resulting from or suspected of resulting from inhalation or ingestion of, dermal exposure to, or ocular contact with a pesticide. Laboratory confirmation is not required.

“*Placard*” means a warning sign to be erected and displayed on the periphery of a quarantine area, forbidding entry to or exit from the area.

“*Poison control or poison information center*” means any organization or program which has as one of its primary objectives the provision of toxicologic and pharmacologic information and referral services to the public and to health care providers (other than pharmacists) in response to inquiries about actual or potential poisonings.

“*Public health disaster*” means an incident as defined in Iowa Code section 135.140.

“*Quarantinable disease*” means any communicable disease which presents a risk of serious harm to public health and which may require isolation or quarantine to prevent its spread. “Quarantinable disease” includes but is not limited to cholera; diphtheria; infectious tuberculosis; plague; smallpox; yellow fever; viral hemorrhagic fevers, including Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named; novel influenza; and severe acute respiratory syndrome (SARS).

“*Quarantine*” means the limitation of freedom of movement of persons or animals that have been exposed to a quarantinable disease within specified limits marked by placards for a period of time equal to the longest usual incubation period of the disease in such manner as to prevent the spread of a quarantinable disease which affects people.

“*Reportable cancers*” means those cancers included in the National Cancer Institute’s Surveillance, Epidemiology and End Results (SEER) Program.

“*Reportable disease*” means any disease designated by this chapter.

“*Severe skin disorder*” means those dermatoses, burns, and other severe skin disorders which result in death or which require hospitalization or other multiple courses of medical therapy.

“*Sexually transmitted disease or infection*” means a disease or infection as identified by this chapter that is transmitted through sexual practices. “Sexually transmitted disease or infection” includes, but is not limited to, acquired immunodeficiency syndrome (AIDS), chlamydia, gonorrhea, hepatitis B and hepatitis C, human immunodeficiency virus (HIV), human papillomavirus, and syphilis.

“*Suspected case*” means an individual that presents with clinical signs or symptoms indicative of a reportable or quarantinable disease.

“*Toxic agent*” means any noxious substance in solid, liquid or gaseous form capable of producing illness in humans including, but not limited to, pesticides, heavy metals, organic and inorganic dusts and organic solvents. Airborne toxic agents may be in the form of dusts, fumes, vapors, mists, gases or smoke.

“*Toxic hepatitis*” means any acute or subacute necrosis of the liver or other unspecified chemical hepatitis caused by exposure to nonmedicinal toxic agents other than ethyl alcohol including, but not limited to, carbon tetrachloride, chloroform, tetrachloroethane, trichloroethylene, phosphorus,

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trinitrotoluene (TNT), chloronaphthalenes, methylenedianilines, ethylene dibromide, and organic solvents. (ICD-10 codes K71.0 to K71.9)

641—1.2(139A) Purpose and authority.

1.2(1) Purpose. The purpose of this chapter is to establish rules that identify diseases, poisonings and conditions, and incidents that are to be reported to the department in accordance with Iowa Code chapters 135, 136A, 139A, 141A, and 144. These rules also establish the information to be reported, how and when to report, and who is to report. This chapter provides for disease investigation and disease control through preventive measures including but not limited to quarantine and isolation.

1.2(2) Authority. The director is the principal officer of the state to administer disease, poisoning and condition, and incident reporting and control. The State Health Registry of Iowa, administered by the Department of Epidemiology of the College of Public Health at the University of Iowa, is a public health authority for purposes of collecting cancer data in accordance with this chapter.

REPORTABLE COMMUNICABLE AND INFECTIOUS DISEASES

641—1.3(139A,141A) Reportable communicable and infectious diseases. Reportable communicable and infectious diseases are those listed in Appendix A. The director may also designate any disease, poisoning or condition or syndrome temporarily reportable for the purpose of a special investigation.

641—1.4(135,139A) Reporting of reportable communicable and infectious diseases. Each case of a reportable disease is required to be reported to the Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075, in a manner specified by this chapter.

1.4(1) Who is required to report communicable and infectious diseases.

a. Health care providers, hospitals, clinical laboratories, and other health care facilities are required to report cases of reportable communicable and infectious diseases.

b. School nurses are required to report suspected cases of reportable diseases occurring among the children supervised.

c. School officials, through the principal or superintendent as appropriate, are required to report when there is no school nurse.

d. Laboratories are required to report cases of reportable diseases and results obtained in the examination of all specimens which yield evidence of or are reactive for sexually transmitted diseases.

e. Poison control and poison information centers are required to report inquiries about cases of reportable diseases received by them.

f. Medical examiners are required to report their investigatory findings of any death which was caused by or otherwise involved a reportable disease.

g. Occupational nurses are required to report cases of reportable diseases.

h. Hospitals, health care providers and clinical laboratories outside the state of Iowa shall immediately report any confirmed or suspect case of a reportable disease, poisoning or condition in an Iowa resident.

1.4(2) What to report. Each report shall contain all of the following information:

a. The patient's name.

b. The patient's address.

c. The patient's date of birth.

d. The sex of the patient.

e. The race and ethnicity of the patient.

f. The patient's marital status.

g. The patient's telephone number.

h. The name and address of the laboratory.

i. The date the test was found to be positive and the collection date.

j. The name and address of the health care provider who performed the test.

k. If the patient is female, whether the patient is pregnant.

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l. The name of the reportable disease.

1.4(3) How to report.

a. Immediate reporting by telephone of diseases identified in Appendix A as immediately reportable. A health care provider and a public, private, or hospital clinical laboratory shall immediately report any confirmed or suspected case of a disease identified in Appendix A as immediately reportable to the department's disease notification hotline at 1-800-362-2736. The report shall include all information required by 1.4(2) and the following:

- (1) The stage of the disease process.
- (2) Clinical status.
- (3) Any treatment provided for the disease.
- (4) All household and other known contacts.
- (5) Whether household and other known contacts have been examined and the results of such examinations.

b. Other diseases that carry serious consequences or spread rapidly. A health care facility, health care provider and a public, private, or hospital clinical laboratory shall immediately report any confirmed or suspected case of a common source epidemic or disease outbreak of unusual numbers by telephone to the department's 24/7 disease reporting telephone hotline at 1-800-362-2736.

c. Reporting of other reportable diseases. Cases of other reportable communicable or infectious diseases not included in 1.4(3) "a" shall be reported to the department in accordance with Appendix A by mail, telephone, facsimile, or other secure electronic means. The preferred method is secure Web-based reporting when available. If the department determines that reporting by mail hinders the application of organized control measures to protect the public health, the department may require that the reportable disease be reported by telephone, facsimile or secure Web-based reporting.

1.4(4) Contagious or infectious disease notification at time of death. The purpose of this subrule is to establish contagious or infectious disease notification requirements for the information of any person handling a dead body.

a. A health care provider attending a person prior to the person's death shall, at the time of death, place with the body a written notice which specifies or signifies either "known contagious or infectious disease" or "suspected contagious or infectious disease."

b. The health care facility in which the health care provider is working shall be responsible for establishing written procedures and implementing the specific internal practices necessary to satisfy this notification requirement.

REPORTABLE POISONINGS AND CONDITIONS—NONCOMMUNICABLE

641—1.5(139A,135) Reportable poisonings and conditions. Reportable poisonings and conditions are those listed in Appendix B. The director may also designate any disease, poisoning or condition or syndrome temporarily reportable for the purpose of a special investigation.

641—1.6(135,139A) Reporting poisonings and conditions.

1.6(1) Who is required to report.

a. Health care providers, hospitals, and clinical laboratories and other health care facilities are required to report cases of reportable poisonings and conditions. Health care providers are exempted from reporting blood lead testing if the laboratory performing the analysis provides the report containing the required information to the department.

b. School nurses are required to report suspected cases of a reportable poisoning or condition occurring among the children supervised.

c. School officials, through the principal or superintendent as appropriate, are required to report when there is no school nurse.

d. Poison control and poison information centers are required to report inquiries about cases of a reportable poisoning or condition received by them.

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e. Medical examiners are required to report their investigatory findings of any death which was caused by or otherwise involved a reportable poisoning or condition.

f. Occupational nurses are required to report cases of reportable poisonings and conditions.

g. Hospitals, health care providers and clinical laboratories outside the state of Iowa shall immediately report any confirmed or suspected case of a reportable poisoning or condition in an Iowa resident.

1.6(2) *What to report.* Each report shall contain all of the following information:

a. The patient's name.

b. The patient's address.

c. The patient's date of birth.

d. The sex of the patient.

e. The race and ethnicity of the patient.

f. The patient's marital status.

g. The patient's telephone number.

h. The name and address of the laboratory.

i. The collection date.

j. The analytical result.

k. In the case of blood lead testing, whether the sample is a capillary or venous blood sample.

l. For conditions not identified by a laboratory analysis, the date that the condition was diagnosed.

m. The name and address of the health care provider who performed the test.

n. If the patient is female, whether the patient is pregnant.

o. In the case of occupational conditions, the name of the patient's employer.

1.6(3) *How to report.*

a. Blood lead testing. All analytical results greater than or equal to 20 micrograms per deciliter ($\mu\text{g}/\text{dL}$) in a child under the age of six years or a pregnant woman shall be reported to the department immediately by telephone at 1-800-972-2026. All other analytical results shall be reported to the department at least weekly in an electronic format specified by the department.

b. Each instance of carbon monoxide poisoning shall be reported to the department immediately by telephone at 1-800-972-2026.

c. Reportable poisonings and conditions other than blood lead testing and carbon monoxide poisoning shall be reported to the department in accordance with Appendix B.

d. Occupational nurses shall submit cases of occupationally related reportable poisonings or conditions on report forms provided by the department.

INVESTIGATION

641—1.7(135,139A) Investigation of reportable diseases. A health care provider and a public, private, or hospital clinical laboratory shall assist in a disease investigation conducted by the department, a local board, or a local department.

1.7(1) A health care provider and a clinical laboratory shall provide the department, local board, or local department with all information necessary to conduct the investigation, including but not limited to medical records; exposure histories; medical histories; contact information; and test results necessary to the investigation, including positive, pending, and negative test results.

1.7(2) Issuance of investigatory subpoenas.

a. The department may upon the written request of a local board of health, the state public health medical director and epidemiologist or designee, or the state public health veterinarian or designee, subpoena records, reports, or any other evidence necessary to conduct a disease investigation. The subpoena shall be signed by the division director of the division of acute disease prevention and emergency response or the division director's designee following review and approval of the written request for subpoena.

b. A written request for a subpoena shall contain the following:

(1) The name and address of the person, facility, or entity to which the subpoena will be directed;

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- (2) A specific description of the records, reports, or other evidence requested; and
- (3) An explanation of why the documents sought to be subpoenaed are necessary for the department to conduct the disease investigation.

c. Each subpoena shall contain:

- (1) The name and address of the person, facility, or entity to which the subpoena is directed;
- (2) A description of the records, reports, or other evidence requested;
- (3) The date, time, and location for production, inspection, or copying;
- (4) The time within which a motion to quash or modify the subpoena must be filed;
- (5) The signature, address, and telephone number of the division director;
- (6) The date of issuance; and
- (7) A return of service.

d. Process to challenge a subpoena.

(1) Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within five days after service of the subpoena, or before the time specified for compliance if such time is less than five days, file with the department a motion to quash or modify the subpoena. The motion shall describe the reasons why the subpoena should be quashed or modified, and may be accompanied by legal briefs or factual affidavits.

(2) Upon receipt of a timely motion to quash or modify a subpoena, the department may request an administrative law judge to issue a decision. Oral argument may be scheduled at the discretion of the administrative law judge. The administrative law judge may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

(3) A person aggrieved by a ruling of an administrative law judge who desires to challenge that ruling must appeal the ruling to the department by serving on the department director, either in person or by certified mail, a notice of appeal within ten days after the service of the decision of the administrative law judge. The department director's decision is final for purposes of judicial review.

e. Subpoenas issued under this subrule and requests, motions, and pleadings related to the issuance of subpoenas are confidential pursuant to Iowa Code sections 139A.3 and 22.7.

ISOLATION AND QUARANTINE

641—1.8(139A) Isolation and quarantine. Isolation and quarantine should be consistent with guidelines provided by the Centers for Disease Control and Prevention's 2007 Guideline for Isolation Precautions: Preventing Transmission of Infectious Agents in Healthcare Settings, June 2007; <http://www.cdc.gov/ncidod/dhqp/pdf/isolation2007.pdf>.

641—1.9(135,139A) Quarantine and isolation.

1.9(1) Examination, testing, and treatment of quarantinable diseases.

a. A health care provider who attends an individual with a suspected or active quarantinable disease shall make all reasonable efforts in accordance with guidance from a local health department or the department to examine or cause all household and other known contacts of the individual to be examined by a physician. The physician shall promptly report to the department the results of such examination. If the individual refuses or is unable to undergo examination, the health care provider shall promptly report such information to the department.

b. When required by the department, all contacts not examined by a physician, including all adult and minor contacts, shall submit to a diagnostic test or tests. If any suspicious abnormality is found, steps satisfactory to the department shall be taken to refer the individual promptly to a physician or appropriate medical facility for further evaluation and, if necessary, treatment. The referring health care provider or facility shall notify the receiving health care provider or facility of the suspicious abnormality. When requested by the department, a physician shall report the results of the examination of a contact to the case or suspected case or incident.

c. Upon order of the department or local board of health, an individual with a suspected or active quarantinable disease shall not attend the workplace or school and shall not be present at other public

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places until the individual receives the approval of the department or a local board of health to engage in such activity. Upon order of the department or local board of health, employers, schools and other public places shall exclude an individual with a suspected or active quarantinable disease. An individual may also be excluded from other premises or facilities if the department or a local board of health determines the premises or facilities cannot be maintained in a manner adequate to protect others against the spread of the disease.

d. A person diagnosed with or clinically suspected of having infectious tuberculosis shall complete voluntary treatment until, in the opinion of the attending physician or the state public health medical director and epidemiologist, the person's tuberculosis is cured or such person is no longer a threat to public health. If such person refuses to complete the course of voluntary treatment, the department or local board of health may issue an order compelling mandatory treatment. Such order shall include the identity of the person subject to the mandatory treatment order, a description of the treatment ordered, the medical basis upon which the treatment is ordered, and a description of the potential medical and legal consequences of violating such order. A person who violates a mandatory treatment order may be subject to the penalties provided in Iowa Code section 135.38 or 137.21 and may be placed under mandatory quarantine or isolation in accordance with the provisions of this chapter.

e. A person diagnosed with extrapulmonary tuberculosis or clinically suspected of having infectious tuberculosis who fails to comply with a physician's recommendation for diagnostic testing may be ordered to undergo diagnostic testing by the department or local board of health. Such order shall include the identity of the person subject to mandatory diagnostic testing, a description of the diagnostic testing ordered, the medical basis upon which the diagnostic testing is ordered, and a description of the potential medical and legal consequences of violating such order. A person who violates a mandatory diagnostic testing order may be subject to the penalties provided in Iowa Code section 135.38 or 137.21 and may be placed under mandatory quarantine or isolation in accordance with the provisions of this chapter.

1.9(2) General provisions.

a. Voluntary confinement. Prior to instituting mandatory isolation or quarantine pursuant to this rule, the department or a local board of health may request that an individual or group of individuals voluntarily confine themselves to a private home or other facility.

b. Quarantine and isolation. The department and local boards of health are authorized to impose and enforce quarantine and isolation restrictions. Quarantine and isolation shall rarely be imposed by the department or by local boards of health. If a quarantinable disease occurs in Iowa, individuals with a suspected or active quarantinable disease and contacts to the case may be quarantined or isolated as the particular situation requires. Any quarantine or isolation imposed by the department or a local board of health shall be established and enforced in accordance with this rule.

1.9(3) Conditions and principles. The department and local boards of health shall adhere to all of the following conditions and principles when isolating or quarantining individuals or a group of individuals:

a. The isolation or quarantine shall be by the least restrictive means necessary to prevent the spread of a communicable or possibly communicable disease to others and may include, but not be limited to, confinement to private homes, other private premises, or public premises.

b. Isolated individuals shall be confined separately from quarantined individuals.

c. The health status of isolated or quarantined individuals shall be monitored regularly to determine if the individuals require further or continued isolation or quarantine.

d. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a communicable or possibly communicable disease, the individual shall be promptly removed to isolation.

e. Isolated or quarantined individuals shall be immediately released when the department or local board of health determines that the individuals pose no substantial risk of transmitting a communicable or possibly communicable disease.

f. The needs of isolated or quarantined individuals shall be addressed in a systematic and competent fashion including, but not limited to, providing adequate food; clothing; shelter; means of

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communicating with those in and outside of isolation or quarantine; medication; and competent medical care.

g. The premises used for isolation or quarantine shall be maintained in a safe and hygienic manner and shall be designed to minimize the likelihood of further transmission of infection or other harm to isolated or quarantined individuals.

h. To the extent possible, cultural and religious beliefs shall be considered in addressing the needs of individuals in isolation or quarantine premises and in establishing and maintaining the premises.

1.9(4) Isolation and quarantine premises.

a. Sites of isolation or quarantine shall be prominently placarded with isolation or quarantine signs prescribed and furnished by the department and posted on all sides of the building wherever access is possible.

b. An individual subject to isolation or quarantine shall obey the rules and orders of the department or the local board of health and shall not go beyond the isolation or quarantine premises.

c. The department or a local board of health may authorize physicians, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals.

d. No individual, other than an individual authorized by the department or a local board of health, shall enter isolation or quarantine premises. If the department has requested the assistance of law enforcement in enforcing the isolation or quarantine, the department shall provide law enforcement personnel with a list of individuals authorized to enter the isolation or quarantine premises.

e. Any individual entering an isolation or quarantine premises with or without authorization of the department or a local board of health may be isolated or quarantined pursuant to this rule.

1.9(5) Isolation and quarantine by local boards of health.

a. A local board of health may:

- (1) Isolate individuals who are presumably or actually infected with a quarantinable disease;
- (2) Quarantine individuals who have been exposed to a quarantinable disease;
- (3) Establish and maintain places of isolation and quarantine; and
- (4) Adopt emergency rules and issue orders as necessary to establish, maintain, and enforce isolation or quarantine.

b. Isolation and quarantine undertaken by a local board of health shall be accomplished according to the rules and regulations of the local board of health so long as such rules are not inconsistent with this chapter.

1.9(6) Isolation and quarantine by the Iowa department of public health.

a. Authority.

(1) The department, through the director, the department's medical director, or the director's or medical director's designee, may:

1. Isolate individuals or groups of individuals who are presumably or actually infected with a quarantinable disease; and

2. Quarantine individuals or groups of individuals who have been exposed to a quarantinable disease, including individuals who are unable or unwilling to undergo examination, testing, vaccination, or treatment, pursuant to 2003 Iowa Acts, chapter 33.

(2) The department may:

1. Establish and maintain places of isolation and quarantine; and

2. Adopt emergency rules and issue orders as necessary to establish, maintain, and enforce isolation or quarantine.

(3) Isolation and quarantine undertaken by the department, including isolation and quarantine undertaken by the department in the event of a public health disaster, shall be established pursuant to paragraph 1.9(6) "b" or "c."

b. *Temporary isolation and quarantine without notice.* The department may temporarily isolate or quarantine an individual or groups of individuals through an oral order, without notice, only if delay in imposing the isolation or quarantine would significantly jeopardize the department's ability to prevent or limit the transmission of a communicable or possibly communicable disease to others. If the department

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imposes temporary isolation or quarantine of an individual or groups of individuals through an oral order, the department shall issue a written order as soon as is reasonably possible and in all cases within 24 hours of issuance of the oral order if continued isolation or quarantine is necessary to prevent or limit the transmission of a communicable or possibly communicable disease.

c. Written order. The department may isolate or quarantine an individual or groups of individuals through a written order issued pursuant to this rule.

(1) The written order shall include all of the following:

1. The identity of the individual, individuals, or groups of individuals subject to isolation or quarantine.

2. The premises subject to isolation or quarantine.

3. The date and time at which isolation or quarantine commences.

4. The suspected communicable disease.

5. A description of the less restrictive alternatives that were attempted and were unsuccessful, or the less restrictive alternatives that were considered and rejected, and the reasons such alternatives were rejected.

6. A statement of compliance with the conditions and principles for isolation and quarantine specified in subrule 1.9(3).

7. The legal authority under which the order is requested.

8. The medical basis upon which isolation or quarantine is justified.

9. A statement advising the individual, individuals, or groups of individuals of the right to appeal the written order pursuant to subrule 1.9(7) and the rights of individuals and groups of individuals subject to quarantine and isolation as listed in subrule 1.9(8).

10. A copy of this chapter and the relevant definitions.

(2) A copy of the written order shall be provided to the individual to be isolated or quarantined within 24 hours of issuance of the order in accordance with any applicable process authorized by the Iowa Rules of Civil Procedure. If the order applies to a group or groups of individuals and it is impractical to provide individual copies, the order may be posted in a conspicuous place in the isolation or quarantine premises.

1.9(7) Appeal from order imposing isolation or quarantine.

a. Contested case. The subject of a department order imposing isolation or quarantine may appeal a written order and has the right to a contested case hearing regarding such appeal. The subject of a department order imposing isolation or quarantine may appeal the order by submitting a written appeal within ten days of receipt of the written order. The appeal shall be addressed to the Department of Public Health, Division of Epidemiology, Emergency Medical Services, and Disaster Operations, Lucas State Office Building, Des Moines, Iowa 50319-0075. Unless stayed by order of the director or a district court, the written order for quarantine or isolation shall remain in force and effect until the appeal is finally determined and disposed of upon its merits.

b. Presiding officer. The presiding officer in a contested case shall be the director or the director's designee. The director or the director's designee may be assisted by an administrative law judge in conducting the contested case hearing. The decision of the director or the director's designee shall be the department's final decision and is subject to judicial review in accordance with the provisions of Iowa Code chapter 17A.

c. Proceeding. The contested case hearing shall be conducted in accordance with the provisions contained at 641—Chapter 173. The hearing shall be held as soon as is practicable, and in no case later than ten days from the date of receipt of the appeal. The hearing may be held by telephonic or other electronic means if necessary to prevent additional exposure to the communicable or possibly communicable disease. In extraordinary circumstances and for good cause shown, the department may apply to continue the hearing date for up to ten additional days on a petition filed pursuant to this rule. The presiding officer may use discretion in granting a continuance giving due regard to the rights of the affected individuals, the protection of the public's health, and the availability of necessary witnesses and evidence.

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d. Judicial review. The aggrieved party to the final decision of the department may petition for judicial review of that action pursuant to Iowa Code chapter 17A. Petitions for judicial review shall be filed within 30 days after the decision becomes final.

e. Immediate judicial review of department order. The department acknowledges that in certain circumstances the subject or subjects of a department order may desire immediate judicial review of a department order in lieu of proceeding with the contested case process. The department recognizes that the procedural step of pursuing exhaustion of administrative remedies may be inadequate for purposes of Iowa Code section 17A.19, and the department may consent to immediate jurisdiction of the district court when requested by the subject or subjects of a department order and justice so requires. Unless stayed by order of the director or a district court, the written order for quarantine or isolation shall remain in force and effect until the judicial review is finally determined and disposed of upon its merits.

1.9(8) Rights of individuals and groups of individuals subject to isolation or quarantine. Any individual or group of individuals subject to isolation or quarantine shall have the following rights:

- a.* The right to be represented by legal counsel.
- b.* The right to be provided with prior notice of the date, time, and location of any hearing.
- c.* The right to participate in any hearing. The hearing may be held by telephonic or other electronic means if necessary to prevent additional exposure to the communicable or possibly communicable disease.
- d.* The right to respond and present evidence and argument on the individual's own behalf in any hearing.
- e.* The right to cross-examine witnesses who testify against the individual.
- f.* The right to view and copy all records in the possession of the department which relate to the subject of the written order.

1.9(9) Consolidation of claims. In any proceeding brought pursuant to this rule, to promote the fair and efficient operation of justice and having given due regard to the rights of the affected individuals, the protection of the public's health, and the availability of necessary witnesses and evidence, the department or a court may order the consolidation of individual claims into group claims, if all of the following conditions exist:

- a.* The number of individuals involved or to be affected is so large that individual participation is impractical.
- b.* There are questions of law or fact common to the individual claims or rights to be determined.
- c.* The group claims or rights to be determined are typical of the affected individuals' claims or rights.
- d.* The entire group will be adequately represented in the consolidation.

1.9(10) Implementation and enforcement of isolation and quarantine.

a. Jurisdictional issues. The department has primary jurisdiction to isolate or quarantine individuals or groups of individuals if the communicable disease outbreak has affected more than one county or has multicounty, statewide, or interstate public health implications. When imposing isolation or quarantine, the department shall coordinate with the local health department as appropriate. If isolation or quarantine is imposed by the department, a local board of health or local health department may not alter, amend, modify, or rescind the isolation or quarantine order.

b. Assistance of local boards of health and local health departments. If isolation or quarantine is imposed by the department, the local boards of health and the local health departments in the affected areas shall assist in the implementation of the isolation or quarantine order.

c. Assistance of law enforcement. Pursuant to Iowa Code section 135.35, all peace officers of the state shall enforce and execute a lawful department order for isolation or quarantine within their respective jurisdictions. The department shall take all reasonable measures to minimize the risk of exposure to peace officers and others assisting with enforcement of an isolation or quarantine order.

d. Penalty. Pursuant to Iowa Code section 135.38, any individual who knowingly violates a lawful department order for isolation or quarantine, whether written or oral, shall be guilty of a simple misdemeanor. The court-ordered sentence may include a fine of up to \$500 and imprisonment not to exceed 30 days.

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e. Enforcement action. The department may file a civil action in Polk County district court or in the district court for the county in which the individual resides or is located to enforce a department order for isolation or quarantine. Such action shall be filed in accordance with the Iowa Rules of Civil Procedure.

641—1.10 and **641—1.11** Reserved.

641—1.12(135,137,139A) Quarantine and isolation—model rule for local boards.

1.12(1) Applicability. The provisions of rule 641—1.12(135,137,139A) are applicable in jurisdictions in which a local board has adopted this rule by reference in accordance with Iowa Code section 137.6. This rule shall not be construed to require a local board to adopt this model rule.

1.12(2) Definitions.

“*Board*” means [insert the name of the city, county, or district board of health].

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

“*Isolation*” means the separation of persons or animals presumably or actually infected with a communicable disease, or that are disease carriers, for the usual period of communicability of that disease. Isolation shall be in such places, marked by placards if necessary, and under such conditions to prevent the direct or indirect conveyance of the infectious agent or contagion to susceptible individuals.

“*Quarantinable disease*” means any communicable disease which presents a risk of serious harm to public health and which may require isolation or quarantine to prevent its spread. “Quarantinable disease” includes but is not limited to cholera; diphtheria; infectious tuberculosis; plague; smallpox; yellow fever; viral hemorrhagic fevers, including Lassa, Marburg, Ebola, Crimean-Congo, South American, and others not yet isolated or named; and severe acute respiratory syndrome (SARS).

“*Quarantine*” means the limitation of freedom of movement of persons or animals that have been exposed to a communicable disease, within specified limits marked by placards, for a period of time equal to the longest usual incubation period of the disease. The limitation of movement shall be in such manner as to prevent the spread of a communicable disease.

1.12(3) General provisions.

a. Voluntary confinement. Prior to instituting mandatory isolation or quarantine pursuant to this rule, the board may request that an individual or group of individuals voluntarily confine themselves to a private home or other facility.

b. Quarantine and isolation. The board is authorized to impose and enforce quarantine and isolation restrictions. Quarantine and isolation shall rarely be imposed by the board. If a quarantinable disease occurs in Iowa, individuals with a suspected or active quarantinable disease and contacts to the case may be quarantined or isolated as the particular situation requires. Any quarantine or isolation imposed by the board shall be established and enforced in accordance with this rule.

c. The local board of health shall notify, consult and work cooperatively with the Iowa department of agriculture and land stewardship and the state veterinarian office on issues relating to isolation and quarantine of animals.

1.12(4) Conditions and principles. The board shall adhere to all of the following conditions and principles when isolating or quarantining individuals or a group of individuals:

a. The isolation or quarantine shall be by the least restrictive means necessary to prevent the spread of a communicable or possibly communicable disease to others and may include, but is not limited to, confinement to private homes, other private premises, or public premises.

b. Isolated individuals shall be confined separately from quarantined individuals.

c. The health status of isolated or quarantined individuals shall be monitored regularly to determine if the individuals require further or continued isolation or quarantine.

d. If a quarantined individual subsequently becomes infected or is reasonably believed to have become infected with a communicable or possibly communicable disease, the individual shall be promptly removed to isolation.

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e. Isolated or quarantined individuals shall be immediately released when the board determines that the individuals pose no substantial risk of transmitting a communicable or possibly communicable disease.

f. The needs of isolated or quarantined individuals shall be addressed in a systematic and competent fashion including, but not limited to, providing adequate food; clothing; shelter; means of communicating with those in and outside of isolation or quarantine; medication; and competent medical care.

g. The premises used for isolation or quarantine shall be maintained in a safe and hygienic manner and shall be designed to minimize the likelihood of further transmission of infection or other harm to isolated or quarantined individuals.

h. To the extent possible, cultural and religious beliefs shall be considered in addressing the needs of individuals in isolation and quarantine premises and in establishing and maintaining the premises.

1.12(5) *Isolation and quarantine premises.*

a. Sites of isolation or quarantine shall be prominently placarded with isolation or quarantine signs prescribed and furnished by the department and posted on all sides of the building wherever access is possible.

b. An individual subject to isolation or quarantine shall obey the rules and orders of the board and shall not go beyond the isolation or quarantine premises.

c. The department or the board may authorize physicians, health care workers, or others access to individuals in isolation or quarantine as necessary to meet the needs of isolated or quarantined individuals.

d. No individual, other than an individual authorized by the department or the board, shall enter an isolation or quarantine premises. If the department has requested the assistance of law enforcement in enforcing the isolation or quarantine, the department shall provide law enforcement personnel with a list of individuals authorized to enter the isolation or quarantine premises.

e. Any individual entering an isolation or quarantine premises with or without authorization of the department or the board may be isolated or quarantined pursuant to this rule.

1.12(6) *Isolation and quarantine.*

a. Authority. The board may:

- (1) Isolate individuals who are presumably or actually infected with a quarantinable disease;
- (2) Quarantine individuals who have been exposed to a quarantinable disease;
- (3) Establish and maintain places of isolation and quarantine; and
- (4) Adopt emergency rules and issue orders as necessary to establish, maintain, and enforce isolation or quarantine.

b. Isolation and quarantine undertaken by the board shall be accomplished in accordance with this rule.

c. Temporary isolation and quarantine without notice. The board may temporarily isolate or quarantine an individual or groups of individuals through an oral order, without notice, only if delay in imposing the isolation or quarantine would significantly jeopardize the board's ability to prevent or limit the transmission of a communicable or possibly communicable disease to others. If the board imposes temporary isolation or quarantine of an individual or groups of individuals through an oral order, the board shall issue a written order as soon as is reasonably possible and in all cases within 24 hours of issuance of the oral order if continued isolation or quarantine is necessary to prevent or limit the transmission of a communicable or possibly communicable disease.

d. Written order. The board may isolate or quarantine an individual or groups of individuals through a written order issued pursuant to this rule.

(1) The written order shall include all of the following:

1. The identity of the individual, individuals, or groups of individuals subject to isolation or quarantine.
2. The premises subject to isolation or quarantine.
3. The date and time at which isolation or quarantine commences.
4. The suspected communicable disease.

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5. A description of the less restrictive alternatives that were attempted and were unsuccessful, or the less restrictive alternatives that were considered and rejected, and the reasons such alternatives were rejected.

6. A statement of compliance with the conditions and principles for isolation and quarantine specified in subrule 1.12(4).

7. The legal authority under which the order is requested.

8. The medical basis upon which isolation or quarantine is justified.

9. A statement advising the individual, individuals, or groups of individuals of the right to appeal the written order pursuant to subrule 1.12(7) and the rights of individuals and groups of individuals subject to quarantine and isolation as listed in subrule 1.12(8).

10. A copy of this rule and the relevant definitions.

(2) A copy of the written order shall be provided to the individual to be isolated or quarantined within 24 hours of issuance of the order in accordance with any applicable process authorized by the Iowa Rules of Civil Procedure. If the order applies to a group or groups of individuals and it is impractical to provide individual copies, the order may be posted in a conspicuous place in the isolation or quarantine premises.

1.12(7) *Appeal from order imposing isolation or quarantine.*

a. Appeal. The subject of a board order imposing isolation or quarantine may appeal a written order by submitting a written appeal within ten days of receipt of the written order. The appeal shall be addressed to [insert name of board and board address]. Unless stayed by order of the board or a district court, the written order for quarantine or isolation shall remain in force and effect until the appeal is finally determined and disposed of upon its merits.

b. Proceeding. The appeal proceeding shall be conducted in accordance with this rule [or insert specific board rule governing appeal proceedings]. The proceeding shall be held as soon as is practicable, and in no case later than ten days from the date of receipt of the appeal. The hearing may be held by telephonic or other electronic means if necessary to prevent additional exposure to the communicable or possibly communicable disease. In extraordinary circumstances and for good cause shown, the board may continue the proceeding date for up to ten days, giving due regard to the rights of the affected individuals, the protection of the public's health, and the availability of necessary witnesses and evidence. At the appeal proceeding, the subject of the appeal shall have the right to introduce evidence on all issues relevant to the order. The board, by majority vote, may modify, withdraw, or order compliance with the order under appeal.

c. Judicial review. The aggrieved party to the final decision of the board may petition for judicial review of that action by filing an action in the appropriate district court. Petitions for judicial review shall be filed within 30 days after the decision becomes final.

d. Immediate judicial review of board order. The board acknowledges that in certain circumstances the subject or subjects of a board order may desire immediate judicial review of a board order in lieu of proceeding with the board's appeal process. The board may consent to immediate jurisdiction of the district court when requested by the subject or subjects of a board order and justice so requires. Unless stayed by order of the board or a district court, the written order for quarantine or isolation shall remain in force and effect until the judicial review is finally determined and disposed of upon its merits.

1.12(8) *Rights of individuals and groups of individuals subject to isolation or quarantine.* Any individual or group of individuals subject to isolation or quarantine shall have the following rights:

a. The right to be represented by legal counsel.

b. The right to be provided with prior notice of the date, time, and location of any hearing.

c. The right to participate in any hearing. The hearing may be held by telephonic or other electronic means if necessary to prevent additional exposure to the communicable or possibly communicable disease.

d. The right to respond and present evidence and argument on the individual's own behalf in any hearing.

e. The right to cross-examine witnesses who testify against the individual.

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f. The right to view and copy all records in the possession of the board which relate to the subject of the written order.

1.12(9) Consolidation of claims. In any proceeding brought pursuant to this rule, to promote the fair and efficient operation of justice and having given due regard to the rights of the affected individuals, the protection of the public's health, and the availability of necessary witnesses and evidence, the board or a court may order the consolidation of individual claims into group claims, if all of the following conditions exist:

a. The number of individuals involved or to be affected is large enough that consolidation would be the best use of resources.

b. There are questions of law or fact common to the individual claims or rights to be determined.

c. The group claims or rights to be determined are typical of the affected individuals' claims or rights.

d. The entire group will be adequately represented in the consolidation.

1.12(10) Implementation and enforcement of isolation and quarantine.

a. Jurisdictional issues. The department has primary jurisdiction to isolate or quarantine individuals or groups of individuals if the communicable disease outbreak has affected more than one county or has multicounty, statewide, or interstate public health implications. If isolation or quarantine is imposed by the department, the board may not alter, amend, modify, or rescind the isolation or quarantine order.

b. Assistance of local boards of health and local health departments. If isolation or quarantine is imposed by the department, the local boards of health and the local health departments in the affected areas shall assist in the implementation of the isolation or quarantine order.

c. Penalty. Pursuant to Iowa Code sections 137.21 and 139A.25(1), any individual who violates a lawful board order for isolation or quarantine, whether written or oral, shall be guilty of a simple misdemeanor. The court-ordered sentence may include a fine of up to \$500 and imprisonment not to exceed 30 days.

d. Enforcement action. The board, through the office of the county attorney, may file a civil action in the appropriate district court to enforce a board order for isolation or quarantine. Such action shall be filed in accordance with the Iowa Rules of Civil Procedure.

641—1.13(135,139A) Area quarantine.

1.13(1) General provisions. The department and local boards of health are authorized to impose and enforce area quarantine in accordance with this rule. Area quarantine shall rarely be imposed by the department or by local boards of health.

1.13(2) Conditions and principles. The department and local boards of health shall adhere to all of the following conditions and principles when imposing and enforcing area quarantine:

a. Area quarantine shall be imposed by the least restrictive means necessary to prevent or contain the spread of a suspected or confirmed quarantinable disease or suspected or known hazardous or toxic agent.

b. Area quarantine shall be immediately terminated when the department or a local board of health determines that no substantial risk of exposure to a quarantinable disease or hazardous or toxic agent continues to exist.

c. The geographical boundaries of an area quarantine shall be established by risk assessment procedures including medical and scientific analysis of the quarantinable disease or hazardous or toxic agent, the location of the affected area, the risk of spread or contamination, and other relevant information.

1.13(3) Area quarantine sites.

a. Sites of area quarantine shall be prominently identified to restrict ingress to and egress from the area, to the extent practicable. The department or a local board of health may placard or otherwise identify the site, or may request the assistance of law enforcement in identifying the site.

b. No individual, other than an individual authorized by the department or a local board of health, shall enter a building, structure, or other physical location subject to area quarantine. The department

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or a local board of health may authorize public health officials, environmental specialists, health care providers, or others access to an area quarantine site as necessary to conduct public health investigations, to decontaminate the site, or for other public health purposes. Notwithstanding any provision in this chapter to the contrary, law enforcement, fire service, and emergency medical service providers may enter an area quarantine site to provide emergency response services or to conduct emergency law enforcement investigations or other emergency activities without authorization by the department or a local board of health. If the department has requested the assistance of law enforcement in enforcing the area quarantine, the department shall provide law enforcement personnel with a list of individuals authorized to enter the area quarantine site.

c. An individual authorized to enter an area quarantine site may be required to wear personal protective equipment as appropriate.

d. No individual, other than an individual authorized by the department or a local board of health, shall remove any item or object from a building, structure, or other physical location subject to area quarantine.

e. An individual entering an area quarantine site without authorization of the department or a local board of health may be isolated or quarantined pursuant to rule 641—1.9(135,139A) and may be found guilty of a simple misdemeanor.

1.13(4) *Area quarantine by local boards of health or the department of public health.*

a. Authority.

(1) The department, through the director, the department's medical director, or the director or medical director's designee, may impose area quarantine through oral or written order. Prior to imposing area quarantine, the department shall attempt to notify the local board or boards of health in the affected geographic area. If attempts to notify the local boards of health are initially unsuccessful, the department shall continue to make regular notification attempts until successful.

(2) A local board of health may impose area quarantine through oral or written order. Prior to imposing area quarantine, a local board of health shall attempt to notify the department by contacting the director, medical director, or department duty officer by telephone. If attempts to notify the department are initially unsuccessful, the local board of health shall continue to make regular notification attempts until successful.

b. Temporary area quarantine without notice. The department or a local board of health may temporarily impose area quarantine through an oral order, without notice, only if delay in imposing area quarantine would significantly jeopardize the department's or local board's ability to prevent or contain the spread of a suspected or confirmed quarantinable disease or to prevent or contain exposure to a suspected or known hazardous or toxic agent. If the department or local board imposes temporary area quarantine through an oral order, a written order shall be issued as soon as is reasonably possible and in all cases within 24 hours of issuance of the oral order if continued area quarantine is necessary.

c. Written order. The department or local board may impose area quarantine through a written order issued pursuant to this rule.

(1) The written order shall include all of the following:

1. The building or buildings, structure or structures, or other definable physical location, or portion thereof, subject to area quarantine.

2. The date and time at which area quarantine commences and the date and time at which the area quarantine shall be terminated, if known.

3. The suspected or confirmed quarantinable disease or the chemical, biological, radioactive, or other hazardous or toxic agent.

4. A statement of compliance with the conditions and principles for area quarantine specified in subrule 1.13(2).

5. The legal authority under which the order is imposed.

6. The medical or scientific basis upon which area quarantine is justified.

7. A statement advising the owner or owners of the building or buildings, structure or structures, or other definable physical location subject to area quarantine of the right to appeal the written order

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pursuant to subrule 1.13(5) and the rights of owners of sites subject to area quarantine pursuant to subrule 1.13(6).

8. A copy of 641—Chapter 1 and the relevant provisions of this rule.

(2) A copy of the written order shall be provided to the owner or owners of the building or buildings, structure or structures, or other definable physical location subject to area quarantine within 24 hours of issuance of the order in accordance with any applicable process authorized by the Iowa Rules of Civil Procedure; or, if the order applies to a group of owners and it is impractical to provide individual notice to each owner, the written order shall be posted in a conspicuous place at the site of area quarantine.

1.13(5) Appeal from order imposing area quarantine.

a. Contested case. The subject of a department order imposing area quarantine may appeal a written order and has the right to a contested case hearing regarding such appeal. The subject of a department order imposing area quarantine may appeal the order by submitting a written appeal within 10 days of receipt or other notice of the written order. The appeal shall be addressed to the Department of Public Health, Division of Acute Disease Prevention and Emergency Response, Lucas State Office Building, Des Moines, Iowa 50319-0075. Unless stayed by order of the director or a district court, the written order for area quarantine shall remain in force and effect until the appeal is finally determined and disposed of upon its merits.

b. Presiding officer. The presiding officer in a contested case shall be the director or the director's designee. The director or the director's designee may be assisted by an administrative law judge in conducting the contested case hearing. The decision of the director or the director's designee shall be the agency's final decision and is subject to judicial review in accordance with the provisions of Iowa Code chapter 17A.

c. Proceeding. The contested case hearing shall be conducted in accordance with the provisions contained at 641—Chapter 173. The hearing shall be held as soon as is practicable, and in no case later than 10 days from the date of receipt of the appeal. In extraordinary circumstances and for good cause shown, the department may apply to continue the hearing date on a petition filed pursuant to this paragraph for up to 10 days, which continuance the presiding officer may grant in its discretion giving due regard to the rights of the affected individuals, the protection of the public's health, and the availability of necessary witnesses and evidence.

d. Judicial review. The aggrieved party to the final decision of the department may petition for judicial review of that action pursuant to Iowa Code chapter 17A. Petitions for judicial review shall be filed within 30 days after the decision becomes final.

e. Immediate judicial review of department order. The department acknowledges that in certain circumstances the subject or subjects of a department order may desire immediate judicial review of a department order in lieu of proceeding with the contested case process. The department recognizes that the procedural step of pursuing exhaustion of administrative remedies may be inadequate for purposes of Iowa Code section 17A.19, and the department may consent to immediate jurisdiction of the district court when requested by the subject or subjects of a department order and justice so requires. Unless stayed by order of the director or a district court, the written order for area quarantine shall remain in force and effect until the judicial review is finally determined and disposed of upon its merits.

1.13(6) Rights of owners of sites subject to area quarantine. An owner of a building, structure, or other physical location subject to area quarantine shall have the following rights:

- a.* The right to be represented by legal counsel.
- b.* The right to be provided with prior notice of the date, time, and location of any hearing.
- c.* The right to participate in any hearing.
- d.* The right to respond and present evidence and argument on the owner's own behalf in any hearing.
- e.* The right to cross-examine witnesses who testify against the individual.
- f.* The right to view and copy all records in the possession of the department which relate to the subject of the written order.

1.13(7) Consolidation of claims. In any proceeding brought pursuant to this rule, to promote the fair and efficient operation of justice and having given due regard to the rights of the affected individuals, the

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protection of the public's health, and the availability of necessary witnesses and evidence, the department or a court may order the consolidation of individual claims into group claims, if all of the following conditions exist:

- a. The number of individuals involved or who may be affected is so large that individual participation is impractical.
- b. There are questions of law or fact common to the individual claims or rights to be determined.
- c. The group claims or rights to be determined are typical of the affected individuals' claims or rights.
- d. The entire group will be adequately represented in the consolidation.

1.13(8) Implementation and enforcement of area quarantine.

a. *Jurisdictional issues.* The department has primary jurisdiction to impose area quarantine if the quarantinable disease or hazardous or toxic agent has affected more than one county and implicates multicounty or statewide public health concerns. If area quarantine is imposed by the department, a local board of health or local health department may not alter, amend, modify, or rescind the area quarantine order.

b. *Assistance of local boards of health and local health departments.* If area quarantine is imposed by the department, the local boards of health and the local health departments in the affected areas shall assist in the implementation of the area quarantine.

c. *Assistance of law enforcement.* Pursuant to Iowa Code section 135.35, all peace officers of the state shall enforce and execute a lawful department order for area quarantine within their respective jurisdictions. The department shall take all reasonable measures to minimize the risk of individual exposure of peace officers and others assisting with enforcement of an area quarantine order.

d. *Emergency response, investigation, and decontamination—authority of other agencies.* Emergency response, investigation, and decontamination activities in and around an area quarantine site shall be conducted by law enforcement, fire service, emergency medical service providers, or other appropriate federal, state, or local officials in accordance with federal and state law and accepted procedures and protocols for emergency response, investigation, and decontamination. This rule shall not be construed to limit the authority of law enforcement, fire service, emergency medical service providers, or other federal, state, or local officials to conduct emergency response, investigation, or decontamination activities to the extent authorized by federal and state law and accepted procedures and protocols.

e. *Penalty.* Pursuant to Iowa Code section 135.38, any individual who knowingly violates a lawful department order for area quarantine, whether written or oral, shall be guilty of a simple misdemeanor. The court-ordered sentence may include a fine of up to \$500 and imprisonment not to exceed 30 days.

f. *Enforcement action.* To enforce a department order for quarantine, the department may file a civil action in Polk County District Court or in the district court for the county in which the area quarantine will be enforced. Such action shall be filed in accordance with the Iowa Rules of Civil Procedure.

SPECIFIC NONCOMMUNICABLE CONDITIONS

641—1.14(139A) Cancer. Each occurrence of a reportable cancer that is diagnosed or treated in an Iowa resident or occurs in a nonresident who is diagnosed or treated in an Iowa facility shall be reported to the State Health Registry of Iowa, administered by the Department of Epidemiology of the College of Public Health at the University of Iowa, by mail, telephone or electronic means.

1.14(1) Who is required to report. Occurrences of reportable cancers shall be reported by registrars employed by the State Health Registry of Iowa, registrars employed by health care facilities, and health care providers involved in the diagnosis, care, or treatment of individuals with a reportable cancer.

1.14(2) What to report. The content of the reports shall include, but not be limited to, follow-up data and demographic, diagnostic, treatment, and other medical information. Tissue samples may also be submitted under the authority of this rule.

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1.14(3) *How to report.* For these particular diseases, physicians and other health practitioners should not send a report to the department.

a. The department has delegated to the State Health Registry of Iowa the responsibility for collecting these data through review of records from hospitals, radiation treatment centers, outpatient surgical facilities, oncology clinics, pathology laboratories, and physician offices.

b. Prior to collecting the data from an office or facility, the State Health Registry of Iowa shall work with the office or facility to develop a process for abstracting records which is agreeable to the office or facility.

c. Where applicable, reportable cancers shall be reported on forms developed and distributed by the State Health Registry of Iowa.

d. Data will be supplemented with information obtained from records from hospitals, radiation treatment centers, outpatient surgical centers, oncology clinics, pathology laboratories, and physician offices through an abstracting process developed by the State Health Registry of Iowa.

641—1.15(144) Congenital and inherited disorders. Each occurrence of a congenital and inherited disorder that is diagnosed or treated in an Iowa resident or occurs in a nonresident who is diagnosed or treated in an Iowa facility is a reportable condition, and records of these congenital and inherited disorders shall be abstracted and maintained in a central registry. Congenital and inherited disorder surveillance shall be performed in order to determine the occurrence and trends of congenital and inherited disorders, to conduct thorough and complete epidemiological surveys, to assist in the planning for and provision of services to children with congenital and inherited disorders and their families, and to identify environmental and genetic risk factors for congenital and inherited disorders.

1.15(1) *Who is required to report.* Occurrences of reportable congenital and inherited disorders shall be reported by registrars employed by the Iowa Registry for Congenital and Inherited Disorders, registrars employed by health care facilities, and health care providers involved in the diagnosis, care, or treatment of individuals with reportable congenital and inherited disorders.

1.15(2) *What to report.* The content of the reports shall include, but not be limited to, follow-up data and demographic, diagnostic, treatment, and other medical information. Tissue samples may also be submitted under the authority of this rule.

1.15(3) *How to report.*

a. The department has delegated to the Iowa Registry for Congenital and Inherited Disorders the responsibility for collecting these data through review of records from hospitals, radiation treatment centers, outpatient surgical facilities, oncology clinics, pathology laboratories, and physician offices.

b. Prior to collecting the data from an office or facility, the Iowa Registry for Congenital and Inherited Disorders shall work with the office or facility to develop a process for abstracting records.

1.15(4) *Fetal death (stillbirth).* Each occurrence of a fetal death that occurs in an Iowa resident or occurs in a nonresident who is identified in an Iowa facility is a reportable condition.

a. Providers shall complete the fetal death certificate supplied by the department.

b. Fetal death certificates are to be filed with the department's bureau of vital records within seven days.

641—1.16(139A) Agriculturally related injury.

1.16(1) *Who is required to report.*

a. Health care providers are required to report all cases of agriculturally related injury attended by them.

b. Clinics, hospitals and other health care facilities are required to report all cases of agriculturally related injury treated at their facility.

c. Health care providers who reside and health care facilities that are located outside the state of Iowa shall report all cases of agriculturally related injury of an Iowa resident that are attended or treated by them.

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d. Medical examiners are required to report their investigatory findings of any death occurring within the state of Iowa which was caused by or otherwise involved a reportable agriculturally related injury.

1.16(2) *What to report.* Each report shall contain all of the following information:

- a.* The patient's name.
- b.* The patient's address.
- c.* The patient's date of birth.
- d.* The sex of the patient.
- e.* The race and ethnicity of the patient.
- f.* The patient's marital status.
- g.* The patient's telephone number.
- h.* If the patient is female, whether the patient is pregnant.
- i.* In the case of occupational conditions, the name of the patient's employer.
- j.* The date that the injury occurred.
- k.* The name and address of the health care provider who diagnosed and treated the injury, and the name of the reporting site, clinic, or hospital.

l. Injury diagnosis and description, including diagnostic and external cause of injury codes utilizing the international classification of diseases (ICD) coding system.

m. Severity of injury.

1.16(3) *How to report.*

a. All data shall be reported to the department at least quarterly using formats approved by the department. Reports, using the Iowa Agricultural Injury Report Form found at www.idph.state.ia.us, may be submitted by facsimile to (515)281-4529, or by mail to the Iowa Department of Public Health, Bureau of Lead Poisoning Prevention, Occupational Safety and Health Surveillance Program, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. Information may also be reported by telephone to 1-800-972-2026 during normal office hours.

b. Trauma centers may report using the Iowa Trauma Patient Registry COLLECTOR software by indicating "Yes" for farm and agriculturally related injury. For more information about using the Iowa Trauma Patient Registry for reporting, contact the Iowa Department of Public Health Bureau of Emergency Medical Services at 1-800-728-3367.

CONFIDENTIALITY

641—1.17(139A,22) Confidentiality.

1.17(1) A report or other information provided to or maintained by the department, a local board, or a local department which identifies a person infected with or exposed to a reportable or other disease or health condition is confidential and shall not be accessible to the public.

1.17(2) The identity of a business named in a report or investigation is confidential and shall not be accessible to the public. If information contained in a report or other information provided to or maintained by the department, a local board, or a local department concerns a business, information disclosing the identity of the business may be released to the public when the state public health medical director and epidemiologist or the director determines such a release of information necessary for the protection of the public.

1.17(3) Reportable disease records and information, with the exception of AIDS and HIV records, which identify a person or a business named in a report, may be disclosed under the following limited circumstances:

- a.* By and between department employees and agents who have a need for the record in the performance of their duties.
- b.* By and between department employees and agents and local boards of health and local health departments as necessary to conduct an investigation.
- c.* By and between department employees and agents and health care providers, laboratories, and hospitals as necessary to conduct an investigation.

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- d.* By and between department employees and agents and employees and agents of federal, state, and local agencies as necessary to conduct an investigation.
- e.* Reportable disease information may be included in a quarantine or isolation order or placard as necessary to prevent the spread of a quarantinable disease.
- f.* Pursuant to rule 641—175.9(17A,22) or 641—175.10(17A,22).
These rules are intended to implement Iowa Code chapters 135, 136A, 139A, 141A and 144.

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APPENDIX A
Iowa Department of Public Health
Table of Reportable Communicable and Infectious Diseases

Report cases of the diseases listed in the following table to the department within the time frame specified in the When to Report column and by the reporting method in the How to Report column.

To report diseases immediately, use the 24/7 disease reporting telephone hotline: 1-800-362-2736.

IMMEDIATELY report diseases, syndromes, poisonings and conditions of any kind suspected or caused by a biological, chemical, or radiological agent or toxin when there is reasonable suspicion that the disease, syndrome, poisoning or condition may be the result of a deliberate act such as terrorism.

IMMEDIATELY report to the department outbreaks of any kind, diseases that occur in unusual numbers or circumstances, unusual syndromes, or uncommon diseases. Outbreaks may be infectious, environmental or occupational in origin and include food-borne outbreaks or illness secondary to chemical exposure (e.g., pesticides, anhydrous ammonia).

Report diseases by:

Entering into the Iowa Disease Surveillance System (IDSS): For IDSS-related questions, call the Center for Acute Disease Epidemiology (CADE) at 1-800-362-2736.

Fax: (515)281-5698

Mail:

Iowa Department of Public Health
 Center for Acute Disease Epidemiology
 Lucas State Office Building
 321 E. 12th Street
 Des Moines, Iowa 50319

Isolates shall be sent to:

University Hygienic Laboratory
 102 Oakdale Campus, H101 OH
 Iowa City, Iowa 52242

For specimen submission questions, call (319)335-4500 or go to <http://www.uhl.uiowa.edu/>.

Diseases	When to Report	How to Report
Acquired immune deficiency syndrome (AIDS) and AIDS-defining conditions	7 days	Report by mail <ul style="list-style-type: none"> • Health care providers: use the Pediatric or Adult Confidential Case Report Form • Laboratories: send copy of lab report or the Iowa Confidential Report of Sexually Transmitted Disease & HIV Infection. Mark envelope "Attention 03" For HIV/AIDS-related questions, call (515)242-5141
Anthrax	1 day	Phone, IDSS, or fax

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Diseases	When to Report	How to Report
Arboviral disease (includes West Nile Disease, St. Louis, LaCrosse, WEE, EEE, VEE encephalitis)	3 days	Phone, IDSS, fax or mail
Botulism	Immediately	24/7 disease reporting telephone hotline: 800-362-2736
Brucellosis (Burcella)	3 days	Phone, IDSS, fax or mail
Campylobacteriosis (Campylobacter)	3 days	Phone, IDSS, fax or mail
Cholera	Immediately	24/7 disease reporting telephone hotline: 800-362-2736
Chlamydia	3 days	Use the Iowa Confidential Report of Sexually Transmitted Disease and HIV Infection
Cryptosporidiosis	3 days	Phone, IDSS, fax or mail
Cyclospora	3 days	Phone, IDSS, fax or mail
Diphtheria	Immediately	24/7 disease reporting telephone hotline: 800-362-2736
Enterococcus invasive disease	3 days	Laboratories send isolate to the UHL
Escherichia coli shiga toxin-producing and related diseases (includes HUS and TTP)	3 days	Phone, IDSS, fax or mail Laboratories send isolate to the UHL
Giardiasis (Giardia)	3 days	Phone, IDSS, fax or mail
Gonorrhea	3 days	Use the Iowa Confidential Report of Sexually Transmitted Disease and HIV Infection
Group A Streptococcus invasive disease	3 days	Send isolate to the UHL
Haemophilus influenza type B invasive disease	Immediately	24/7 disease reporting telephone hotline: 800-362-2736 Laboratories send isolate to the UHL
Hansen's disease (leprosy)	3 days	Phone, IDSS, fax or mail
Hantavirus syndromes	3 days	Phone, IDSS, fax or mail
Hepatitis A	1 day	Phone, IDSS or fax
Hepatitis B, C, D, E	3 days	Phone, IDSS, fax or mail
Human immunodeficiency virus (HIV) cases Death of a person with HIV Perinatally exposed newborn and child (newborn and child who was born to an HIV-infected mother)	7 days	Report by mail <ul style="list-style-type: none"> Health care providers: use the Pediatric or Adult Confidential Case Report Form Laboratories: send copy of lab report or the Iowa Confidential Report of Sexually Transmitted Disease & HIV Infection. Mark envelope "Attention 03" For HIV/AIDS-related questions, call (515)242-5141
Legionellosis (Legionella)	3 days	Phone, IDSS, fax or mail
Listeria monocytogenes invasive disease	1 day	Phone, IDSS, or fax Laboratories send isolate to the UHL
Lyme disease	3 days	Phone, IDSS, fax or mail
Malaria	3 days	Phone, IDSS, fax or mail
Measles (rubeola)	Immediately	24/7 disease reporting telephone hotline: 800-362-2736
Meningococcal invasive disease	Immediately	24/7 disease reporting telephone hotline: 800-362-2736 Laboratories send isolate to the UHL
Mumps	3 days	Phone, IDSS, fax or mail
Pertussis	3 days	Phone, IDSS, fax or mail

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Diseases	When to Report	How to Report
Plague	Immediately	24/7 disease reporting telephone hotline: 800-362-2736
Poliomyelitis	Immediately	24/7 disease reporting telephone hotline: 800-362-2736
Psittacosis	3 days	Phone, IDSS, fax or mail
Rabies, animal	3 days	Phone, IDSS, fax or mail
Rabies, human	Immediately	24/7 disease reporting telephone hotline: 800-362-2736
Rocky Mountain spotted fever	3 days	Phone, IDSS, fax or mail
Rubella (including congenital)	1 day	Phone, IDSS, fax or mail
Salmonellosis (Salmonella)	3 days	Phone, IDSS, fax or mail Laboratories send isolate to the UHL
Severe acute respiratory syndrome (SARS)	Immediately	24/7 disease reporting telephone hotline: 800-362-2736
Shigellosis (Shigella)	3 days	Phone, IDSS, fax or mail Laboratories send isolate to the UHL
Smallpox	Immediately	24/7 disease reporting telephone hotline: 800-362-2736
Staphylococcus aureus invasive disease: Methicillin-resistant invasive disease (number of S. aureus isolates should be reported to the department quarterly)	3 days	Laboratories send isolate to the UHL Mail the number of staphylococcus isolated quarterly to UHL
Vancomycin-resistant S. aureus	Immediately	24/7 disease reporting telephone hotline: 800-362-2736
Streptococcus pneumoniae invasive disease	3 days	Laboratories send isolate to the UHL
Syphilis	3 days	Use the Iowa Confidential Report of Sexually Transmitted Disease and HIV Infection
Tetanus	3 days	Phone, IDSS, fax or mail
Toxic Shock Syndrome	3 days	Phone, IDSS, fax or mail
Trichinosis	3 days	Phone, IDSS, fax or mail
Tuberculosis	3 days	Phone, IDSS, fax or mail
Typhoid fever	1 day	Phone, IDSS or fax
Yellow fever	Immediately	24/7 disease reporting telephone hotline: 800-362-2736

PUBLIC HEALTH DEPARTMENT[641](cont'd)

APPENDIX B
Iowa Department of Public Health
Table of Reportable Poisonings and Conditions

Report cases of the poisonings and conditions listed in the following table to the department within the time frame specified in the When to Report column and by the reporting method in the How to Report column.

To report diseases immediately, use the 24/7 disease reporting telephone hotline: 1-800-362-2736.

IMMEDIATELY report diseases, syndromes, poisonings and conditions of any kind suspected or caused by a biological, chemical, or radiological agent or toxin when there is reasonable suspicion that the disease, syndrome, poisoning or condition may be the result of a deliberate act such as terrorism.

IMMEDIATELY report to the department outbreaks of any kind, diseases that occur in unusual numbers or circumstances, unusual syndromes, or uncommon diseases. Outbreaks may be infectious, environmental or occupational in origin and include food-borne outbreaks or illness secondary to chemical exposure (e.g., pesticides, anhydrous ammonia).

Mailing address:

**Bureau of Lead Poisoning Prevention Division of Environmental Health
Iowa Department of Public Health
321 East 12th Street
Des Moines Iowa 50319-0075**

Telephone: 1-800-972-2026

Fax: (515)281-4529

Poisoning or Condition	Cases to Report	When to Report	How to Report
Arsenic poisoning	Blood arsenic values equal to or greater than 70 µg/L Urine arsenic values equal to or greater than 100 µg/L of urinary creatinine	Weekly	Format specified by department. Web-based reporting if available. Alternatives include by mail, telephone, and facsimile.
Blood lead testing	All analytical results greater than or equal to 20 micrograms per deciliter (µg/dl) in a child under the age of 6 years or a pregnant woman	Daily	By telephone: 800-972-2026
	All other analytical values for all blood lead analyses	Weekly	Electronic format specified by the department
Cadmium poisoning	Blood cadmium values equal to or greater than 5 µg/L Urine cadmium values equal to or greater than 3 µg/g	Weekly	Format specified by department. Web-based reporting if available. Alternatives include by mail, telephone, and facsimile.
Carbon monoxide (CO) poisoning	Blood carbon monoxide level equal to or greater than 10% carboxyhemoglobin or its equivalent with a breath analyzer test, or a clinical diagnosis of CO poisoning regardless of any test results	Daily	By telephone: 800-972-2026

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Poisoning or Condition	Cases to Report	When to Report	How to Report
Hypersensitivity pneumonitis	All cases	Weekly	Format specified by department. Web-based reporting if available. Alternatives include by mail, telephone, and facsimile.
Mercury poisoning	Blood mercury values equal to or greater than 2.8 µg/dL Urine mercury values equal to or greater than 20 µg/L	Weekly	Format specified by department. Web-based reporting if available. Alternatives include by mail, telephone, and facsimile.
Methemoglobinemia	Blood analyses showing greater than 5% of total hemoglobin present as methemoglobin	Weekly	Format specified by department. Web-based reporting if available. Alternatives include by mail, telephone, and facsimile.
Noncommunicable respiratory illness	All cases	Weekly	Format specified by department. Web-based reporting if available. Alternatives include by mail, telephone, and facsimile.
Occupationally related asthma, bronchitis or respiratory hypersensitivity reaction	All cases	Weekly	Format specified by department. Web-based reporting if available. Alternatives include by mail, telephone, and facsimile.
Pesticide poisoning (including pesticide-related contact dermatitis)	All cases	Weekly	Format specified by department. Web-based reporting if available. Alternatives include by mail, telephone, and facsimile.
Severe skin disorder	All cases	Weekly	Format specified by department. Web-based reporting if available. Alternatives include by mail, telephone, and facsimile.
Toxic hepatitis	All cases	Weekly	Format specified by department. Web-based reporting if available. Alternatives include by mail, telephone, and facsimile.

ARC 7967B**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 135.11 and 135.131, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 3, "Early Hearing Detection and Intervention," Iowa Administrative Code.

This chapter contains rules for the universal hearing screening of all newborns and infants in Iowa and the transfer of data to the Department to enhance the capacity of agencies and practitioners to provide services to children and their families. The goal of universal hearing screening of all newborns and infants in Iowa is early detection of hearing loss to allow children and their families the opportunity to obtain early intervention services. This chapter also includes rules to establish procedures for distribution of funds to support the purchase of hearing aids and audiologic services for children.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

These proposed amendments eliminate unnecessary dates, clarify language regarding reporting the child's primary care provider to the Department and clarify the roles and responsibilities of the hospital and audiologist or health care provider for reporting hearing screening or diagnostic assessment results for children under the age of three to the Department. The changes facilitate timely follow-up and avoid unnecessary contact with parents and providers, as well as help the Iowa Early Hearing Detection and Intervention (EHDI) program to monitor the quality of EHDI services and provide recommendations for improving care. These changes are supported by the Early Detection and Intervention Advisory Committee.

Any interested person may make written comments or suggestions on the proposed amendments on or before August 4, 2009. Such written comments should be directed to Tammy O'Hollearn, Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. E-mail may be sent to tohollea@idph.state.ia.us.

A public hearing will be held by conference call on August 4, 2009, from 9 to 10 a.m. Individuals may participate by calling 1-866-685-1580 and entering the following pass code: 0009990487 followed by the # key.

These amendments are intended to implement Iowa Code section 135.131 as amended by 2009 Iowa Acts, House File 314, division II, and 2009 Iowa Acts, House File 811, division IV, section 60(2)"c."

The following amendments are proposed.

ITEM 1. Strike "80GA,ch102" wherever it appears in the parenthetical implementation statutes of **641—Chapter 3** and insert "135" in lieu thereof:

ITEM 2. Adopt the following new heading before rule **641—3.1(135)**:

EARLY HEARING DETECTION AND INTERVENTION [EHDI] PROGRAM

ITEM 3. Adopt the following new definitions in rule **641—3.1(135)**:

"*Applicant*" means a child for whom assistance under this program is being requested.

"*Contractor*" means the entity selected by the department to act as third-party administrator for claims payment related to hearing aids and audiologic services for children.

"*Early hearing detection and intervention advisory committee*" or "*EHDI advisory committee*" means the committee appointed by the department to advise the director of the department regarding issues related to hearing health care for children and to make recommendations about the design and implementation of the early hearing detection and intervention program.

"*Protocol*" means a document which guides decision making and provides the criteria to be used regarding screening, diagnosis, management, and treatment of children related to hearing health care. Early hearing detection and intervention protocols not otherwise specified in this chapter are available on the department's Web site at <http://www.idph.state.ia.us/iaehdi/professionals.asp>.

"*Provider*" means a licensed audiologist, otolaryngologist or hearing aid dispenser who agrees to provide hearing aids or audiologic services to eligible patients.

"*Resident*" means an individual who is a legal resident of the state of Iowa.

ITEM 4. Amend rule 641—3.2(135) as follows:

641—3.2(135) Purpose. The overall purpose of this chapter is to establish administrative rules in accordance with ~~2003 Iowa Acts, chapter 102~~ Iowa Code section 135.131 as amended by 2009 Iowa Acts, House File 314, division II, relative to the following:

1. Universal hearing screening of all newborns and infants in Iowa.
2. Facilitating the transfer of data to the department to enhance the capacity of agencies and practitioners to provide services to children and their families.
3. Establishing the procedure for distribution of funds to support the purchase of hearing aids and audiologic services for children in accordance with 2009 Iowa Acts, House File 811, section 60(2)"c."

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ITEM 5. Renumber rules **641—3.4(135)** to **641—3.13(135)** as **641—3.5(135)** to **641—3.14(135)**.

ITEM 6. Adopt the following **new** rule 641—3.4(135):

641—3.4(135) Program components.

3.4(1) The early hearing detection and intervention (EHDI) coordinator assigned within the department provides administrative oversight to the early hearing detection and intervention program within Iowa.

3.4(2) The EHDI advisory committee represents the interests of the people of Iowa and assists in the development of programming that ensures the availability and access to quality hearing health care for Iowa children.

a. Committee membership includes representation from different facets of the health care community including the Iowa Hospital Association, private practice audiologists, pediatricians, family practice physicians and otolaryngologists.

b. The committee also includes representation from the deaf community, parents of children with hearing loss, advocates, Early ACCESS (IDEA, Part C), area education agencies, and other stakeholders that are affected by or involved with newborn hearing screening and follow-up.

3.4(3) The early hearing detection and intervention program has an association with the Iowa Title V maternal and child health programs to promote comprehensive services for infants and children with special health care needs.

ITEM 7. Amend renumbered rule 641—3.5(135), introductory paragraph, as follows:

641—3.5(135) Screening the hearing of all newborns. ~~Beginning January 1, 2004, all~~ All newborns and infants born in Iowa, except those born with a condition that is incompatible with life, shall be screened for hearing loss. The person required to perform the screening shall use at least one of the following procedures:

ITEM 8. Amend renumbered rule 641—3.6(135), introductory paragraph, as follows:

641—3.6(135) Procedures required of birthing hospitals. ~~Beginning January 1, 2004, each~~ Each birthing hospital in Iowa shall follow these procedures:

ITEM 9. Adopt the following **new** subrules 3.6(7) and 3.6(8):

3.6(7) The birthing hospital shall report the results of the hearing screening to the primary care provider of the newborn or infant upon the newborn's or infant's discharge from the birthing hospital. If the newborn or infant was not tested prior to discharge, the hospital shall report the status of the hearing screening to the primary care provider of the newborn or infant.

3.6(8) The birthing hospital shall follow the hearing screening protocols prescribed by the department.

ITEM 10. Amend renumbered rule 641—3.7(135), introductory paragraph, as follows:

641—3.7(135) Procedures required of birth centers. ~~Beginning January 1, 2004, each~~ Each birth center in Iowa shall follow these procedures:

ITEM 11. Adopt the following **new** subrule 3.7(6):

3.7(6) The person who completes the screening shall follow the hearing screening protocols prescribed by the department.

ITEM 12. Amend renumbered subrule 3.8(1) as follows:

3.8(1) ~~Beginning January 1, 2004, a~~ A physician or other health care professional who undertakes primary pediatric care of a newborn delivered in a location other than a birthing hospital or birth center shall refer the newborn to an audiologist, physician, or hospital for completion of the newborn hearing screening within three months of the newborn's birth. The health care professional who undertakes primary pediatric care of the newborn shall arrange an appointment for the newborn hearing screening and report to the parent the appointment time, date, and location.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 13. Adopt the following new subrule 3.8(4):

3.8(4) The person who completes the newborn hearing screening shall follow the hearing screening protocols prescribed by the department.

ITEM 14. Amend renumbered rule 641—3.9(135) as follows:

641—3.9(135) Reporting hearing screening results and information to the department. ~~Beginning January 1, 2004, any~~ Any birthing hospital, birth center, physician, audiologist or other health care professional required to report information pursuant to ~~2003 Iowa Acts, chapter 102~~ Iowa Code section 135.131 as amended by 2009 Iowa Acts, House File 314, division II, shall report all of the following information to the department relating to each newborn's hearing screening within six working days of the birth of the newborn and within six working days of any hearing rescreen, utilizing the department's designated reporting system.

3.9(1) and **3.9(2)** No change.

3.9(3) The name of the primary care provider for the newborn ~~at~~ upon the newborn's discharge from the birthing hospital or birth center.

3.9(4) and **3.9(5)** No change.

3.9(6) Known risk indicators for hearing loss of the newborn or infant.

ITEM 15. Amend renumbered rule 641—3.10(135) as follows:

641—3.10(135) Conducting and reporting screening results and diagnostic audiologic assessments to the department. ~~Beginning January 1, 2004, any facility, including AEAs, Any facility, licensed audiologist or health care professional~~ conducting newborn hearing screens, rescreens, or diagnostic audiologic assessments shall report the results ~~of the assessments~~ within six working days for any child under three years of age to the department utilizing the department's designated reporting system. The facility shall conduct the diagnostic hearing assessment in accordance with the Pediatric Audiologic Diagnostic Protocol contained at Appendix A. Results ~~of a hearing screen, rescreen or diagnostic audiologic assessment~~ shall be reported as follows:

3.10(1) Reports shall include:

a. The name and date of birth of the child.

b. The name, address, and telephone number, if available, of the mother of the child. If the mother is not the person designated as legally responsible for the child's care, the name, address, and telephone number of the parent, as defined in 641—3.1(135), shall be reported.

c. The name of the primary care provider for the child.

d. Known risk indicators for hearing loss.

~~3.10(1)~~ **3.10(2)** Results of the newborn hearing screening shall be reported as either "pass" or "refer" for each ear separately.

3.10(3) Results of the hearing rescreen shall be reported as either "pass" or "refer" for each ear separately.

~~3.10(2)~~ **3.10(4)** If an assessment results in a diagnosis of normal hearing for both ears, this shall be reported.

~~3.10(3)~~ **3.10(5)** Any diagnosis of hearing loss shall also be reported except for transient conductive hearing loss lasting for less than 90 days in the professional judgment of the practitioner.

~~3.10(4)~~ **3.10(6)** Reported Diagnostic audiologic assessment results shall include a statement of the severity (mild, moderate, moderately severe, severe, profound, or undetermined) and type (sensorineural, conductive, mixed, or undetermined) of hearing loss.

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- ITEM 16. Rescind and reserve renumbered rule **641—3.12(135)**.
- ITEM 17. Reserve rules **641—3.15** and **641—3.16**.
- ITEM 18. Adopt the following **new** heading before new rule **641—3.17(83GA,HF811)**.

HEARING AIDS AND AUDIOLOGIC SERVICES FUNDING PROGRAM

- ITEM 19. Adopt the following **new** rules 641—3.17(83GA,HF811) to 641—3.22(83GA,HF811):

641—3.17(83GA,HF811) Eligibility criteria. The enrollment process to determine eligibility for services under this program includes the following requirements:

3.17(1) Age. Individuals are eligible from birth through 20 years of age.

3.17(2) Residency. Individuals must currently reside in Iowa.

3.17(3) The applicant must not be eligible for hearing aids or audiologic services under Title XIX or HAWK-I.

641—3.18(83GA,HF811) Covered services.

3.18(1) Funding does not cover either the surgical costs associated with a cochlear or Baha implant or the cost of the devices.

3.18(2) Funding does not pay for services denied by insurance because the applicant received services outside the provider network.

3.18(3) The following hearing aids and audiologic services may be provided through the hearing aids and audiologic services funding program:

1. Repair/modification of hearing aid
2. Hearing aid, monaural, behind the ear
3. Hearing aid dispensing fee, monaural
4. Hearing aid, binaural, in the ear
5. Hearing aid, binaural, behind the ear
6. Hearing aid dispensing fee, binaural
7. Hearing aid, bicros, glasses
8. Ear mold/insert, not disposable, any type
9. Battery for use in hearing aid
10. Hearing aid supplies, accessories
11. Assistive listening device, not otherwise specified
12. Assistive listening device, dispensing
13. Service handling charge
14. Service charge, ear mold
15. Annual charge, ear mold
16. Pure tone audiometry, air only
17. Pure tone audiometry, air and speech audiometry threshold
18. Speech audiometry threshold
19. Speech audiometry threshold with speech
20. Comprehensive audiometry threshold evaluation
21. Tympanometry (impedance testing)
22. Conditioning play audiometry
23. Auditory-evoked potentials for evoked response audiometry, comprehensive
24. Auditory-evoked potentials for evoked response audiometry, limited
25. Visual reinforcement audiometry
26. Evoked otoacoustic emissions, limited
27. Hearing aid examination and selection, monaural
28. Hearing aid examination and selection, binaural
29. Hearing aid check, monaural
30. Hearing aid check, binaural

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31. Electroacoustic evaluation for hearing aid, monaural
32. Electroacoustic evaluation for hearing aid, binaural
33. Office/outpatient visit related to audiologic services
34. Consultations related to audiologic services

3.18(4) The department may elect to cover additional services not otherwise restricted in these rules.

641—3.19(83GA, HF811) Application procedures.

3.19(1) A child, or the parent or guardian of a child, desiring hearing aids or audiologic services may apply to the contractor.

3.19(2) The following information shall be provided to the contractor by the applicant to be considered for eligibility under this program:

- a.* Patient's first name, middle initial and last name.
- b.* Patient's date of birth.
- c.* Patient's address, including city, state and ZIP code.
- d.* Parent/guardian's first name, middle initial and last name.
- e.* Parent/guardian's telephone number.
- f.* Parent/guardian's E-mail address.
- g.* Parent/guardian's or child's medical insurance plan name.
- h.* Hearing aid/audiologic service provider name and telephone number.
- i.* Whether the request is for hearing aids or audiologic services or both.
- j.* Estimated service costs.

3.19(3) Applicants will be enrolled in the program on a first-come, first-served basis upon the date the application is received by the contractor.

3.19(4) The contractor will provide written notification to the applicant regarding determination of eligibility or noneligibility and the applicant's right to appeal a denial. For those applicants deemed eligible, an enrollee number will be assigned by the contractor.

3.19(5) An applicant must submit a renewal application form on an annual basis, accompanied by all information requested by the department.

641—3.20(83GA, HF811) Hearing aids and audiologic services funding wait list.

3.20(1) If an applicant is eligible for hearing aid and audiologic services funding and sufficient funds are available to provide services to the applicant, the contractor shall enroll the applicant upon approval by the department. If the applicant is eligible for hearing aid and audiologic services funding and sufficient funds are not available to provide services to the applicant, the contractor upon approval by the department shall place the applicant's name on the hearing aid and audiologic services funding wait list in the order provided for in this rule.

3.20(2) The contractor, upon approval by the department, shall place names on the wait list in the following order:

- a.* Applicants under the age of three diagnosed with a hearing loss who are in need of hearing aids.
- b.* Applicants in need of hearing aids or audiologic services.
- c.* All other applicants, who shall be placed on the wait list in chronological order based upon the date of receipt of a completed application by the contractor upon approval by the department.

641—3.21(83GA, HF811) Reimbursement of providers.

3.21(1) To receive reimbursement for hearing aids and audiologic services, the provider must complete a provider information sheet and I-9 form provided by the department.

3.21(2) The provider must be a Title XIX provider.

3.21(3) Reimbursement of hearing aids and audiologic services will be paid directly to the provider based on Title XIX reimbursement rates.

- a.* Bills will be adjusted accordingly by the department prior to payment.
- b.* Reimbursement for hearing aids or supplemental hearing devices includes the costs of shipping and handling.

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3.21(4) Hearing aids and audiologic services funding shall be the payor of last resort.

3.21(5) Payment through this funding source is considered payment in full for covered services. If a third party liability (TPL) payment equals or exceeds the Title XIX allowance, no further reimbursement is provided.

3.21(6) The provider shall submit bills after an enrollee number is assigned to the applicant and the audiologic service is provided or hearing aid is fitted.

3.21(7) The provider shall submit the following documents:

a. Health Care Financing Administration Form HCFA 1500. Forms will be furnished by the providers and will include the applicant's enrollee number in the upper right-hand corner of the form.

b. Manufacturer's invoice for hearing devices as prescribed by the department.

c. Applicant's explanation of benefits or documentation of a telephone contact made by the provider to the patient's private insurance company including: date of contact, name of insurance representative, name of insurance company, applicant's policy number and coverage limitations for hearing evaluations and devices.

641—3.22(83GA, HF811) Appeals. The department shall cause an applicant to be notified of the department's decision to approve or deny an application or to place an applicant on the child hearing aids and audiologic services wait list. In the event an applicant is dissatisfied with the department's decision, the applicant may submit a formal appeal in writing to the EHDI advisory committee. Such request shall be delivered in person or shall be mailed by certified mail, return receipt requested, to EHDI Advisory Committee, Iowa Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Upon receipt of such an appeal, the EHDI advisory committee shall review the case and issue a written determination within 15 days of receipt of the request. The decision shall refer to the applicant by initials or other nonidentifying means. The EHDI advisory committee's decision shall be final and binding. This appeal process does not constitute a contested case proceeding as defined in Iowa Code chapter 17A.

ITEM 20. Amend **641—Chapter 3**, implementation sentence, as follows:

These rules are intended to implement ~~2003 Iowa Acts, chapter 102.~~ Iowa Code section 135.131 as amended by 2009 Iowa Acts, House File 314, division II, and 2009 Iowa Acts, House File 811, division IV, section 60(2)“c.”

ITEM 21. Amend **641—Chapter 3, Appendix A**, second unnumbered paragraph, as follows:

Infants should be referred for a diagnostic evaluation after receiving a “refer” result from one or both ears on a newborn hearing screening and a hearing rescreen performed at two to six weeks of age. Timely referral for diagnostic auditory brainstem response (ABR) testing may negate the need for sedation for this test in very young infants. Infants who are identified at risk for congenital or late-onset hearing loss (JCIH, 2000 2007) should receive ~~audiologic monitoring and follow-up by age appropriate test procedures at six-month intervals until the age of five years.~~ an audiologic assessment at least once by 24 to 30 months of age. Children with risk indicators that are highly associated with delayed-onset hearing loss, such as having received ECMO or having congenital CMV infection, should have more frequent audiologic assessments based on infant or toddler needs. All infants for whom the family has significant concerns regarding hearing or communication should be promptly referred for an audiologic and speech-language assessment.

ARC 7968B**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 135.11, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 124, "Interagency Coordinating Council for the State Medical Examiner," and Chapter 125, "Advisory Council for the State Medical Examiner," Iowa Administrative Code.

These amendments propose a change to the rules governing the number of required meetings that are held in a year for the participants of the Interagency Coordinating Council for the State Medical Examiner and the Advisory Council for the State Medical Examiner.

Any interested persons may make written comments or suggestions on the proposed amendments on or before August 4, 2009. Such written comments should be directed to Jerri McLemore, M.D., Office of the State Medical Examiner, 2250 S. Ankeny Boulevard, Ankeny, Iowa 50023. E-mail may be sent to jmclemor@idph.state.ia.us.

These amendments are intended to implement Iowa Code section 691.6B and Iowa Code section 691.6C as amended by 2009 Iowa Acts, House File 380, section 11.

The following amendments are proposed.

ITEM 1. Amend subrule 124.3(1) as follows:

124.3(1) The interagency coordinating council shall schedule ~~quarterly meetings~~ two meetings per year to be held at the office of the director of public health.

ITEM 2. Amend rule **641—125.3(691)**, introductory paragraph, as follows:

641—125.3(691) Meetings. The advisory council will hold a meeting at the Iowa laboratory facility in Ankeny at least ~~quarterly~~ two times per year or on a more frequent basis as deemed necessary by the chief state medical examiner with approval of a majority of members of the council.

ARC 7969B**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 131, "Emergency Medical Services Provider Education/Training/Certification," and Chapter 132, "Emergency Medical Services—Service Program Authorization," Iowa Administrative Code.

The rules in Chapter 131 describe the standards for emergency medical providers and training programs. The rules in Chapter 132 describe the standards for the authorization of EMS services. These proposed amendments update the reference to the Iowa EMS Scope of Practice document to the most recent edition, April 2009.

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Any interested person may make written comments or suggestions on the proposed amendments on or before August 4, 2009. Such written comments should be directed to Kirk Schmitt, Bureau of EMS, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to kschmitt@idph.state.ia.us.

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

The following amendments are proposed.

ITEM 1. Amend paragraph **131.3(3)“b”** as follows:

b. Scope of Practice for Iowa EMS Providers (~~April 2005~~ April 2009) is incorporated and adopted by reference for EMS providers. For any differences that may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

ITEM 2. Amend paragraph **132.2(4)“b”** as follows:

b. Scope of Practice for Iowa EMS Providers (~~April 2005~~ April 2009) is incorporated and adopted by reference for EMS providers. For any differences that may occur between the adopted references and these administrative rules, the administrative rules shall prevail.

ARC 7970B**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 amends Chapter 1, "Organization," Chapter 23, "Iowa Community Development Block Grant Program," Chapter 53, "Community Economic Betterment Account (CEBA) Program," Chapter 57, "Value-Added Agricultural Products and Processes Financial Assistance Program (VAAPFAP)," Chapter 59, "Enterprise Zone (EZ) Program," Chapter 60, "Entrepreneurial Ventures Assistance (EVA) Program," Chapter 61, "Physical Infrastructure Assistance Program (PIAP)," Chapter 68, "High Quality Job Creation (HQJC) Program," and Chapter 69, "Loan and Credit Guarantee Program"; adopts Chapter 74, "Grow Iowa Values Financial Assistance Program," and Chapter 75, "Opportunities and Threats Program"; and amends Chapter 165, "Allocation of Grow Iowa Values Fund," Chapter 173, "Standard Definitions," Chapter 174, "Wage, Benefit, and Investment Requirements," Chapter 175, "Application Review and Approval Procedures," Chapter 187, "Contracting," and Chapter 189, "Annual Reporting," Iowa Administrative Code.

These amendments are intended to implement 2009 Iowa Acts, Senate File 344. This rule making amends 15 existing chapters and adopts 2 new chapters. 2009 Iowa Acts, Senate File 344, simplifies four state financial assistance programs (CEBA, PIAP, VAAPFAP, EVA), three funding sources ("old money," IVF (FES), IVF (2005)), and two tax credit programs (HQJC, EZ). These legislative changes will make it easier for the Department to report on program results, easier for the public to evaluate performance, easier for the state to administer, and easier for businesses to understand performance expectations.

2009 Iowa Acts, Senate File 344, standardizes and simplifies the Department's state financial assistance requirements. The amendments accomplish the following:

- Provide that awards will be based on the creation or retention of high-quality jobs;
- Provide that award amounts will be based on the Fiscal Impact Ratio (FIR);
- Provide that awards are negotiable and tied to the Fiscal Impact Ratio (FIR);
- Establish standard qualifying wage thresholds (100 percent or 130 percent of county or regional wage, whichever is lower; 90 percent in Enterprise Zone and EDSA projects that do not receive awards from multiple programs);
- Establish a standard benefit package requirement (company must pay 80 percent of single or 50 percent of family coverage or a monetary equivalent for medical and dental coverage) for which the company will receive a 10 percent credit toward its wage threshold calculation (the benefits credit is only applicable to the 130 percent wage component and HQJP);
- Establish a standard project completion period (three years from project award date) and project maintenance period (two years from project completion date);
- Provide that all requests for assistance will be acted upon by the IDED Board; and
- Provide that businesses receiving more than one type of financial assistance will contract for and be measured on the highest wage requirement of the program components awarded.

The Iowa Economic Development Board adopted the amendments on June 18, 2009.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest because 2009 Iowa Acts, Senate File 344, became effective on July 1, 2009, and the legislative changes apply to all applications received on or after July 1, 2009.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and the amendments be made effective on July 1, 2009, the same date 2009 Iowa Acts, Senate File 344, became effective. These amendments confer a benefit on the public by ensuring that the program rules are updated to reflect recent statutory changes and to allow the Department to process applications for pending projects in a timely manner.

These amendments are also published herein under Notice of Intended Action as **ARC 7971B** to allow for public comment.

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These amendments became effective on July 1, 2009.

These amendments are intended to implement 2009 Iowa Acts, Senate File 344.

The following amendments are adopted.

ITEM 1. Amend rule **261—1.2(15)**, definition of “Board,” as follows:

“Board” or “*IDED board*” means the Iowa economic development board created by Iowa Code chapter 15 as amended by 2005 Iowa Acts, House File 868.

ITEM 2. Amend rule 261—1.3(15) as follows:

261—1.3(15) Iowa department of economic development board.

1.3(1) Composition.

a. and b. No change.

e. ~~—Voting members—representation on the board following the transitional year (July 1, 2005, to June 30, 2006).~~ Following the transitional year, at least one of the voting members shall be less than 30 years of age at the time of appointment. At least 9 members of the board shall be actively employed in the private, for-profit sector of the economy. Each of the following areas of expertise shall be represented by at least 1 member of the board who has professional experience in that area of expertise:

- (1) ~~—Finance, insurance, or investment banking.~~
- (2) ~~—Advanced manufacturing.~~
- (3) ~~—Statewide agriculture.~~
- (4) ~~—Life sciences.~~
- (5) ~~—Small business development.~~
- (6) ~~—Information technology.~~
- (7) ~~—Economics.~~
- (8) ~~—Labor.~~
- (9) ~~—Marketing.~~
- (10) ~~—Entrepreneurship.~~

1.3(2) and 1.3(3) No change.

1.3(4) Board committees. The board shall establish the following statutorily authorized committees: a due diligence committee pursuant to Iowa Code section 15.103(6), a loan and credit guarantee committee pursuant to Iowa Code section 15.103(6) as amended by 2009 Iowa Acts, Senate File 344, section 18, and a technology commercialization committee, ~~and~~ pursuant to Iowa Code section 15.116 as amended by 2009 Iowa Acts, Senate File 344, section 22. The board may, from time to time, establish other standing committees that the board members deem necessary to assist the board in carrying out its duties. Meetings of standing committees are open to the public pursuant to Iowa Code chapter 21. The board chairperson may appoint such other ad hoc advisory committees as deemed necessary for specific purposes. An ad hoc committee appointed by the chairperson shall be comprised of less than a quorum of the board. Meetings of ad hoc committees or subcommittees appointed by the board chairperson are not open to the public. The board chairperson may appoint a nominations committee as described in paragraph 1.3(4)“d” for the purpose of developing recommendations to the board for the election of a board chairperson, vice chairperson, and membership on board committees. Upon recommendation of the nominations committee, the board shall elect the members of the committees, and the board chairperson shall designate the chairpersons and vice chairpersons of all committees.

1.3(5) Standing committees.

a. *Due diligence committee.* The due diligence committee shall be an advisory committee composed of voting members of the board elected annually by the voting members of the board. The size of the committee and the terms of committee members will be established annually by the board. Duties of the due diligence committee include, but are not limited to, carrying out any duties assigned by the board in relation to programs administered by the department, reviewing applications for financial assistance, conducting a thorough review of proposed projects and making recommendations to the board regarding funding. A majority of committee members constitutes a quorum. Nonvoting,

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

ex officio members of the board may be appointed by the chairperson of the due diligence committee to serve on the due diligence committee as nonvoting, ex officio members.

b. Loan and credit guarantee committee. The loan and credit guarantee committee shall be an advisory committee composed of voting members of the board elected annually by the voting members of the board. The size of the committee and the terms of committee members will be established annually by the board. Duties of the loan and credit guarantee committee include, but are not limited to, carrying out any duties assigned by the board in relation to the loan and credit guarantee program administered by the department, reviewing loan and credit guarantee applications and making recommendations to the board regarding funding. A majority of committee members constitutes a quorum. Nonvoting, ex officio members of the board may be appointed by the chairperson to serve on the loan and credit guarantee committee as nonvoting, ex officio committee members. The loan and credit guarantee program was repealed by 2009 Iowa Acts, Senate File 344. This board committee shall continue to exist until the program has been closed out.

c. Technology commercialization committee. To evaluate and approve funding for projects and programs under 2005 Iowa Acts, House File 809, section 19, Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2, the board shall create a technology commercialization committee composed of members with expertise in the areas of biosciences, engineering, manufacturing, pharmaceuticals, materials, information solutions, software, and energy. At least one member of the technology commercialization committee shall be a member of the economic development board. The size of the committee and the terms of committee members will be established annually by the board. An organization designated by the department, composed of members from both the public and private sectors and composed of subunits or subcommittees in the areas of already identified bioscience platforms, education and workforce development, commercialization, communication, policy and governance, and finance, shall provide funding recommendations to the technology commercialization committee. A majority of committee members constitutes a quorum.

~~*d. Nominations committee.* The board chairperson may appoint a nominations committee comprised of voting members of the board. The committee shall be appointed by the chairperson at a meeting of the board prior to May 1 of each year.~~

d. Community and workforce development committee. The community and workforce development committee shall be an advisory committee to the board on workforce development matters. The committee shall review and make recommendations regarding programs such as CDBG and HOME programs which include housing, public infrastructure and public facilities funding programs; main street Iowa and downtown resource center; tourism office; training programs established by Iowa Code chapters 260E, 260F and 260G; workforce and economic development training fund; and programs administered by the innovation and commercialization division such as internship, career awareness, up-skilling and related programs.

1.3(6) Ad hoc committees. The board chairperson or committee chairpersons, as applicable, may appoint ad hoc advisory committees and subcommittees that meet for specific, limited purposes including but not limited to:

a. Nominations committee. Prior to May 1 of each year, the board chairperson may appoint a nominations committee comprised of voting members of the board for the purpose of developing recommendations to the full board for the election of a board chairperson, vice-chairperson, and membership on the board's standing committees. Upon recommendation of the nominations committee, the board shall elect the members of the committees, and the board chairperson shall designate the chairpersons and vice-chairpersons of all committees.

b. Finance review committee. The board chairperson may appoint a finance review committee comprised of voting members of the board for the purpose of periodically meeting with department officials to review the department's regularly maintained financial records and other financial information requested by the board. The finance review committee may also attend audit entrance and exit interviews conducted by the auditor of state with department officials. The finance review committee is advisory only and may provide recommendations to the board.

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c. Due diligence subcommittee. The due diligence committee chairperson may appoint a due diligence subcommittee comprised of voting members of the board for the purpose of reviewing requests for project extensions, amended awards, workouts and project restructures. The due diligence subcommittee is advisory only and may provide recommendations to the due diligence committee.

~~1.3(5)~~ 1.3(7) *Appeals of department of revenue decisions—wage-benefit tax credit program appeals.* A business whose application for a wage-benefit tax credit has been denied by the department of revenue may appeal the decision to the board. The appeal must be made in writing and received by the department within 30 days of the date on the notice of denial sent to the business by the department of revenue. The board may uphold or overturn the decision of the department of revenue. If the IDED board overturns the decision of the department of revenue, the department of revenue will be instructed, subject to availability, to issue a tax credit certificate.

ITEM 3. Amend **261—Chapter 1**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 15 as amended by 2009 Iowa Acts, Senate File 344, 2005 Iowa Acts, House File 868 and House File 809 chapter 15G as amended by 2009 Iowa Acts, Senate File 344, and Iowa Code section 17A.3.

ITEM 4. Rescind the definitions of “Average county wage” and “Average regional wage” in rule **261—23.2(15)**.

ITEM 5. Adopt the following new rule 261—53.18(15,83GA,SF344):

261—53.18(15,83GA,SF344) Applicability of CEBA program after July 1, 2009.

53.18(1) Effective July 1, 2009, the CEBA program is rescinded by 2009 Iowa Acts, Senate File 344, and replaced with the grow Iowa values financial assistance program. Rules for the grow Iowa values financial assistance program may be found in 261—Chapter 74.

53.18(2) For awards made prior to July 1, 2009, the rules of 261—Chapter 53 shall govern for purposes of contract administration and closeout of projects. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2009 Iowa Acts, Senate File 344.

ITEM 6. Adopt the following new rule 261—57.16(15E,83GA,SF344):

261—57.16(15E,83GA,SF344) Applicability of VAAPFAP program after July 1, 2009.

57.16(1) Effective July 1, 2009, the VAAPFAP program is rescinded by 2009 Iowa Acts, Senate File 344, section 9, and replaced with the grow Iowa values financial assistance program. Rules for the grow Iowa values financial assistance program may be found in 261—Chapter 74.

57.16(2) For awards made prior to July 1, 2009, the rules of 261—Chapter 57 shall govern for purposes of contract administration and closeout of projects. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2009 Iowa Acts, Senate File 344.

ITEM 7. Amend subrule 59.1(2) as follows:

59.1(2) Administrative procedures. The EZ program is subject to the requirements of the department’s rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance. Part VII and Part VIII include standard definitions; standard program requirements; wage, benefit and investment requirements; application review and approval procedures; contracting; contract compliance and job counting; and annual reporting requirements.

ITEM 8. Amend rule **261—59.2(15E)**, definition of “Act,” as follows:

“Act” means Iowa Code sections 15E.191 to 15E.197 as amended by ~~2007 Iowa Acts, House File 648~~ 2009 Iowa Acts, Senate File 344.

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ITEM 9. Rescind the definition of “Project initiation” in rule 261—59.2(15E).

ITEM 10. Amend rule 261—59.6(15E) as follows:

261—59.6(15E) Eligible business.

59.6(1) Requirements. A business which is or will be located, in whole or in part, in an enterprise zone is eligible to be considered to receive incentives and assistance under the Act if the business meets all of the following:

a. and b. No change.

c. *Employee benefits.* ~~The business provides all full time employees with the option of choosing one of the following:~~

(1) ~~The business pays 80 percent of both of the following:~~

1. ~~—The cost of a standard medical insurance plan, and~~

2. ~~—The cost of a standard dental insurance plan or an equivalent plan.~~

(2) ~~The business provides the employee with a monetarily equivalent plan to the plan provided for in subparagraph (1) above.~~ The business offers or will offer a sufficient benefits package to its employees as defined in 261—Chapter 173.

d. *Wage levels.* ~~The business pays an average wage that is at or greater than 90 percent of the lesser of the average county wage or average regional wage, as determined by the department. The business pays or will pay the qualifying wage threshold for the enterprise zone program as established in 261—Chapter 174 and defined in 261—Chapter 173.~~ However, in any circumstance, the wage paid by the business for the project jobs shall not be less than \$7.50 per hour. The local enterprise zone commission may establish higher company eligibility wage thresholds if it so desires.

e. *Job creation or retention.* The business expansion or location must result in at least ten full-time project jobs. The time period allowed to create the jobs and the required period to retain the jobs are described in 261—Chapter 187. ~~For an existing business in counties with a population of 10,000 or less or in cities with a population of 2,000 or less, the commission may adopt a provision that allows the business to create at least five initial jobs with the additional five jobs to be added within five years. The business shall include in its strategic plan the time line for job creation. If the existing business fails to meet the ten job creation requirement within the five year period, all incentives and assistance will cease immediately.~~

f. *Capital investment.* The business makes a capital investment of at least \$500,000. ~~If the business will be occupying a vacant building suitable for industrial use, the fair market value of the building and land, not to exceed \$250,000, as determined by the local enterprise zone commission, shall be counted toward the capital investment requirement. An existing business that has been operating in the enterprise zone for at least five years is exempt from the capital investment requirement of this paragraph of up to \$250,000 of the fair market value, as established by an appraisal, of the building and land. The capital investment amount stated in the business’s application must be completed within three years of the effective date of the agreement described in rule 59.9(15E).~~

g. *Location within zone.* If the business is only partially located in an enterprise zone, the business must be located on contiguous land.

59.6(2) Additional information. In addition to meeting the requirements under subrule 59.6(1), an eligible business shall provide the enterprise zone commission with all of the following:

a. The long-term strategic plan for the business, which shall include labor and infrastructure needs.

b. Information dealing with the benefits the business will bring to the area.

c. Examples of why the business should be considered or would be considered a good business enterprise.

d. The impact the business will have on other Iowa businesses in competition with it. The enterprise zone commission shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for assistance. The enterprise zone commission shall make a good faith effort to determine the probability that the proposed financial assistance will displace employees of the existing businesses. In determining the impact on businesses

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in competition with the business being considered for assistance, jobs created or retained as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created or retained.

~~e. — An affidavit that it has not, within the last five years, violated state or federal environmental and worker safety statutes, rules, and regulations or if such violation has occurred that there were mitigating circumstances or such violations did not seriously affect public health or safety or the environment.~~

e. A report describing all violations of environmental law or worker safety law within the last five years. If, upon review of the application, the enterprise zone commission finds that a business has a record of violations of the law, statutes, rules, or regulations that tends to show a consistent pattern, the enterprise zone commission shall not make an award of financial assistance to the business unless the commission finds either that the violations did not seriously affect public health, public safety, or the environment, or, if such violations did seriously affect public health, public safety, or the environment, that mitigating circumstances were present.

59.6(3) Benefits. The department reserves the right to negotiate the amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; and the refund of sales, service and use taxes paid to contractors and subcontractors. The following incentives and assistance may be available to an eligible business within a certified enterprise zone, subject to the amount of incentives and assistance negotiated by the department with the eligible business and agreed upon as described in an executed agreement, only when the average wage of all the new project jobs meets the minimum wage requirements of 59.6(1) “d”:

a. New jobs supplemental credit; alternative credit for housing assistance programs.

~~(1) An approved business shall receive a new jobs supplemental credit from withholding in an amount equal to 1½ percent of the gross wages paid by the business, as provided in Iowa Code section 15E.197. The supplemental new jobs credit available under this program is in addition to and not in lieu of the program and withholding credit of 1½ percent authorized under Iowa Code chapter 260E. Additional new jobs created by the project, beyond those that were agreed to in the original agreement as described in 261—59.12(15E), are eligible for the additional 1½ percent withholding credit as long as those additional jobs meet the local enterprise zone wage eligibility criteria and are an integral part or a continuation of the new location or expansion. Approval and administration of the supplemental new jobs credit shall follow existing procedures established under Iowa Code chapter 260E. Businesses eligible for the new jobs training program are those businesses engaged in interstate commerce or intrastate commerce for the purpose of manufacturing, processing, or assembling products, conducting research and development, or providing services in interstate commerce, but exclude retail, health or professional services.~~

~~(2) — As an alternative to the credit described in subparagraph (1) above, a business may provide a housing assistance program in the form of down payment assistance or rental assistance for employees in new jobs, as defined in Iowa Code section 260E.2, who buy or rent housing located within any certified enterprise zone. A business establishing a housing assistance program shall fund this program through a credit from withholding based on the wages paid to the employees participating in the housing assistance program. An amount equal to 1½ percent of the gross wages paid by the employer to each employee participating in the housing assistance program shall be credited from the payment made by an employer pursuant to Iowa Code section 422.16. If the amount of the withholding by the employer is less than 1½ percent of the gross wages paid to the employees, then the employer shall receive a credit against other withholding taxes due by the employer. The employer shall deposit the amount of the credit quarterly into a housing assistance fund created by the business out of which the business shall provide employees enrolled in the housing assistance program with down payment assistance or rental assistance.~~

~~(3) — A business may enter into an agreement with the county or city designating the enterprise zone pursuant to Iowa Code section 15E.194 to borrow initial moneys to fund a housing assistance program. The county or city may appropriate from the general fund of the county or city for the assistance program an amount not to exceed an amount estimated by the department of revenue to be equal to the total amount of credit from withholding for employees determined by the business to be enrolled in the program during the first two years. The business shall pay the principal and interest on the loan out of moneys received from the credit from withholding provided for in subparagraph (1). The terms of the loan agreement shall include the principal amount, the interest rate, the terms of repayment, and the term of the loan. The~~

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~~agreement shall require that the down payment assistance or rental assistance provided for employees in new jobs be repaid, in whole or in part, in the event an employee is no longer employed by the business or defaults under the agreement between the business and an employee. The terms of the loan agreement shall not extend beyond the period during which the enterprise zone is certified. The employer shall certify to the department of revenue that the credit from withholding is in accordance with an agreement and shall provide other information the department of revenue may require. The business shall enter into an agreement with each employee receiving down payment or rental assistance. The agreements shall include terms and conditions of the receipt of the assistance and repayment provisions should the employee no longer work for the business or default under the terms of the agreement.~~

~~(4) An employee participating in the housing assistance program will receive full credit for the amount withheld as provided in Iowa Code section 422.16.~~

~~(5) The 1½ percent supplemental credit authorized under this rule may be apportioned between the 260E training programs described in subparagraph (1) and the down payment or rental assistance program described in subparagraph (2).~~

~~b. to g. No change.~~

~~59.6(4) and 59.6(5) No change.~~

ITEM 11. Amend **261—Chapter 59**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 15.333, 15.333A, and 15E.191 to 15E.196 and ~~2001 Iowa Acts, chapter 141~~ 2009 Iowa Acts, Senate File 344.

ITEM 12. Adopt the following **new** rule 261—60.10(15,83GA,SF344):

261—60.10(15,83GA,SF344) Applicability of EVA program after July 1, 2009.

60.10(1) Effective July 1, 2009, the EVA program is rescinded by 2009 Iowa Acts, Senate File 344, section 9, and replaced with the grow Iowa values financial assistance program. Rules for the grow Iowa values financial assistance program may be found in 261—Chapter 74.

60.10(2) For awards made prior to July 1, 2009, the rules of 261—Chapter 60 shall govern for purposes of contract administration and closeout of projects. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2009 Iowa Acts, Senate File 344.

ITEM 13. Adopt the following **new** rule 261—61.9(15E):

261—61.9(15E) Applicability of PIAP program after July 1, 2009.

61.9(1) Effective July 1, 2009, the PIAP program is rescinded by 2009 Iowa Acts, Senate File 344, section 9, and replaced with the grow Iowa values financial assistance program. Rules for the grow Iowa values financial assistance program may be found in 261—Chapter 74.

61.9(2) For awards made or contracts entered into prior to July 1, 2009, the rules of 261—Chapter 61 shall govern for purposes of contract administration and closeout of projects. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2009 Iowa Acts, Senate File 344.

ITEM 14. Amend **261—Chapter 68**, title, as follows:

HIGH QUALITY ~~JOB JOBS CREATION (HJJC)~~ PROGRAM (HQJP)

ITEM 15. Amend subrule 68.1(1) as follows:

68.1(1) Administrative procedures. The ~~HQJC program~~ HQJP is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance. Part VII and Part VIII include standard definitions; standard program requirements; wage, benefit and investment requirements; application review and approval procedures; contracting; contract compliance and job counting; and annual reporting requirements.

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ITEM 16. Amend subrule 68.1(2), introductory paragraph, as follows:

68.1(2) Definitions. In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the ~~HQJC program~~ HQJP:

ITEM 17. Amend subrule **68.1(2)**, definitions of “Act,” “High quality jobs” and “Program,” as follows:

“Act” means Iowa Code sections 15.326 to 15.337 as amended by 2009 Iowa Acts, Senate File 344.

“High quality jobs” means ~~created jobs that, at minimum, have a starting wage, including benefits, equal to or greater than 130 percent of the average county wage or the wage established by the board as a result of the wage waiver process~~ or retained jobs that meet the wage requirements established in subrule 68.2(4) and subrules 68.2(7) and 68.2(8) when applicable.

“Program” means the high quality ~~job creation~~ jobs program.

ITEM 18. Rescind the definitions of “Community base jobs,” “Project initiation” and “Qualifying investment” in subrule **68.1(2)**.

ITEM 19. Adopt the following new definitions of “Contractor or subcontractor” and “Eligible business” in subrule **68.1(2)**:

“Contractor or subcontractor” means a person who contracts with the eligible business or subcontracts with a contractor for the provision of property, materials, or services for the construction or equipping of a facility of the eligible business.

“Eligible business” means a business meeting the conditions of Iowa Code section 15.329 as amended by 2009 Iowa Acts, Senate File 344, section 12.

ITEM 20. Amend subrule 68.2(2) as follows:

68.2(2) Closures or relocations. The business shall not close or substantially reduce ~~its operation~~ operations in one area of ~~the this~~ this state and relocate substantially the same ~~operation operations~~ operations in ~~the a~~ a community in another area of this state. This subrule ~~does~~ shall not be construed to prohibit the business from expanding its ~~operation operations~~ operations in ~~the a~~ a community if existing operations of a similar nature in ~~the this~~ this state are not closed or substantially reduced.

ITEM 21. Rescind subrule 68.2(4) and adopt the following new subrule in lieu thereof:

68.2(4) Created and retained jobs. The business shall create or retain jobs as part of a project.

a. The business shall pay the qualifying wage threshold for HQJP as established in 261—Chapter 174.

b. If the business is creating jobs, the business shall demonstrate that the jobs will pay at least 100 percent of the qualifying wage threshold at the start of the project completion period, at least 130 percent of the qualifying wage threshold by the project completion date, and at least 130 percent of the qualifying wage threshold until the maintenance period completion date.

c. If the business is retaining jobs, the business shall demonstrate that the jobs retained will pay at least 130 percent of the qualifying wage threshold throughout both the project completion period and the maintenance period.

ITEM 22. Renumber subrule **68.2(5)** as **68.2(7)**.

ITEM 23. Rescind subrule **68.2(6)**.

ITEM 24. Adopt the following new subrules 68.2(5) and 68.2(6):

68.2(5) Determination of sufficient benefits. The business shall provide a sufficient package of benefits to each employee holding a created or retained job. The business shall offer a sufficient benefits package to its employees as defined in 261—Chapter 173.

68.2(6) Sufficient fiscal impact. The business shall demonstrate that the jobs created or retained will have a sufficient impact on state and local government revenues as determined by the department after calculating the fiscal impact ratio of the project.

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ITEM 25. Renumber subrules **68.2(7)** to **68.2(9)** as **68.2(8)** to **68.2(10)**.

ITEM 26. Amend renumbered subrule 68.2(10) as follows:

68.2(10) Ineligibility—no high quality jobs created or retained. If a project is creating or retaining jobs, but none are high quality jobs, then the project is not eligible to receive benefits and assistance under this program.

ITEM 27. Amend paragraph **68.3(1)“a”** as follows:

a. ~~The business is encouraged to apply prior to project initiation; however, an An application may be submitted at any time up to 12 months following project completion~~ will not be accepted after project initiation.

ITEM 28. Amend paragraph **68.3(4)“a”** as follows:

a. *Level of need.* The three general justifiable reasons for assistance are as follows:

(1) The business can raise only a portion of the debt and equity necessary to complete the project. A gap between sources and uses exists and state or federal funds or both are needed to fill the gap.

(2) The business can raise sufficient debt and equity to complete the project, but the returns are inadequate to motivate a company decision maker to proceed with the project. Project risks outweigh the rewards.

(3) The business is deciding between a site in Iowa (site A) and a site in another state (site B) for its project. The business argues that the project will cost less at site B and will require a subsidy to equalize costs in order to locate at site A. The objective is to quantify the cost differential between site A and site B.

~~Projects that have already been initiated will be considered as having minimal need~~ not be considered for funding.

ITEM 29. Rescind subparagraph **68.3(4)“b”(4)**.

ITEM 30. Amend paragraph **68.3(4)“d”** as follows:

d. *Economic impact.* ~~The department will consider the economic costs and benefits to the state in determining what amount of tax incentives and assistance to offer the business. In measuring the economic impact to this state, the department shall place greater emphasis on projects which demonstrate the following:~~

(1) A business with a greater percentage of sales out-of-state or of import substitution.

(2) A business with a higher proportion of in-state suppliers.

(3) A project which would provide greater diversification of the state economy.

(4) A business with fewer in-state competitors.

(5) A potential for future job growth.

ITEM 31. Adopt the following new subparagraph **68.4(1)“a”(3)**:

(3) The eligible business shall inform the department of revenue in writing within two weeks of project completion.

ITEM 32. Amend paragraph **68.4(1)“b”** as follows:

b. *Racks, shelving, and conveyor equipment.* If the project is the location, expansion, or modernization of a warehouse or distribution center, the approved business may be entitled to a refund of sales and use taxes attributable to racks, shelving, and conveyor equipment. The approved business shall, not more than 12 months following project completion, make written application to the department for a refund. The application must include the refund amount being requested and documentation such as invoices or contracts which substantiate the requested amount. The department, in consultation with the department of revenue, will validate the refund amount and instruct the department of revenue to issue the refund.

The aggregate combined total amount of refunds and tax credits attributable to sales and use taxes on racks, shelving, and conveyor equipment issued by the department to businesses approved for high quality job creation jobs program, new capital investment program, new jobs and income program, and enterprise zone program benefits shall not exceed \$500,000 during a fiscal year. Tax refunds and tax

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credits will be issued on a first-come, first-served basis. If an approved business's application does not receive a refund or tax credits due to the \$500,000 fiscal year limitation, the approved business's application shall be considered in the succeeding fiscal year.

ITEM 33. Amend paragraph **68.4(2)“b”** as follows:

b. Racks, shelving, and conveyor equipment. If the project is the location, expansion, or modernization of a warehouse or distribution center, the approved business may claim a corporate tax credit up to the amount of sales and use taxes paid by a third-party developer and attributable to racks, shelving, and conveyor equipment. The approved business shall, not more than 12 months following project completion, make written application to the department for a tax credit. The application must include the tax credit amount being requested and documentation from the third-party developer such as invoices or contracts which substantiate the requested amount. The department, in consultation with the department of revenue, will confirm the tax credit amount and issue a tax credit certificate in an amount equal to all or a portion of the sales and use taxes attributable to racks, shelving, and conveyor equipment. The approved business shall not claim the tax credit provided in this subrule unless a tax credit certificate issued by the department is attached to the approved business's tax return for the tax year in which the tax credit is claimed. A tax credit certificate shall contain the approved business's name, address, tax identification number, the amount of the tax credit, and other information required by the department of revenue. Any tax credit in excess of the tax liability for the tax year may be credited to the tax liability for the following seven years or until depleted, whichever occurs earlier. An approved business may elect to receive a refund of all or a portion of an unused tax credit.

The aggregate combined total amount of refunds and tax credits attributable to sales and use taxes on racks, shelving, and conveyor equipment issued by the department to businesses approved for high quality job creation jobs program, new capital investment program, new jobs and income program, and enterprise zone program benefits shall not exceed \$500,000 during a fiscal year. Tax refunds and tax credits will be issued on a first-come, first-served basis. If an approved business's application does not receive a refund or tax credits due to the \$500,000 fiscal year limitation, the approved business's application shall be considered in the succeeding fiscal year.

ITEM 34. Amend subrule 68.4(3) as follows:

68.4(3) Value-added property tax exemption. Pursuant to Iowa Code section 15.332, the community may exempt from taxation all or a portion of the actual value added by improvements to real property directly related to ~~new~~ jobs created or retained by the location or expansion of the approved business and used in the operations of the approved business. The exemption may be allowed for a period not to exceed 20 years beginning the year the improvements are first assessed for taxation. For purposes of this subrule, improvements include new construction and rehabilitation of and additions to existing structures. The exemption shall apply to all taxing districts in which the real property is located. The community shall provide the department and the local assessor with a copy of the resolution adopted by its governing body which indicates the estimated value and duration of the authorized exemption.

ITEM 35. Amend paragraph **68.4(4)“a”** as follows:

a. Claiming the investment tax credit. Pursuant to Iowa Code section 15.333, the approved business may claim an investment tax credit equal to a percentage of the new investment directly related to ~~new~~ jobs created or retained by the start-up, location, expansion, or modernization of the approved business under the program. The tax credit shall be earned when the qualifying asset is placed in service.

(1) to (3) No change.

ITEM 36. Amend paragraph **68.4(4)“b,”** introductory paragraph, as follows:

b. Investment qualifying for the tax credit. For purposes of this subrule, new investment directly related to ~~new~~ jobs created or retained by the start-up, location, expansion or modernization of the approved business under the program means all of the following:

ITEM 37. Amend subparagraph **68.4(4)“c”(4)** as follows:

(4) Issuance of tax credit certificates. The department shall not issue tax credit certificates to approved businesses in the ~~high quality job creation program, the new capital investment program, the~~

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~~new jobs and income program, high quality jobs program~~ and the enterprise zone program which total more than \$4 million during a fiscal year. If the department receives applications for tax credit certificates in excess of \$4 million, the applicants shall receive certificates for a prorated amount. In such a case, the tax credit requested by an approved business will be prorated based upon the total dollar amount of requested tax credit certificates received during the fiscal year. This proportion will be applied to the amount requested by each approved business to determine the amount of the tax credit certificate that will be distributed to each business for the fiscal year. For example, if an approved business submits a request in the amount of \$1 million and the total amount of requested tax credit certificates equals \$8 million, the business will be issued a tax credit certificate in the amount of \$500,000 (\$4 million / \$8 million = 50% × \$1 million = \$500,000). The department will issue tax credit certificates within a reasonable period of time following the May 15 application deadline.

ITEM 38. Amend subrule 68.4(5), introductory paragraph, as follows:

68.4(5) Insurance premium tax credit. Pursuant to Iowa Code section 15.333A, the approved business may claim an insurance premium tax credit equal to a percentage of the new investment directly related to ~~new~~ jobs created or retained by the start-up, location, expansion, or modernization of the approved business under the program.

ITEM 39. Amend paragraph **68.4(5)“b,”** introductory paragraph, as follows:

b. Investment qualifying for the tax credit. For purposes of this subrule, new investment directly related to ~~new~~ jobs created or retained by the start-up, location, expansion or modernization of the approved business under the program means all of the following:

ITEM 40. Amend subrule 68.4(7) as follows:

68.4(7) Maximum tax incentives available. Tax incentives and assistance awarded under this program are based upon the number of ~~new high quality~~ jobs created or retained by the approved business that pay the qualifying wage threshold for HQJP as established in 261—Chapter 174 and as defined in 261—Chapter 173 and the amount of qualifying investment. The maximum possible award is based on the following schedule:

~~*a.* “High quality jobs” means created jobs with a starting wage, including benefits, equal to or greater than 130 percent of the average county wage but less than 160 percent of the average county wage or the wage established by the board as a result of the wage waiver process.~~

~~(1) *a.*~~ No high quality jobs are created or retained but economic activity is furthered by the qualifying investment. For purposes of this ~~subparagraph~~ paragraph, “economic activity” means a modernization project which will result in increased skills and wages for the current employees; a project involving retained jobs; or a project that involves a waiver, granted by the board pursuant to rule 261—175.1(15) 174.6(15E, 15G, 83GA, SF344), of the ~~average county wage~~ qualifying wage threshold calculation if the reason for the waiver is that damages were sustained as a result of a natural disaster in a presidentially declared disaster area.

~~1. (1)~~ Less than \$100,000 in qualifying investment.

~~1.~~ • Investment tax credit or insurance premium tax credit of up to 1 percent.

~~2.~~ Reserved.

~~2. (2)~~ \$100,000 to \$499,999 in qualifying investment.

~~1.~~ • Investment tax credit or insurance premium tax credit of up to 1 percent.

~~2.~~ • Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

~~3. (3)~~ \$500,000 or more in qualifying investment.

~~1.~~ • Investment tax credit or insurance premium tax credit of up to 1 percent.

~~2.~~ • Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

~~3.~~ • Research activities credit.

~~(2) b.~~ 1 to 5 high quality jobs are created or retained.

~~1. (1)~~ Less than \$100,000 in qualifying investment.

~~1.~~ • Investment tax credit or insurance premium tax credit of up to 2 percent.

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- 2. Reserved.
 - ~~2.~~ (2) \$100,000 to \$499,999 in qualifying investment.
 - 1. • Investment tax credit or insurance premium tax credit of up to 2 percent.
 - 2. • Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - ~~3.~~ (3) \$500,000 or more in qualifying investment.
 - 1. • Investment tax credit or insurance premium tax credit of up to 2 percent.
 - 2. • Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - 3. • Research activities credit.
 - ~~(3)~~ c. 6 to 10 high quality jobs are created or retained.
 - ~~1.~~ (1) Less than \$100,000 in qualifying investment.
 - 1. • Investment tax credit or insurance premium tax credit of up to 3 percent.
 - 2. Reserved.
 - ~~2.~~ (2) \$100,000 to \$499,999 in qualifying investment.
 - 1. • Investment tax credit or insurance premium tax credit of up to 3 percent.
 - 2. • Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - ~~3.~~ (3) \$500,000 or more in qualifying investment.
 - 1. • Investment tax credit or insurance premium tax credit of up to 3 percent.
 - 2. • Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - 3. • Research activities credit.
 - ~~(4)~~ d. 11 to 15 high quality jobs are created or retained.
 - ~~1.~~ (1) Less than \$100,000 in qualifying investment.
 - 1. • Investment tax credit or insurance premium tax credit of up to 4 percent.
 - 2. Reserved.
 - ~~2.~~ (2) \$100,000 to \$499,999 in qualifying investment.
 - 1. • Investment tax credit or insurance premium tax credit of up to 4 percent.
 - 2. • Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - ~~3.~~ (3) \$500,000 or more in qualifying investment.
 - 1. • Investment tax credit or insurance premium tax credit of up to 4 percent.
 - 2. • Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - 3. • Research activities credit.
 - ~~(5)~~ e. 16 ~~or more~~ to 30 high quality jobs are created or retained.
 - ~~1.~~ (1) Less than \$100,000 in qualifying investment.
 - 1. • Investment tax credit or insurance premium tax credit of up to 5 percent.
 - 2. Reserved.
 - ~~2.~~ (2) \$100,000 to \$499,999 in qualifying investment.
 - 1. • Investment tax credit or insurance premium tax credit of up to 5 percent.
 - 2. • Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - ~~3.~~ (3) \$500,000 or more in qualifying investment.
 - 1. • Investment tax credit or insurance premium tax credit of up to 4 percent.
 - 2. • Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.
 - 3. • Research activities credit.
- ~~b.~~ —“High quality jobs” means created jobs with a starting wage, including benefits, equal to or greater than 160 percent of the average county wage or the wage established by the board as a result of the wage waiver process.

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- (1) ~~f.~~ 21 to 30 31 to 40 high quality jobs are created or retained.
- ~~1. — Less than \$100,000 in qualifying investment.~~
 - ~~• — Investment tax credit or insurance premium tax credit of up to 5 percent.~~
 - ~~2. — \$100,000 to \$499,999 in qualifying investment.~~
 - ~~• — Investment tax credit or insurance premium tax credit of up to 5 percent.~~
 - ~~• — Sales and use tax refund or corporate tax credit for certain sales taxes paid by third party developer, or both, if applicable.~~
 - ~~3. — \$500,000 to \$9,999,999 in qualifying investment.~~
 - ~~• — Investment tax credit or insurance premium tax credit of up to 5 percent.~~
 - ~~• — Sales and use tax refund or corporate tax credit for certain sales taxes paid by third party developer, or both, if applicable.~~
 - ~~• — Research activities credit.~~
 - ~~4. (1) \$10 million or more in qualifying investment.~~
 - ~~1. • Investment tax credit or insurance premium tax credit of up to 6 percent.~~
 - ~~2. • Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.~~
 - ~~3. • Research activities credit.~~
 - ~~4. • Value-added property tax exemption.~~
- (2) Reserved.
- (2) ~~g.~~ 31 to 40 41 to 60 high quality jobs are created or retained.
- ~~1. — Less than \$100,000 in qualifying investment.~~
 - ~~• — Investment tax credit or insurance premium tax credit of up to 5 percent.~~
 - ~~2. — \$100,000 to \$499,999 in qualifying investment.~~
 - ~~• — Investment tax credit or insurance premium tax credit of up to 5 percent.~~
 - ~~• — Sales and use tax refund or corporate tax credit for certain sales taxes paid by third party developer, or both, if applicable.~~
 - ~~3. — \$500,000 to \$9,999,999 in qualifying investment.~~
 - ~~• — Investment tax credit or insurance premium tax credit of up to 5 percent.~~
 - ~~• — Sales and use tax refund or corporate tax credit for certain sales taxes paid by third party developer, or both, if applicable.~~
 - ~~• — Research activities credit.~~
 - ~~4. (1) \$10 million or more in qualifying investment.~~
 - ~~1. • Investment tax credit or insurance premium tax credit of up to 7 percent.~~
 - ~~2. • Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.~~
 - ~~3. • Research activities credit.~~
 - ~~4. • Value-added property tax exemption.~~
- (2) Reserved.
- (3) ~~h.~~ 41 to 50 61 to 80 high quality jobs are created or retained.
- ~~1. — Less than \$100,000 in qualifying investment.~~
 - ~~• — Investment tax credit or insurance premium tax credit of up to 5 percent.~~
 - ~~2. — \$100,000 to \$499,999 in qualifying investment.~~
 - ~~• — Investment tax credit or insurance premium tax credit of up to 5 percent.~~
 - ~~• — Sales and use tax refund or corporate tax credit for certain sales taxes paid by third party developer, or both, if applicable.~~
 - ~~3. — \$500,000 to \$9,999,999 in qualifying investment.~~
 - ~~• — Investment tax credit or insurance premium tax credit of up to 5 percent.~~
 - ~~• — Sales and use tax refund or corporate tax credit for certain sales taxes paid by third party developer, or both, if applicable.~~
 - ~~• — Research activities credit.~~
 - ~~4. (1) \$10 million or more in qualifying investment.~~
 - ~~1. • Investment tax credit or insurance premium tax credit of up to 8 percent.~~

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2. ◆ Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.

3. ◆ Research activities credit.

4. ◆ Value-added property tax exemption.

(2) Reserved.

~~(4) i. 51 to 60 81 to 100 high quality jobs are created or retained.~~

~~1. — Less than \$100,000 in qualifying investment.~~

~~◆ — Investment tax credit or insurance premium tax credit of up to 5 percent.~~

~~2. — \$100,000 to \$499,999 in qualifying investment.~~

~~◆ — Investment tax credit or insurance premium tax credit of up to 5 percent.~~

~~◆ — Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.~~

~~3. — \$500,000 to \$9,999,999 in qualifying investment.~~

~~◆ — Investment tax credit or insurance premium tax credit of up to 5 percent.~~

~~◆ — Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.~~

~~◆ — Research activities credit.~~

~~4. (1) \$10 million or more in qualifying investment.~~

~~1. ◆ Investment tax credit or insurance premium tax credit of up to 9 percent.~~

~~2. ◆ Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.~~

~~3. ◆ Research activities credit.~~

~~4. ◆ Value-added property tax exemption.~~

~~(2) Reserved.~~

~~(5) i. 61 101 or more high quality jobs are created or retained.~~

~~1. — Less than \$100,000 in qualifying investment.~~

~~◆ — Investment tax credit or insurance premium tax credit of up to 5 percent.~~

~~2. — \$100,000 to \$499,999 in qualifying investment.~~

~~◆ — Investment tax credit or insurance premium tax credit of up to 5 percent.~~

~~◆ — Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.~~

~~3. — \$500,000 to \$9,999,999 in qualifying investment.~~

~~◆ — Investment tax credit or insurance premium tax credit of up to 5 percent.~~

~~◆ — Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.~~

~~◆ — Research activities credit.~~

~~4. (1) \$10 million or more in qualifying investment.~~

~~1. ◆ Investment tax credit or insurance premium tax credit of up to 10 percent.~~

~~2. ◆ Sales and use tax refund or corporate tax credit for certain sales taxes paid by third-party developer, or both, if applicable.~~

~~3. ◆ Research activities credit.~~

~~4. ◆ Value-added property tax exemption.~~

~~(2) Reserved.~~

ITEM 41. Rescind and reserve subrule **68.4(9)**.

ITEM 42. Amend **261—Chapter 68**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 15.326 to 15.336 as amended by 2009 Iowa Acts, Senate File 344.

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ITEM 43. Adopt the following **new** rule 261—69.8(15E,83GA,SF344):

261—69.8(15E,83GA,SF344) Applicability of LCG program after July 1, 2009.

69.8(1) Effective July 1, 2009, the LCG program is rescinded by 2009 Iowa Acts, Senate File 344, section 9.

69.8(2) For awards made prior to July 1, 2009, the rules of 261—Chapter 69 shall govern for purposes of loan guarantee contract administration and closeout of contracts. A contract amendment is not allowable if the result of the amendment is to increase the benefits available.

This rule is intended to implement 2009 Iowa Acts, Senate File 344.

ITEM 44. Adopt the following **new** 261—Chapter 74:

CHAPTER 74

GROW IOWA VALUES FINANCIAL ASSISTANCE PROGRAM

261—74.1(83GA,SF344) Purpose and administrative procedures.

74.1(1) Purpose. The department shall establish and administer a grow Iowa values financial assistance program for purposes of providing financial assistance from the fund to applicants. The financial assistance shall be provided from moneys credited to the grow Iowa values fund and not otherwise obligated or allocated pursuant to 2009 Iowa Acts, Senate File 344.

74.1(2) Program funding components. The program shall consist of the following components:

- a. 130 percent wage component.
- b. 100 percent wage component.
- c. Entrepreneurial component.
- d. Infrastructure component.
- e. Value-added agriculture component.
- f. Disaster recovery component.

74.1(3) Fiscal impact. In making awards of financial assistance from the 130 percent wage component and the 100 percent wage component, the department shall calculate the fiscal impact ratio. In reviewing each application to determine the amount of financial assistance to award, the board shall consider the appropriateness of the award to the fiscal impact ratio of the project and to other factors deemed relevant by the board.

74.1(4) Administrative procedures. The grow Iowa values financial assistance program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance. Part VII and Part VIII include standard definitions; standard program requirements; wage, benefit and investment requirements; application review and approval procedures; contracting; contract compliance and job counting; and annual reporting requirements.

261—74.2(83GA,SF344) 130 percent wage component.

74.2(1) Eligibility. In order to qualify for financial assistance under this component of the program, a business shall meet all of the following requirements:

a. The business shall create or retain jobs as part of a project, and the jobs created or retained shall meet one of the following requirements:

(1) If the business is creating jobs, the business shall demonstrate that the jobs will pay at least 100 percent of the qualifying wage threshold at the start of the project completion period, at least 130 percent of the qualifying wage threshold by the project completion date, and at least 130 percent of the qualifying wage threshold until the maintenance period completion date.

(2) If the business is retaining jobs, the business shall demonstrate that the jobs retained will pay at least 130 percent of the qualifying wage threshold throughout both the project completion period and the maintenance period.

b. The business shall provide a sufficient package of benefits to each employee holding a created or retained job.

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c. The business shall demonstrate that the jobs created or retained will have a sufficient impact on state and local government revenues as determined by the department after calculating the fiscal impact ratio of the project.

d. The business shall not be a retail business or a business where entrance is limited by a cover charge or membership requirement.

74.2(2) Sufficient benefits credit. A business providing a sufficient package of benefits to each employee holding a created or retained job shall qualify for a credit against any of the 130 percent qualifying wage threshold requirement.

261—74.3(83GA,SF344) 100 percent wage component. In order to qualify for financial assistance under this component of the program, a business shall meet all of the following requirements:

74.3(1) The business shall create or retain jobs as part of a project, and the jobs created or retained shall meet one of the following qualifying wage thresholds:

a. If the business is creating jobs, the business shall demonstrate that the jobs created will pay at least 100 percent of the qualifying wage threshold at the start of the project completion period, by the project completion date, and until the maintenance period completion date.

b. If the business is retaining jobs, the business shall demonstrate that the jobs retained will pay at least 100 percent of the qualifying wage threshold throughout both the project completion period and the maintenance period.

74.3(2) The business shall provide a sufficient package of benefits to each employee holding a created or retained job.

74.3(3) The business shall demonstrate that the jobs created or retained will have a sufficient impact on state and local government revenues as determined by the department after calculating the fiscal impact ratio of the project.

74.3(4) The business shall not be a retail business or a business where entrance is limited by a cover charge or membership requirement.

261—74.4(83GA,SF344) Entrepreneurial component.

74.4(1) Purpose. The purpose of this component is to encourage the development of early-stage businesses in conjunction with the delivery of a financial assistance program.

74.4(2) Definitions. In addition to the standard definitions in 261—Chapter 173, the following definitions shall apply to this component:

“*Early-stage business*” means a business that has been competing in a particular industry for three years or less.

“*Eligible applicant*” means a business that has consulted with and obtained a letter of endorsement from either a business accelerator approved by the department or from an entrepreneurial development organization recognized by the department.

“*Eligible business*” means an early-stage business that is developing a new product or technology.

74.4(3) Eligibility. In order to qualify for financial assistance under the entrepreneurial component of the program, a business shall meet all of the following requirements:

a. In order to be eligible for assistance, the business, or proposed business, must be located in the state of Iowa.

b. The business shall be an early-stage business.

c. If the business is a sole proprietorship or a partnership, all applicable business owners must apply. If the business is a limited liability company, a limited liability partnership, or a corporation, the application must be submitted and signed by an individual who has been authorized by the business to do so.

d. The business owner or owners (or appropriate individual(s) in a limited liability company, limited liability partnership or corporation) must consult with and obtain a letter of endorsement from either a business accelerator approved by the department or from an entrepreneurial development organization recognized by the department.

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e. The individual or business must have a business plan which details the business's growth strategy, management team, production/management plan, marketing plan, financial plan, and other standard elements of a business plan.

74.4(4) *Local match not required.* A business applying for financial assistance under the entrepreneurial component is eligible for financial assistance regardless of whether the business has received matching funds from a city or county.

74.4(5) *Funding priorities.* In awarding financial assistance under the entrepreneurial component of the program, the department and the board shall give priority to businesses in those sectors of the Iowa economy with the greatest potential for growth and expansion. Sectors having such potential include but are not limited to biotechnology, recyclable materials, software development, computer-related products, advanced materials, and advanced manufacturing.

74.4(6) *Financial assistance.* An applicant may apply to the department for financial assistance to assist with the applicant's early-stage business growth. The applicant may request up to \$250,000 for early-stage growth activities to be used for business expenses and to leverage conventional financing from commercial lenders or private investors. Assistance will generally be made in staged investments with amounts to be determined by company development, growth, and defined milestones. The assistance under this program is limited to 50 percent or less of the total original capitalization, if a new business, or total project costs, if an existing business. Funds may be used to purchase machinery, equipment, or software or for working capital needs or other business expenses deemed reasonable and appropriate by the department. Awards will be in the form of a loan, royalty agreement, or other form of an equity-like investment. A single recipient is limited to \$250,000 in total financial assistance.

74.4(7) *Technical assistance.* Applicants may apply for assistance in paying for consulting or other third-party technical assistance either in conjunction with the request for financial assistance or in a separate application. Applications submitted that are not in conjunction with a request for financial assistance must demonstrate financial need for the technical assistance. Financial need will be determined by the department based on review of the applicant's financial statements, narrative submitted by the applicant outlining the financial need, and other documentation as requested by the department. Awards will be in the form of a grant, loan, royalty agreement, or other form of an equity-like investment. Technical assistance of this nature is limited to no more than \$25,000 per applicant.

74.4(8) *Application process.* Applications must be submitted in the format required by the department. Applications, the business plan, and related material shall be submitted online or by mail to the department at the address listed in 261—subrule 175.2(7).

74.4(9) *Review criteria.*

a. Applications will first be reviewed for completeness. If additional information is required, the program staff shall send the applicant notice to submit the additional needed information. The applicant shall submit the requested information within a reasonable time period in order to ensure further action on the request.

b. Applications will then be reviewed for content of the business plan and to evaluate the business's viability and potential for growth. The department may consult with the business accelerators or other knowledgeable agencies or individuals as a part of the review process.

c. The following items will be reviewed:

(1) Type of business.

1. Highest priority will be given to businesses in sectors of the Iowa economy with the greatest start-up and growth potential for Iowa, including but not limited to:

- Biotechnology (including drugs and pharmaceuticals and value-added agricultural products);
- Recyclable materials;
- Software development and computer-related products;
- Advanced materials; and
- Advanced manufacturing.

2. Assistance may be provided to industries other than those listed in paragraph "1" above; however, the applicant shall provide strong rationale regarding how that industry diversifies, strengthens

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or otherwise enhances Iowa's economy. Eligibility may be established by an industry other than those listed if that industry can provide rationale regarding the industry's benefit to Iowa's economic base. Rationale that is provided will be reviewed by the department staff to determine eligibility as a targeted industry. Factors that will be considered in determining an industry's benefit to Iowa's economic base include:

- The majority of the products produced by the industry are exported out of Iowa;
- The inputs for the products produced in the industry are raw materials available in Iowa or are provided by Iowa suppliers;
- The goods produced by the industry diversify Iowa's economy;
- The goods produced by the industry resulted in, or will result in, a decrease in the importation of foreign-made goods into the United States;
- The industry shows potential for future growth; and
- The functions of the industry do not produce harmful effects for Iowa's natural environment.

Businesses engaged in retail sales, personal services, consulting, franchises, the provision of health care or other professional services, or the distribution of products or services will not be considered targeted industries and are not eligible for the program.

(2) Management team and management expertise. Factors considered for this criterion are whether the applicant(s) has a background (including education, training, work experience, and other factors) that will be helpful and useful in the business in question. The department will also consider the degree to which the applicant's background is fully documented.

(3) Business capitalization. Factors considered for this criterion are the original sources of financing for the business. Although all projects must have at least 50 percent of their financing from sources other than the entrepreneurial component, the department will give preference to those applications in which the other sources of financing are higher than 50 percent.

(4) Strength of business plan. The strength of the business plan is the most important factor in the evaluation of applications. Factors considered for this criterion are the quality of the business plan and how well it addresses all elements of the business, such as:

1. A description of the company and the overall industry;
2. The product and production plan;
3. The market, competition, and the marketing strategy;
4. The management team and business operation;
5. A well-defined project time line;
6. Patent issues (if applicable), critical risks and problems; and
7. Financial information and plan.

261—74.5(83GA,SF344) Infrastructure component.

74.5(1) Eligibility. In order to qualify for financial assistance under the infrastructure component of the program, a business or community shall be engaged in a physical infrastructure project. For purposes of this component, "physical infrastructure project" means a project that creates necessary infrastructure for economic success throughout Iowa, provides the foundation for the creation of jobs, and involves the investment of a substantial amount of capital. Physical infrastructure projects include but are not limited to projects involving any mode of transportation; public works and utilities such as sewer, water, power, or telecommunications; physical improvements that mitigate, prevent, or eliminate environmental contamination; and other similar projects deemed to be physical infrastructure by the department.

74.5(2) Local match not required. A business applying for financial assistance under the infrastructure component is eligible for financial assistance regardless of whether the business has received matching funds from a city or county.

261—74.6(83GA,SF344) Value-added agriculture component.

74.6(1) Purpose. The purpose of this component is to encourage the increased utilization of agricultural commodities produced in this state. The component shall assist in efforts to revitalize

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rural regions of this state by committing resources to provide financial assistance to new or existing value-added production facilities.

74.6(2) Definitions. In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the value-added agriculture component:

“Agricultural biomass industry” means businesses that utilize agricultural commodity crops, agricultural by-products, or animal feedstock in the production of chemicals, protein products, or other high-value products.

“Agricultural biotechnology industry” means businesses that utilize scientifically enhanced plants or animals that can be raised by producers and used in the production of high-value products.

“Agriculture” means the science, art, and business of cultivating the soil, producing crops and raising livestock.

“Alternative energy industry” means businesses involved in the production of ethanol, including gasoline with a mixture of 70 percent or more ethanol, biodiesel, biomass, or hydrogen or in the production of wind energy.

“Committee” means the renewable fuels and coproducts advisory committee established pursuant to Iowa Code section 159A.4.

“Coordinator” means the administrative head of the office of renewable fuels and coproducts appointed by the department of agriculture and land stewardship as provided in Iowa Code section 159A.3.

“Coproduct” means a product other than a renewable fuel which at least in part is derived from the processing of agricultural commodities and which may include corn gluten feed, distillers grain, solubles, or a feed supplement, or can be used as livestock feed.

“Farming” means the cultivation of land for the production of agricultural crops, the raising of poultry, the production of eggs, the production of milk, the production of fruit or other horticultural crops, grazing or the production of livestock. “Farming” shall not include the production of timber, forest products, nursery products, or sod; and “farming” shall not include a contract where a processor or distributor of farm products or supplies provides spraying, harvesting or other farm services.

“Fund” means the renewable fuels and coproducts fund established pursuant to Iowa Code section 159A.7.

“Innovative” means a new or different agricultural product or a method of processing agricultural products which is an improvement over traditional methods in a new, different, or unusual way.

“Livestock production operations” means the production, feeding and marketing of livestock, poultry and aquaculture. “Livestock production operations” includes, but is not limited to, beef and dairy cattle, swine, sheep, goat, poultry, turkey and equine operations. “Livestock production operations” also includes nontraditional agricultural operations such as ostrich, fallow deer, rabbit, fish and other aquaculture.

“Office” means the office of renewable fuels and coproducts created pursuant to Iowa Code section 159A.3.

“Organic products” means Iowa-grown or Iowa-raised agricultural products as defined by 21—Chapter 47, Iowa organic program.

“Person” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

“Producer-owned, value-added business” means a person who holds an equity interest in the agricultural business and is personally involved in the production of crops or livestock on a regular, continuous, and substantial basis.

“Renewable fuel” means an energy source at least in part derived from an organic compound, capable of powering machinery, including an engine or power plant. “Renewable fuel” includes but is not limited to ethanol-blended or soydiesel fuel.

“Renewable fuels and coproducts activities” means either of the following:

1. The research, development, production, promotion, marketing, or consumption of renewable fuels and coproducts.

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2. The research, development, transfer, or use of technologies which directly or indirectly increases the supply or demand of renewable fuels and coproducts.

“Rural region” means any geographic area which is predominantly rural in nature, that is, having a relatively low population density and where agriculture is the predominant economic activity.

“Soydiesel fuel” means a fuel made of processed soybean oil which is mixed with diesel fuel, the mixture being a minimum of 20 percent processed soybean oil.

“Value-added product” means a product which, through a series of activities or processes, can be sold at a higher price than its original purchase price.

74.6(3) Eligibility. In order to qualify for financial assistance under the value-added agriculture component of the program, a business shall be a production facility engaged in the process of adding value to agricultural products. Projects considered eligible under this component include but are not limited to innovative agricultural products and processes, innovative and new renewable fuels, agricultural biotechnology, biomass and alternative energy production, and organic products and emerging markets. Financial assistance is available for project development as well as project creation.

a. Innovative agricultural products and processes. An application based on this component shall be considered if either of the following applies:

(1) The business will produce a product derived from an agricultural commodity, if the product is not commonly produced in Iowa from an agricultural commodity; or

(2) The business will utilize a process to produce a product derived from an agricultural commodity, if the process is not commonly used in Iowa to produce the product.

For purposes of this paragraph, a product is “not commonly produced” and a process is “not commonly used” if the product or process is not usually, generally, or ordinarily produced or processed in Iowa.

b. Innovative and new renewable fuels. Applications for renewable fuel and ethanol production shall be considered by the department for funding. Applications based on ethanol fuel production must meet the following criteria to be considered for funding:

(1) All fermentation, distillation, and dehydration of the ethanol occurs at the proposed facility.

(2) The ethanol produced at the proposed facility is at least 190 proof and is denatured. However, if the facility markets the ethanol for further refining, the facility must demonstrate that the refiner produces at least 190 proof ethanol from the ethanol purchased from the facility.

c. Agricultural biotechnology, biomass and alternative energy. Agricultural business facilities in the agricultural biotechnology industry, agricultural biomass industry, and alternative energy industry are eligible for program assistance.

d. Organic products and emerging markets. Facilities that add value to Iowa agricultural commodities through further processing and development of organic products and emerging markets are eligible for program assistance.

e. Project development assistance. The department, at its discretion, may also provide funding for project development related to targeted industries or proposed projects under this program. Feasibility studies and basic research are not eligible for assistance under this program.

f. Project creation assistance. This option is for projects that eventually could be eligible for funding within other value-added agriculture component funding areas.

(1) Any person is eligible to apply, except educational or research institutions. However, an educational or research institution may be a partner to an eligible applicant.

(2) The evaluation process will focus on the application of new technology and knowledge to agricultural products and processing and will be based upon the degree to which:

1. The resulting business has potential to increase utilization of agricultural commodities in this state; and

2. The resulting business has potential to increase value-added economic activities within this state.

74.6(4) Ineligible projects.

a. The department shall not provide financial assistance to support a value-added production facility if the facility or a person owning a controlling interest in the facility has, in the previous five

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years, demonstrated a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment.

b. The department shall not approve an application for assistance under this component to refinance an existing loan.

c. The department shall not directly award financial assistance to support an activity directly related to farming as defined in Iowa Code section 9H.1, including the establishment or operation of a livestock production operation, regardless of whether the activity is related to a renewable fuel production facility.

d. An applicant may not receive more than one award under this program for a single project. However, previously funded projects may receive an additional award(s) if the applicant demonstrates that the funding is to be used for a significant expansion of the project, a new project, or a project which results from previous project development assistance.

e. The board and the department shall not award financial assistance under the value-added agriculture component in an amount exceeding 50 percent of the total capital investment in a project.

74.6(5) *Review process.*

a. Applications will be reviewed by staff for completeness and eligibility. If the applicant had previously consulted with the coordinator in completion of the application, the department may refer the application to the coordinator for further feasibility studies if deemed necessary. Applications will be reviewed as described in 261—Chapter 175.

b. The department may consult with other state agencies regarding any possible future environmental, health, or safety issues linked to technology related to the biotechnology industry.

c. The department reserves the right to informally consult with external resources to assist in the evaluation of projects or to contract with outside consultants, in an amount not to exceed \$20,000 per project, for the same purpose.

74.6(6) *Evaluation criteria.* The department shall evaluate applications based on the following criteria:

a. Feasibility. The company must submit a feasible business plan which demonstrates managerial and technical expertise.

b. Priority components. The department will review the degree to which the proposed project meets one of the component elements which include:

- (1) Innovative agricultural products and processes.
- (2) Innovative and new renewable fuels.
- (3) Agricultural biotechnology, agricultural biomass and alternative energy.
- (4) Organic products and emerging markets.

c. Utilization. The department will review the degree to which the facility will add value to and increase the utilization of agricultural commodities in this state.

d. Producer ownership. The level of producer ownership will be given additional consideration.

e. Rural region. The department will review the extent to which the existing or proposed facility is located in a rural region of the state.

f. Local match. A business applying for financial assistance under the value-added agriculture component is eligible for financial assistance regardless of whether the business has received matching funds from a city or county.

g. Need. The department will review the level of need of the region where the existing facility is located or the proposed facility is to be located.

h. Coproducts. The department will review the degree to which the facility produces a coproduct which is marketed in the same locality as the facility.

i. In-state suppliers. The department will review the extent to which the facility utilizes in-state suppliers of inputs and feedstocks for processing and manufacturing.

j. Sales. The department will review the extent to which the facility sells its products outside the state.

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261—74.7(83GA,SF344) Disaster recovery component.

74.7(1) Eligibility. In order to qualify for financial assistance under the disaster recovery component of the program, a business shall meet all of the following conditions:

- a. The business is located in an area declared a disaster area by a federal official.
- b. The business has sustained substantial physical damage and has closed as the result of a natural disaster. For purposes of this rule, “sustained substantial physical damage” means damage of any origin sustained by a structure or the machinery and equipment contained within whereby the cost of restoring the structure to its before-damaged condition or replacing the machinery and equipment would exceed 50 percent of the market value of the structure or machinery and equipment before the damage occurred. If the business is located in a multitenant building, the market value of the structure before the damage occurred may be prorated based on the percentage of space within the building which the business occupies.
- c. The business must commit to bringing its employment level up, within six months of the award date, to at least 90 percent of its base employment prior to the closure of the business due to the natural disaster in a presidentially declared disaster area. The business shall submit payroll records to establish the business’s employment base prior to the date of the presidential disaster declaration.
- d. The business must commit to paying wages, within six months of the award date, that are no less than the wages paid prior to the closure of the business due to the natural disaster in a presidentially declared disaster area. The business shall submit payroll records to establish the wages that were paid prior to the date of the presidential disaster declaration.
- e. The business must apply for assistance within 12 months of the date of the declaration of disaster by a federal official.

74.7(2) Local match not required. A business applying for financial assistance under the disaster recovery component is eligible for financial assistance regardless of whether the business has received matching funds from a city or county.

These rules are intended to implement 2009 Iowa Acts, Senate File 344, section 3.

ITEM 45. Adopt the following **new** 261—Chapter 75:

CHAPTER 75
OPPORTUNITIES AND THREATS PROGRAM

261—75.1(83GA,SF344) Purpose. The purpose of the opportunities and threats program is to fund projects that present a unique opportunity for economic development in the state of Iowa or projects that address a situation constituting a threat to continued economic prosperity in Iowa.

261—75.2(83GA,SF344) Administrative procedures. The opportunities and threats program is subject to the requirements of the department’s rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance. Part VII and Part VIII include standard definitions, standard program requirements, application review and approval procedures, contracting, contract compliance and job counting, and annual reporting requirements.

261—75.3(83GA,SF344) Eligible applicants. An eligible applicant may be a business, an individual, a development corporation, a nonprofit organization, a council of government as defined in Iowa Code section 28H.1, or a political subdivision in the state of Iowa.

261—75.4(83GA,SF344) Review criteria. When applications are reviewed, the following shall apply:

75.4(1) A project shall not be eligible for financial assistance under another state program. If a project is eligible for assistance under another state program, then the project shall not be eligible for funding under this program.

75.4(2) The project must represent a unique economic development opportunity or involve a unique threat to economic development in the state of Iowa.

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75.4(3) An applicant must demonstrate that any financial assistance received under this program leverages additional public or private funds.

75.4(4) An applicant must demonstrate that the project will lead to a positive economic impact for the state of Iowa.

75.4(5) An applicant must demonstrate financial need for assistance. Financial need may be demonstrated with financial statements, narrative statements outlining the financial need, and any other documentation that demonstrates financial need or that is requested by the department.

261—75.5(83GA,SF344) Award criteria. An award made under this program shall not exceed 50 percent of the total project cost. The minimum award amount is \$25,000. The maximum award amount is \$250,000 per fiscal year. The board may award an amount in excess of \$250,000 if that award is made over multiple fiscal years and the amount committed for each fiscal year within the multiyear award does not exceed \$250,000.

These rules are intended to implement 2009 Iowa Acts, Senate File 344, section 4.

ITEM 46. Amend rules 261—165.1(15G) to 261—165.3(15G) as follows:

261—165.1(15G,83GA,SF344) Purpose. The purpose of the grow Iowa values fund is to provide financial assistance for business incentives, marketing efforts, and other programs and activities designed to spur the economy and improve the quality of life of Iowans. Moneys in the grow Iowa values fund provide financial assistance for ~~programs administered by the department~~ allowable departmental purposes; for state parks pursuant to a plan from the department of natural resources (DNR); for the cultural trust fund; for workforce training and economic development funds of the community colleges; for economic development region initiatives; and for financial assistance to the regents for the University of Northern Iowa, Iowa State University, the University of Iowa, a bioscience organization, and private universities. The rules in this chapter apply to financial assistance awarded from the grow Iowa values fund by ~~the department and~~ the board.

261—165.2(15G,83GA,SF344) Definitions. The definitions located in 261—Chapter 173 apply to this chapter.

261—165.3(15G,83GA,SF344) Grow Iowa values fund (2005 2009). The grow Iowa values fund (2005 2009) refers to the fund established on July 1, 2005, pursuant to Iowa Code Supplement section ~~15G.111(2) and (3)~~ 15G.111(2) and (3) by Iowa Code chapter 15G as amended by 2009 Iowa Acts, Senate File 344. The fund includes moneys appropriated to the department by the general assembly for the fund, ~~interest earned, repayments, and recaptures of loans and grants~~ payments of interest, repayments of moneys loaned, and recaptures of grants and loans made pursuant to the fund, and all moneys accruing to the department from the department's administration of preexisting programs. Pursuant to Iowa Code section ~~15G.108~~ 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2, the fund is under the control of and administered by the department.

ITEM 47. Amend the introductory paragraphs of rule 261—165.4(15G) as follows:

261—165.4(15G,83GA,SF344) Allocation of annual appropriation for grow Iowa values fund moneys—\$50M. Pursuant to Iowa Code section ~~15G.110~~ 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2, \$50 million is appropriated from the grow Iowa values fund to the department each fiscal year for the fiscal period beginning July 1, 2005 2009, and ending June 30, 2015. If the full \$50 million is appropriated in a fiscal year, the fund moneys are allocated as described below. If less than \$50 million is appropriated in a fiscal year, then the amount available will be reduced on a pro-rata basis. The fund moneys are allocated as follows:

~~\$35M (except as set forth in "1" to "3" below) For programs administered by the department, marketing and other specified uses.~~

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~~1. For each fiscal year beginning July 1, 2005, and ending June 30, 2006, the amount available is \$35M.~~

~~2. For each fiscal year beginning July 1, 2006, and ending June 30, 2007, the amount available is \$33M.~~

~~3. For each fiscal year beginning July 1, 2007, and ending June 30, 2009, the amount available is \$30M.~~

~~4. For each fiscal year beginning July 1, 2009, and ending June 30, 2015, the amount available is \$32M.~~

~~1. \$32M—For:~~

~~• Departmental administrative costs,~~

~~• Awards of financial assistance from the grow Iowa values financial assistance program established in 2009 Iowa Acts, Senate File 344, section 3,~~

~~• Marketing,~~

~~• A statewide labor shed study,~~

~~• Responding to opportunities and threats,~~

~~• Technical assistance and information technology,~~

~~• Guarantees in existence as of July 1, 2009, under the loan and credit guarantee program,~~

~~• Renewable fuels infrastructure program for FY 2010 (\$2M), and~~

~~• \$1M for FY 2010 for research and development related to renewable energy pursuant to 2009~~

~~Iowa Acts, House File 817.~~

~~2. \$3M—For the fiscal period beginning July 1, 2007, and ending June 30, 2015, this amount is available for commercialization services described in Iowa Code Supplement section 15.411(2) and (3). For deposit in the innovation and commercialization fund created by 2009 Iowa Acts, Senate File 142.~~

~~\$ 2M—For the fiscal period beginning July 1, 2006, and ending June 30, 2009, this amount is available for deposit in the renewable fuel infrastructure fund as provided in Iowa Code section 15G.205.~~

~~3. \$5M—To the state board of regents for institutions of higher learning under the control of the state board of regents, for specific activities.~~

~~4. \$1M—For projects in targeted state parks, state banner parks and destination parks.~~

~~5. \$1M—For the cultural trust fund administered by the department of cultural affairs.~~

~~6. \$7M—For workforce training and economic development funds of the community colleges.~~

~~7. \$1M—For economic development region initiatives.~~

ITEM 48. Rescind subrule 165.4(1) and adopt the following **new** subrule in lieu thereof:

165.4(1) Board allocation of appropriation to fund for departmental purposes—\$32M. Of the annual appropriation to the fund, the board may allocate \$32 million (or a pro-rata amount if the annual appropriation to the fund is less than \$50 million) for the following activities:

a. Departmental administrative costs. The board may allocate a portion of the funds to cover administrative costs. No more than \$600,000 may be allocated for administrative costs.

b. Awards of financial assistance from the grow Iowa values financial assistance program established in 2009 Iowa Acts, Senate File 344, section 3. The grow Iowa values financial assistance fund consists of six components. The rules for the six components may be found in 261—Chapter 74.

c. Marketing. The board may allocate a portion of the amount available for departmental purposes for marketing proposals pursuant to Iowa Code section 15G.109.

d. Statewide labor shed study. The board may allocate a portion of the funds available to authorize a statewide labor shed study in coordination with the department of workforce development.

e. Responding to opportunities and threats. A portion of the funds may be allocated by the board to respond to opportunities and threats. The rules for this activity are found in 261—Chapter 75.

f. Technical assistance and information technology. The board may allocate a portion of the funds available for procuring technical assistance from either the public or private sector and for information technology purposes.

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- g. Loan guarantees in existence as of July 1, 2009, under the loan and credit guarantee program.
- h. Renewable fuels infrastructure fund established in Iowa Code section 15G.205. For fiscal year 2010, \$2 million shall be allocated to the renewable fuels infrastructure fund established in Iowa Code section 15G.205.
- i. Renewable energy research and development. For fiscal year 2010, \$1 million for research and development related to renewable energy pursuant to 2009 Iowa Acts, House File 817.

ITEM 49. Amend subrules 165.4(2) to 165.4(6) as follows:

165.4(2) *Funding to the state board of regents for institutions of higher learning under the control of the state board of regents for specific activities—\$5M.*

a. *Use of funds.* Five million dollars (or a pro-rata amount if the annual appropriation to the fund is less than \$50 million) is available for financial assistance to institutions of higher learning under the control of the state board of regents (Iowa State University (ISU), University of Iowa (U of I), University of Northern Iowa (UNI)). These funds must be used for capacity building infrastructure in areas related to technology commercialization, for marketing and business development efforts in areas related to technology commercialization, entrepreneurship, and business growth, and for infrastructure projects and programs needed to assist in the implementation of activities under Iowa Code chapter 262B.

(1) and (2) No change.

b. No change.

c. *Board action.* The board shall review the annual report from the state board of regents and accept, or request additional information regarding, the use of the \$5 million allocation from the grow Iowa values fund to the state board of regents. The board will include in its annual grow Iowa values fund report that is required to be submitted by January ~~15~~ 31 each year pursuant to Iowa Code section 15.104(9) an evaluation of the annual report received from the state board of regents.

165.4(3) *Funding for projects in targeted state parks, state banner parks and destination parks—\$1M.*

a. *Use of funds.* One million dollars (or a pro-rata amount if the annual appropriation to the fund is less than \$50 million) is available for purposes of providing financial assistance for projects in targeted state parks, state banner parks, and destination parks. For purposes of this subrule, “state banner park” means a park with multiple uses and which focuses on the economic development benefits of a community or area of the state.

b. No change.

c. *Board action.* The board shall ~~approve, or deny,~~ approve, modify, or defer proposed expenditures under the proposed plan for use of the \$1 million allocation from the grow Iowa values fund for state parks. Upon approval of the plan, a contract shall be executed between the department and the department of natural resources to provide financial assistance to the department of natural resources for support of state parks, state banner parks, and destination parks.

165.4(4) *Funding for the cultural trust fund administered by the department of cultural affairs—\$1M.* One million dollars (or a pro-rata amount if the annual appropriation to the fund is less than \$50 million) ~~is appropriated to the office of the treasurer of state~~ shall be allocated by the department for deposit in the Iowa cultural trust fund created in Iowa Code section 303A.4 and administered by the department of cultural affairs. The department shall transfer the moneys allocated from the grow Iowa values fund for this purpose to the treasurer of state.

165.4(5) *Funding for workforce training and economic development funds of the community colleges—\$7M.* Seven million dollars (or a pro-rata amount if the annual appropriation to the fund is less than \$50 million) is allocated for deposit into the workforce training and economic development funds of the community colleges created pursuant to Iowa Code section 260C.18A. The department shall transfer the moneys allocated from the grow Iowa values fund to the workforce training and economic development fund.

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165.4(6) Funding for economic development region initiatives—\$1M.

a. Funds available. One million dollars (or a pro-rata amount if the annual appropriation to the fund is less than \$50 million) is available for providing assistance to economic development regions. These moneys are allocated as follows:

\$350,000—To ISU, for establishment of small business development centers in certain areas of the state.

\$50,000—To the department, for assistance to Iowa business resource centers authorized in ~~2007 Iowa Code section 15G.111(6)(e)~~ Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2.

\$600,000—To the department, for financial assistance to economic development regions, for the establishment of a regional economic development revenue-sharing pilot project.

b. Allocation of \$600,000 for economic development region initiatives. ~~The department board shall annually allocate the \$600,000 available under this subrule for economic development region initiatives. The department may adjust the allocation during the year if it determines that it is necessary to do so to ensure the availability of funds in those categories in which a greater need is demonstrated to exist.~~ The \$600,000 is available for the following:

(1) to (3) No change.

ITEM 50. Adopt the following **new** rules 261—165.5(15G,83GA,SF344) and 261—165.6(15G,83GA,SF344):

261—165.5(15G,83GA,SF344) Board allocation of other moneys in fund.

165.5(1) Allocation for administrative and operations costs. In addition to the moneys appropriated to the fund for departmental purposes pursuant to Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2, the board may allocate other moneys credited to the fund pursuant to Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2, for departmental administrative and operations costs. The board may allocate a portion of the moneys accruing to the fund resulting from preexisting programs that were repealed by 2009 Iowa Acts, Senate File 344: CEBA, EVA, VAAPFAP, PIAP, and LCG. Funds may be allocated by the board in an amount necessary to fund administrative and operations costs of the department. This allocation is in addition to any allocations the board makes pursuant to subrule 165.4(1).

165.5(2) Allocation of other moneys for fund purposes. The board may allocate for other allowable fund purposes a portion of the moneys accruing to the fund resulting from preexisting programs that were repealed by 2009 Iowa Acts, Senate File 344: CEBA, EVA, VAAPFAP, PIAP, and LCG. This allocation is in addition to any allocations the board makes pursuant to subrule 165.4(1).

261—165.6(15G,83GA,SF344) Annual fiscal year allocations by board.

165.6(1) Annual fiscal year allocations. At the first scheduled meeting of the board after the start of a fiscal year, the board shall take action on each of the following:

a. Board allocation of appropriation to fund for departmental purposes—\$32M. The board shall review the department's recommendation for the annual allocation of the \$32 million (or of such lesser amount if the annual appropriation to the fund is less than \$50 million) for departmental purposes described in subrule 165.4(1).

b. Board allocation of other moneys in the fund. The board shall review the department's recommendation for the annual allocation of other moneys in the fund as described in rule 261—165.5(15G,83GA,SF344).

c. Board allocation among the six components of the grow Iowa values financial assistance program. The board shall review the department's recommendation for the annual allocation among the six components of the grow Iowa values financial assistance program described in 261—Chapter 74.

165.6(2) Reallocation during fiscal year. The board may adjust each of the allocations described in subrule 165.6(1) during the fiscal year as necessary.

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ITEM 51. Amend **261—Chapter 165**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 15G and Iowa Code Supplement section 15G.111(2) and (3) as amended by 2009 Iowa Acts, Senate File 344.

ITEM 52. Amend rule 261—173.1(15) as follows:

261—173.1(15,15G,83GA,SF344) Applicability.

173.1(1) Current programs. This Effective July 1, 2009, this chapter shall apply to the following programs and projects funding sources:

1. ~~VAAPFAP (value added agricultural products and processes financial assistance program) (261—Chapter 57).~~
2. ~~CEBA (community economic betterment account) program (261—Chapter 53).~~
3. ~~EVA (entrepreneurial ventures assistance) program (261—Chapter 60).~~
4. ~~TSBFAP (targeted small business financial assistance program) (261—Chapter 55).~~
5. ~~PIAP (physical infrastructure assistance program) (261—Chapter 61).~~
6. ~~Brownfield redevelopment program (261—Chapter 65).~~
7. ~~EDSA (economic development set aside) program (261—Chapter 23).~~
8. ~~EZ (enterprise zone) program (261—Chapter 59).~~
9. ~~HQJC (high quality job creation) program (261—Chapter 68).~~
10. ~~LCG (loan and credit guarantee) program (261—Chapter 69).~~
11. ~~Projects approved by the grow Iowa values board that received direct financial assistance from the IVF(FES) fund during the period July 1, 2003, through June 16, 2004.~~
12. ~~Projects approved under the NCIP (new capital investment program) (261—Chapter 64).~~
13. ~~Projects approved under the NJIP (new jobs and income program) (261—Chapter 58).~~
 - a. EDSA (economic development set-aside) program (261—Chapter 23).
 - b. EZ (enterprise zone) program (261—Chapter 59).
 - c. HQJP (high quality jobs program) (261—Chapter 68).
 - d. Grow Iowa values fund—IVF(2009).

173.1(2) Prior programs—transition provision. The programs listed in paragraphs “a” to “f” were repealed by 2009 Iowa Acts, Senate File 344, effective July 1, 2009. The rules in effect on June 30, 2009, under this chapter shall apply to the following prior programs until such time as the contracts for these prior programs are closed by the department:

- a. VAAPFAP (value-added agricultural products and processes financial assistance program) (261—Chapter 57).
- b. CEBA (community economic betterment account) program (261—Chapter 53).
- c. EVA (entrepreneurial ventures assistance) program (261—Chapter 60).
- d. TSBFAP (targeted small business financial assistance program) (261—Chapter 55).
- e. PIAP (physical infrastructure assistance program) (261—Chapter 61).
- f. LCG (loan and credit guarantee) program (261—Chapter 69).

ITEM 53. Amend rule 261—173.2(15), parenthetical implementation statute, as follows:

261—173.2(15,15G,83GA,SF344) Definitions.

ITEM 54. Amend rule **261—173.2(15)**, definitions of “Agricultural products advisory council,” “Benefits,” “Business’s base employment,” “Created job,” “Employee,” “Grant,” “IVF,” “Loan,” “Maintenance date,” “Project completion,” “Project completion date” and “Retained job,” as follows:

“*Agricultural products advisory council*” or “*APAC*” means the council which is composed of five members appointed by the secretary of agriculture and five members appointed by the director of the Iowa department of economic development who are experienced in marketing or exporting agricultural commodities or products, financing the export of agricultural commodities or products, or adding value to and the processing of agricultural products as further described in Iowa Code section 15.203 and which reviews VAAPFAP value-added agriculture component applications and makes recommendations to the ~~director and the board.~~

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“*Benefits*” means all of the following nonwage compensation provided to an employee: medical and dental insurance plans, pension, retirement, and profit-sharing plans, child care services, life insurance coverage, vision insurance ~~plan~~ coverage, and disability insurance coverage.

“~~Business’s base~~ Base employment level” means the number of ~~jobs that the business and the department have established as the job base for a project~~ full-time equivalent positions at a business, as established by the department and a business using the business’s payroll records, as of the date a business applies for financial assistance. The number of jobs the business has pledged to create and retain shall be in addition to the ~~business’s base employment base level~~.

“*Created job*” means a new, permanent, full-time equivalent (FTE) position added to a business’s payroll, ~~over and above~~ in excess of the ~~business’s base employment level~~ at the time of application for assistance.

“*Employee*” means:

~~1.~~ 1. An individual filling a full-time position that is part of the payroll of the business receiving financial assistance from any of the programs identified in rule 261—173.1(15, 15G, 83GA, SF344).

~~2.~~ 2. A business’s leased or contract employee, provided all of the following elements are satisfied:
(1) • The business receiving the state financial assistance has a legally binding contract with a third-party provider to provide the leased or contract employee.

(2) • The contract between the third-party provider and the business specifically requires the third-party provider to pay the wages and benefits at the levels required and for the time period required by the department as conditions of the financial assistance award to the business.

(3) • The contract between the third-party provider and the business specifically requires the third-party provider to submit payroll records to the department, in form and content and at the frequency found acceptable to the department, for purposes of verifying that the business’s job creation/retention and benefit requirements are being met.

(4) • The contract between the third-party provider and the business specifically authorizes the department, or its authorized representatives, to access records related to the funded project.

(5) • The business receiving the state financial assistance agrees to be contractually liable to the department for the performance or nonperformance of the third-party provider.

“*Grant*” means an award of assistance with the expectation that, with the fulfillment of the conditions, terms and obligations of the award contract with the department for the project, repayment of funds is not required.

“*IVF(2009)*” means the grow Iowa values fund established by Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2.

“*Loan*” means an award of assistance with the requirement that the award be repaid with term, interest rate, and other conditions specified as part of the award. A “deferred loan” is one for which the payment for principal, interest, or both, is not required for some specified period. A “forgivable loan” is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions. A “float loan” means a short-term loan (maximum of 30 months) from obligated but unexpended IVF(2009) funds.

“*Maintenance period completion date*” means the date on which the maintenance period ends. It is the specific time period date established by the department past the project completion date through which the recipient shall maintain the project, the created jobs, and the retained jobs.

“*Project completion,*” for the EZ and ~~HQJC~~ HQJP tax credit programs, for purposes of reporting to the Iowa department of revenue that a project has been completed, means:

1. and 2. No change.

“*Project completion date*” means the specific date established by the department by which ~~the business~~ a recipient of financial assistance shall have completed all pledged project activities, met its job creation and job retention obligations, and otherwise satisfied the terms and obligations of the contract with the department for a project. (See rule 261—subrule 187.3(3) 187.3(15) for a listing of the duration of the project completion period and maintenance period for IDED’s job creation and tax credit programs.)

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“Retained job” means existing a full-time equivalent permanent positions, position in existence at the time of application, kept in continuous employment by the business that are at risk of being eliminated if the project does not proceed as planned an employer applies for financial assistance which remains continuously filled or authorized to be filled as soon as possible and which is at risk of elimination if the project for which the employer is seeking assistance does not proceed.

ITEM 55. Rescind the definitions of “Average county wage,” “Average regional wage,” “Benefit value,” “Brownfield advisory council,” “FES,” “Float loan,” “IVF(FES)” and “IVF (2005)” in rule **261—173.2(15,15G,83GA,SF344)**.

ITEM 56. Adopt the following **new** definitions of “County wage,” “Financial assistance,” “Fiscal impact ratio,” “ICF,” “Maintenance period,” “Project completion period,” “Project initiation,” “Qualifying wage threshold,” “Regional wage,” “Sufficient benefits,” “Sufficient benefits credit” and “Technology commercialization committee” in rule **261—173.2(15,15G,83GA,SF344)**:

“*County wage*” means the county wage calculation performed by the department pursuant to 2009 Iowa Acts, Senate File 344, section 3.

“*Financial assistance*” means assistance in the form of grants, loans, forgivable loans, float loans, equity-like investment, and royalty payments and other forms deemed appropriate by the board, consistent with Iowa law.

“*Fiscal impact ratio*” or “*FIR*” means a ratio calculated by estimating the amount of taxes to be received by the state from a business and dividing the estimate by the estimated cost to the state of providing certain financial incentives to the business, reflecting a ten-year period of taxation and incentives and expressed in terms of current dollars. “Fiscal impact ratio” does not include taxes received by political subdivisions.

“*ICF*” means the innovation and commercialization fund established by 2009 Iowa Acts, Senate File 142.

“*Maintenance period*” means the period of time between the project completion date and the maintenance period completion date.

“*Project completion period*” means the period of time between the date financial assistance is awarded (the “award date”) and the project completion date.

“*Project initiation*” means, for all programs and funding sources except EDSA, any one of the following:

1. The start of construction of new or expanded buildings;
2. The start of rehabilitation of existing buildings;
3. The purchase or leasing of existing buildings; or
4. The installation of new machinery and equipment or new computers to be used in the operation of the business’s project.

The purchase of land or signing an option to purchase land or earth moving or other site development activities not involving actual building construction, expansion or rehabilitation shall not constitute project initiation. The costs of any land purchase and site development work incurred prior to the award are not eligible qualifying investment expenses.

“*Qualifying wage threshold*” means the county wage or the regional wage, as calculated by the department, whichever is lower.

“*Regional wage*” means the regional wage calculation performed by the department pursuant to 2009 Iowa Acts, Senate File 344, section 3.

“*Sufficient benefits*” means that the employer applying for financial assistance offers to each full-time equivalent permanent position a benefits package that meets one of the following:

1. The employer pays 80 percent of the premium costs for a standard medical and dental plan for single employee coverage with a \$750 maximum deductible; or
2. The employer pays 50 percent of the premium costs for a standard medical and dental plan for employee family coverage with a \$1,500 maximum deductible; or
3. The employer provides medical coverage and pays the monetary equivalent of paragraph “1” or “2” above in supplemental employee benefits. Benefits counted toward monetary equivalent could

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include medical coverage, dental coverage, vision insurance, life insurance, pension, retirement (401k), profit sharing, disability insurance, child care services, and other nonwage compensation approved by the board.

“*Sufficient benefits credit*” means a benefits credit for which a business qualifies if the business provides sufficient benefits to each employee holding a created or retained job. This credit can be applied against the 130 percent qualifying wage requirement. The credit shall be calculated and applied as follows:

1. By multiplying the qualifying wage threshold of the county in which the business is located by one and three-tenths.
2. By multiplying the result of paragraph “1” by one-tenth.
3. The amount of the result of paragraph “2” shall be credited against the amount of the 130 percent qualifying wage threshold requirement that the business is required to meet.
4. The credit shall not be applied against the 100 percent qualifying wage threshold requirement.

“*Technology commercialization committee*” means the committee established by the board pursuant to Iowa Code section 15.116 to evaluate and approve funding for projects and programs referred to in Iowa Code section 15G.111 as amended by 2009 Iowa Acts, Senate File 344, section 2.

ITEM 57. Amend **261—Chapter 173**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 15, 15G as amended by 2009 Iowa Acts, Senate File 344, and 17A.

ITEM 58. Amend rules 261—174.1(15) and 261—174.2(15) as follows:

261—174.1(15,15G,83GA,SF344) Applicability. This chapter is applicable to the programs identified in 261—173.1(15,15G,83GA,SF344).

261—174.2(15,15G,83GA,SF344) Quarterly Annual qualifying wage threshold calculations.

174.2(1) ~~The department will update all program the county and regional qualifying wage thresholds on July 1, October 1, January 1, and April 1 of annually each fiscal year using the most recent four quarters of available wage data from the Iowa workforce development department, and these thresholds will become effective on July 1 of each fiscal year.~~

174.2(2) Transition period Effective date of county wage and regional wage qualifying thresholds. Businesses that submit a project review form to the department will be subject to county and regional qualifying wage thresholds in effect on the date the department receives the project review form, provided that the business’s application is received and approved within six months of the date the project review form was received by the department. If more than six months have elapsed, the business will be subject to the wage thresholds in effect on the date the department receives the business’s completed application.

ITEM 59. Amend rule **261—174.3(15)**, introductory paragraph, as follows:

261—174.3(15,15G,83GA,SF344) Qualifying wage threshold requirements—prior to July 1, 2009. ~~For each financial assistance and tax credit program administered by the department, there are minimum wage threshold requirements that must be met in order for the project to be considered to receive an award. The qualifying wage threshold varies from program to program and according to funding source. This rule describes the qualifying wage thresholds, by funding source and by program, which a project must meet. 2009 Iowa Acts, Senate File 344, became effective on July 1, 2009. 2009 Iowa Acts, Senate File 344, repealed a number of programs administered by the department, established IVF(2009), and transferred moneys from prior programs to the IVF(2009). This resulted in a simplification of state financial assistance programs. The following subrules regarding qualifying wage thresholds apply to awards made on or before June 30, 2009. This rule shall apply to the prior programs and funding sources until such time as the contracts for these prior programs are closed by the department.~~

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ITEM 60. Renumber rule **261—174.7(15)** as **261—174.10(15)**.

ITEM 61. Renumber rules **261—174.5(15)** and **261—174.6(15)** as **261—174.7(15)** and **261—174.8(15)**.

ITEM 62. Adopt the following **new** rules 261—174.5(15G,83GA,SF344) and 261—174.6(15E,15G,83GA,SF344):

261—174.5(15G,83GA,SF344) Qualifying wage threshold requirements—on or after July 1, 2009.

174.5(1) Projects that are funded through one of the IVF(2009) financial assistance program components shall meet the following qualifying wage thresholds:

Funding Source: IVF(2009) Grow Iowa Values Financial Assistance Program		Qualifying Wage Threshold Requirement	Credit for sufficient benefits?
Program Component:	130% wage component	130% of county wage or regional wage, whichever is lower	Yes
	100% wage component	100% of county wage or regional wage, whichever is lower	No
	Entrepreneurial component	No qualifying wage threshold	Not applicable
	Infrastructure component	No qualifying wage threshold	Not applicable
	Value-added agriculture component	No qualifying wage threshold	Not applicable
	Disaster recovery component	No qualifying wage threshold	Not applicable

174.5(2) HQJP and EZ. Projects funded through HQJP or EZ tax credit program shall meet the following qualifying wage thresholds:

Tax Credit Program	Qualifying Wage Threshold Requirement	Credit for sufficient benefits?
HQJP	130% of county wage or regional wage, whichever is lower	Yes
EZ	90% of county wage or regional wage, whichever is lower	No

174.5(3) EDSA. Projects that are funded with EDSA moneys shall meet the following wage threshold:

Program Source: CDBG	Qualifying Wage Threshold Requirement	Credit for sufficient benefits?
EDSA	90% of county wage or regional wage, whichever is lower	No

174.5(4) Higher wage threshold applies if multiple programs are used in a project. Notwithstanding the qualifying wage threshold requirements for each program, if a business is a recipient of financial assistance from more than one program administered by the department and the qualifying wage thresholds are not the same, the business shall be required to pay the higher qualifying wage for the project.

261—174.6(15E,15G,83GA,SF344) Wage waiver requests—130 percent wage component and HQJP.

174.6(1) *Waiver of qualifying wage threshold—130 percent wage component.* An applicant may apply to the board for a waiver of the qualifying wage threshold requirements of the 130 percent wage component of the grow Iowa values financial assistance program. The procedures to follow to request such a waiver are described in rule 261—175.5(15,15G,83GA,SF344).

174.6(2) *Waiver of HQJP qualifying wage threshold.* A community may apply to the board for a project-specific waiver from the qualifying wage threshold requirement in order to seek tax incentives

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for an eligible business. The procedures to follow to request such a waiver are described in rule 261—175.5(15,15G,83GA,SF344).

ITEM 63. Amend renumbered rule 261—174.7(15) as follows:

261—174.7(15,15G,83GA,SF344) Job obligations. Jobs that will be created or retained as a result of a project’s receiving state or federal financial assistance or tax credit benefits from the department shall meet the qualifying wage threshold requirements. Jobs that do not meet the qualifying wage threshold requirements will not be counted toward a business’s job creation or job retention obligations outlined in the contract between the department and the business. A business’s job obligations shall include the business’s ~~employment~~ base employment level and the number of new jobs required to be created above the base employment ~~figure~~ level.

ITEM 64. Amend renumbered rule 261—174.8(15), introductory paragraph, as follows:

261—174.8(15,15G,83GA,SF344) Benefit requirements—prior to July 1, 2009. ~~To be eligible to receive state financial assistance or tax credit benefits, applicants shall meet the following benefit requirements:~~ This rule regarding benefit requirements applies to awards made on or before June 30, 2009. This rule shall apply to the prior programs and funding sources until such time as the contracts for these prior programs are closed by the department.

ITEM 65. Adopt the following new rule 261—174.9(15,15G,83GA,SF344):

261—174.9(15,15G,83GA,SF344) Sufficient benefits requirement—on or after July 1, 2009. To be eligible to receive state financial assistance or tax credit benefits, applicants shall offer sufficient benefits to each FTE permanent position. “Sufficient benefits” and “sufficient benefits credit” are defined in rule 261—173.2(15,15G,83GA,SF344). An employer may select one of the following options to meet the sufficient benefits requirement:

Option 1 80% Single Coverage	Option 2 50% Family Coverage	Option 3 Monetary Equivalent	
Pay 80% of premium costs for a standard medical and dental plan, single coverage. \$750 maximum deductible	Pay 50% of premium costs for a standard medical and dental plan, family coverage. \$1,500 maximum deductible	Provide medical and pay the monetary equivalent of Option 1 or Option 2 in supplemental employee benefits.	Benefits Counted Toward Monetary Equivalent <ul style="list-style-type: none"> ● Medical coverage ● Dental coverage ● Vision insurance ● Life insurance ● Pension ● 401(k) (company’s average contribution) ● Short-/long-term disability insurance ● Child care services ● Other nonwage compensation

ITEM 66. Amend renumbered rule 261—174.10(15), parenthetical implementation statute, as follows:

261—174.10(15,15G,83GA,SF344) Capital investment, qualifying investment for tax credit programs, and investment qualifying for tax credits.

ITEM 67. Amend renumbered subrule 174.10(2) as follows:

174.10(2) Qualifying investment for tax credit programs. For the tax credit programs (EZ and ~~HQIC~~ HQJP), there are statutorily required minimum investment thresholds that must be met for the project to be considered to receive an award. Not all expenditures count toward meeting the investment threshold.

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This rule identifies the categories of expenditures that can be included when the amount of investment is calculated for purposes of meeting program eligibility threshold requirements.

ITEM 68. Amend **261—Chapter 174**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 15, 15E and 15G as amended by 2009 Iowa Acts, Senate File 344.

ITEM 69. Amend rule 261—175.1(15) as follows:

261—175.1(15,83GA,SF344) Applicability. This chapter shall apply to the programs listed in rule 261—173.1(15,15G,83GA,SF344) and to other state and federal programs identified in this chapter. This chapter describes the application review and approval procedures and the role of the advisory groups or board committees and identifies the final decision maker for each program.

ITEM 70. Amend rule 261—175.2(15), parenthetical implementation statute, as follows:

261—175.2(15,83GA,SF344) Application procedures for programs administered by the department.

ITEM 71. Rescind subrule 175.2(1) and adopt the following **new** subrule in lieu thereof:

175.2(1) IVF(2009). Effective July 1, 2009, pursuant to 2009 Iowa Acts, Senate File 344, the grow Iowa values fund was updated, streamlined and simplified, preexisting state financial assistance programs were repealed and previous funding for these programs was transferred to IVF(2009). The fund is administered by the department, and the board has final decision-making authority for IVF(2009) financial assistance awards and other activities.

ITEM 72. Rescind and reserve subrules **175.2(2)** and **175.2(3)**.

ITEM 73. Amend subrule 175.2(5) as follows:

175.2(5) EDSA Federal programs. The department administers ~~the~~ federal programs including, but not limited to, the HOME program and the CDBG program. EDSA is the job creation component of ~~this federal funding source~~ the CDBG program. The department will review an application to ensure that the project meets the requirements for the ~~tax credit~~ programs through which an applicant is applying.

ITEM 74. Rescind subrules **175.2(7)** and **175.2(8)**.

ITEM 75. Renumber subrule **175.2(6)** as **175.2(7)**.

ITEM 76. Adopt the following **new** subrule 175.2(6):

175.2(6) Other state programs. In addition to the programs described herein, the department administers other state programs. The department will review an application to ensure that the project meets the requirements for the tax credit programs through which an applicant is applying.

ITEM 77. Amend renumbered subrule 175.2(7) as follows:

175.2(7) Application required. A business or community seeking financial assistance or tax credit benefits from a department program shall submit an application to the department. The applicant shall comply with the department's application procedures, processes, rules, and, as applicable, the wage and benefit requirements for that program and its funding source. Application forms and directions for completing the forms are available online at the department's Web site at www.iowalifechanging.com or at the department's offices located at 200 East Grand Avenue, Des Moines, Iowa 50309.

ITEM 78. Renumber rules **261—175.3(15)** and **261—175.4(15)** as **261—175.4(15)** and **261—175.5(15)**.

ITEM 79. Adopt the following **new** rule 261—175.3(15,83GA,SF344):

261—175.3(15,83GA,SF344) Standard program requirements. In addition to the eligibility requirements of the individual programs applicable to the financial assistance sought, an applicant shall be subject to all of the following requirements:

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175.3(1) *Environmental and worker safety.* The applicant shall submit to the department with its application for financial assistance a report describing all violations of environmental law or worker safety law within the last five years. If, upon review of the application, the board finds that a business has a record of violations of the law, statutes, rules, or regulations that tends to show a consistent pattern, the board shall not make an award of financial assistance to the business unless the board finds either that the violations did not seriously affect public health, public safety, or the environment or, if such violations did seriously affect public health, public safety, or the environment, that mitigating circumstances were present.

175.3(2) *Sustained operations.* The applicant shall not have closed or substantially reduced operations in one area of this state and relocated substantially the same operations in a community in another area of this state. However, this subrule shall not be construed to prohibit a business from expanding its operations in a community if existing operations of a similar nature in this state are not closed or substantially reduced.

175.3(3) *Competition.* The proposed project shall not negatively impact other businesses in competition with the business being considered for assistance. The department shall make a good faith effort to identify existing Iowa businesses within an industry in competition with the business being considered for financial assistance. The department shall make a good faith effort to determine the probability that the proposed financial assistance will displace employees of the existing businesses. In determining the impact on businesses in competition with the business being considered for financial assistance, jobs created or retained as a result of other jobs being displaced elsewhere in the state shall not be considered direct jobs created or retained.

175.3(4) *Legally authorized employment.* The applicant shall only employ individuals legally authorized to work in this state. In addition to any and all other applicable penalties provided by current law, all or a portion of the assistance received by a business which has received financial assistance under the program and is found to knowingly employ individuals not legally authorized to work in this state is subject to recapture by the department.

ITEM 80. Amend renumbered rule 261—175.4(15), parenthetical implementation statute, as follows:

261—175.4(15,15G,83GA,SF344) Review and approval of applications.

ITEM 81. Amend renumbered subrule 175.4(1) as follows:

175.4(1) *Staff review for eligibility.* Applications received by the department will be reviewed by program staff to ensure that documentation of minimum program eligibility requirements has been submitted by the applicant. Complete applications will be forwarded to the appropriate decision maker for action.

ITEM 82. Rescind renumbered subrules **175.4(2)** and **175.4(3)**.

ITEM 83. Adopt the following **new** subrules 175.4(2) to 175.4(4):

175.4(2) *Additional review factors.* In addition to reviewing an application for eligibility, the department and the board may consider additional factors. Upon review of these additional factors, the board may determine that the applicant is ineligible to receive assistance until such time as the pending resolution of any outstanding issues identified by the board. Additional factors to be considered include:

a. Applicant's past or current performance. If an applicant has received a prior award(s) from the department, the department and board will take into consideration the applicant's past or current performance under the prior award(s).

b. Results of due diligence review. This review will include, but is not limited to, lien searches, reports of violations, lawsuits and other relevant information about the applicant.

c. Report on environmental law compliance. This report is required by rule 261—172.1(15A) and applicable program statutes.

d. Report on violations of law. This report is required by rule 261—172.2(15A) and applicable program statutes.

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d. *Advisory committee recommendations and final action—federal programs.* The approval process for applications for financial assistance and any other request for funding from the department’s federal programs is as follows:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
HOME									•
CDBG									
EDSA				•				•	
All other CDBG assistance									•
Neighborhood Stabilization Program									•

e. *Advisory committee recommendations and final action—other department-administered programs.* The approval process for applications for financial assistance and any other request for funding from other department-administered programs is as follows:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TCC	TSB	Board	Director
Brownfield Redevelopment Program		•							•
Targeted Small Business Financial Assistance Program							•		•
Export Trade Assistance Program									•
Accelerated Career Education Program			•					•	
Targeted Jobs Withholding Tax Credit Program									•

ITEM 84. Amend renumbered rule 261—175.5(15), parenthetical implementation statute, as follows:

261—175.5(15,15G,83GA,SF344) Procedures for waiver of wage and other program requirements.

ITEM 85. Amend renumbered subrule 175.5(1) as follows:

175.5(1) General information. Within the parameters described in this rule, the board may, for good cause shown, waive qualifying wage threshold requirements ~~and some nonstatutory CEBA program requirements.~~ Iowa Code section 15G.112 2009 Iowa Acts, Senate File 344, section 3, permits applicants to apply to the board for a waiver of the IVF (2005) qualifying wage requirement (130 percent of the average county wage) qualifying wage threshold for the 130 percent wage component of the grow Iowa values financial assistance program. Iowa Code section 15.335A(3) as amended by 2009 Iowa Acts, Senate File 344, section 16, allows a community to apply to the board for a project-specific waiver from the ~~average county wage calculations~~ qualifying wage threshold requirement provided in the ~~HQJC program~~ HQJP in order ~~for an eligible business to receive to seek tax incentives for an eligible business.~~ This rule also establishes a process for applicants to apply for a waiver of certain nonstatutory program requirements that the department has established by rule for the CEBA program. The waiver of CEBA nonstatutory program requirements is available only if the funding for the CEBA project is from program funds (“old money”). The meaning of “program funds (“old money”)” is as described in subrule 175.2(3).

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ITEM 86. Amend renumbered subparagraph **175.5(2)“b”(2)** as follows:

(2) All jobs created as a result of the project have a qualifying wage threshold, ~~not including benefits~~, equal to or greater than 100 percent of the ~~average~~ county wage.

ITEM 87. Rescind renumbered paragraph **175.5(2)“c.”**

ITEM 88. Amend renumbered subrule 175.5(3) as follows:

175.5(3) ~~Request to waive HQJC average county wage calculation~~ HOJP qualifying wage threshold requirement.

a. Iowa Code section 15.335A(3) as amended by 2009 Iowa Acts, Senate File 344, section 16, authorizes a community to request a project-specific waiver from the ~~average county wage calculations~~ qualifying wage threshold requirement in order ~~for an eligible business to receive~~ to seek tax incentives ~~for an eligible business.~~

b. Upon a showing of good cause as defined in subrule ~~175.4(2)~~ 175.5(2), the board may grant a project-specific waiver from the ~~average county or regional~~ wage calculations for the remainder of ~~the~~ a calendar year based on ~~average county wage~~ or regional wage calculations brought forth by the applicant county including, but not limited to, any of the following:

- (1) The ~~average~~ county wage calculated without wage data from the business in the county employing the greatest number of full-time employees.
- (2) The ~~average~~ regional wage calculated without wage data from up to two adjacent counties.
- (3) The ~~average~~ county wage calculated without wage data from the largest city in the county.
- (4) to (6) No change.

ITEM 89. Amend renumbered subrule 175.5(4), catchwords, as follows:

175.5(4) ~~Request to waive IVF (2005) qualifying wage requirement~~ qualifying wage threshold for the 130 percent wage component of the grow Iowa values financial assistance program.

ITEM 90. Amend renumbered paragraphs **175.5(4)“a”** and **“b”** as follows:

a. ~~Iowa Code section 15G.112~~ 2009 Iowa Acts, Senate File 344, section 3, allows applicants to apply to the board for a waiver of the ~~IVF (2005) qualifying wage requirement~~ 130 percent wage component of the grow Iowa values financial assistance program.

b. Upon a showing of good cause as defined in subrule ~~175.4(2)~~ 175.5(2), the board may grant a project-specific waiver of the ~~IVF (2005) qualifying wage requirement~~ qualifying wage threshold for the 130 percent wage component of the grow Iowa values financial assistance program. The board may grant a waiver from the ~~average~~ county wage calculations based on ~~average~~ county or regional wage calculations brought forth by the applicant including, but not limited to, any of the following:

- (1) The ~~average~~ county wage calculated without wage data from the business in the county employing the greatest number of full-time employees.
- (2) The ~~average~~ regional wage calculated without wage data from up to two adjacent counties.
- (3) The ~~average~~ county wage calculated without wage data from the largest city in the county.
- (4) A qualifying wage guideline threshold for a specific project based upon unusual economic circumstances present in the city or county.
- (5) and (6) No change.

ITEM 91. Rescind renumbered paragraph **175.5(4)“c.”**

ITEM 92. Rescind renumbered subrules **175.5(5)** and **175.5(6).**

ITEM 93. Amend **261—Chapter 175**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 15, 15E and 15G as amended by 2009 Iowa Acts, Senate File 344.

ITEM 94. Amend subrule 187.2(2) as follows:

187.2(2) Contract required. The department shall prepare a contract, which includes, but is not limited to, a description of the project to be completed by the business; the jobs to be created or retained; length of the project completion period and maintenance project completion period; the project completion date and maintenance period completion date; conditions to disbursement; a requirement

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for annual reporting to the department; and the repayment requirements of the business or other penalties imposed on the business in the event the business does not fulfill its obligations described in the contract and other specific repayment provisions (“clawback provisions”) to be established on a project-by-project basis.

ITEM 95. Amend rule 261—187.3(15) as follows:

261—187.3(15) Project completion date and maintenance period completion date.

187.3(1) Projects shall be completed by the project completion date and maintained through the end of the maintenance date. The contract will establish the duration of the project period and maintenance period. Requests to change the project completion date and the maintenance period completion date shall follow the process for an amended award or contract as described in rule 261—187.4(15).

~~**187.3(2)** Projects receiving funding from programs or funding sources that have statutory project completion and maintenance periods shall comply with the requirements for that program or funding source.~~

~~**187.3(3)** 187.3(2) Projects receiving assistance from programs without statutory project completion and maintenance periods covered by this chapter shall conform to the time periods established by this rule, unless a different time period is negotiated and approved by the board or director.~~

187.3(4) 187.3(3) By the project completion date, a recipient shall have completed the project as required by the contract. The jobs and project shall be maintained through the end of the maintenance period completion date. The project completion date is calculated by the department from the end of the month during which an award is made. For example, if a CEBA award is made on June 13, 2007, the three-year project completion period date will be calculated from June 30, 2007. The project completion date for this award would be June 30, 2010. The maintenance period completion date would be June 30, 2012.

~~**187.3(5)** 187.3(4) The following table describes, by program, the length of the project completion period and the maintenance period:~~

Program	Project Completion Date Period	Maintenance Date Period	Total Contract Length
CEBA	3 years	2 more years	5 years
*PIAP	3 years	2 more years	5 years
*EVA	3 years	Until repayment obligation is fulfilled	Variable
*VAAPFAP	3 years	2 more years	5 years
EDSA	3 years		3 years
*If the project is funded with IVF(FES) or program funds (“old money”), these time periods do not apply.			
EZ	3 years	10 more years	13 years
HQJC 3-15 jobs	3 years	2 more years	5 years
HQJC 16 or more jobs	5 years	2 more years	7 years
Other Contracts in IDEED Project Portfolio (beginning 7/1/03)			
CEBA awards prior to approximately 9/1/05	3 years	Ranging from 13 more weeks to 3 more mos.; as stated in the contract	Variable
IVF(FES) direct project awards from 7/1/03 to 6/16/04	Up to 4 years or longer	Up to 6 years; as stated in the contract	Up to 10 years
NCIP	3 years	2 more years	5 years
NJIP	5 years	5 more years	10 years
<u>Grow Iowa Values Financial Assistance Program:</u>			
130% wage component	3 years	2 more years	5 years
100% wage component	3 years	2 more years	5 years
Entrepreneurial component	3 years	2 more years	5 years

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Program	Project Completion Date Period	Maintenance Date Period	Total Contract Length
<u>Infrastructure component</u>	<u>3 years</u>	<u>2 more years</u>	<u>5 years</u>
<u>Value-added agriculture component</u>	<u>3 years</u>	<u>2 more years</u>	<u>5 years</u>
<u>Disaster recovery component</u>	<u>3 years</u>	<u>2 more years</u>	<u>5 years</u>
<u>High Quality Jobs Program</u>	<u>3 years</u>	<u>2 more years</u>	<u>5 years</u>
<u>Enterprise Zone Program</u>	<u>3 years</u>	<u>2 more years</u>	<u>5 years</u>

ITEM 96. Amend rule 261—187.4(15), catchwords, as follows:

261—187.4(15) Contract ~~amendments and other situations requiring board, due diligence committee (DDC) or director approval~~ and award amendment approval procedures.

ITEM 97. Rescind subrules **187.4(2)** and **187.4(3)**.

ITEM 98. Adopt the following **new** subrule 187.4(2):

187.4(2) All award and contract amendments will be reviewed by the applicable committee identified below, and final action will be taken by the board or director, as identified in the following tables.

Key to tables:

APAC – Agricultural policy advisory committee established in Iowa Code section 15.203 as amended by 2009 Iowa Acts, Senate File 344, section 23.

BRN – Brownfield redevelopment advisory council as established in Iowa Code section 15.294.

CWD – Community and workforce development committee created by the board.

DDC – Due diligence committee established by the board pursuant to Iowa Code section 15.103(6).

LCG – Loan and credit guarantee committee established in Iowa Code section 15.103(6) as amended by 2009 Iowa Acts, Senate File 344, section 18.

TSB – Targeted small business advisory council established in Iowa Code section 15.247(8).

TCC – Technology commercialization committee established in Iowa Code section 15.116 as amended by 2009 Iowa Acts, Senate File 344, section 22.

a. *Amendments—state financial assistance programs.* The approval process to amend an award or a contract for the department’s direct financial assistance programs is as follows:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
Grow Iowa Values Financial Assistance Program:									
130% wage component				•				•	
100% wage component				•				•	
Entrepreneurial component				•				•	
Infrastructure component				•				•	
Value-added agriculture component	•							•	
Disaster recovery component				•				•	
Loan and credit guarantee program					•			•	

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PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
Other Iowa Values Fund (2009) activities:									
Marketing								•	
Labor shed study								•	
Technical assistance and information technology								•	
Opportunities and threats								•	
All other IVF assistance								•	
Innovation and Commercialization Fund:									
Demonstration Fund							•	•	
Information Technology Training Program							•	•	
Targeted Industries Internship Program							•	•	
Community College Equipment and Training Fund							•	•	
Targeted Industries Networking Fund							•	•	
Targeted Industries Student Competition Fund							•	•	
Targeted Industries Career Awareness Fund							•	•	
Lean Manufacturing Institute Program							•	•	
Supplier Capacity and Product Database Program							•	•	
Management Talent Recruitment Program							•	•	

b. *Amendments—tax credit programs.* The approval process to amend an award or a contract for the department’s tax credit programs is as follows:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
High Quality Jobs				•				•	
Enterprise Zone									
Business				•				•	

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PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
Housing									•
Film, Television, and Video Project Promotion									•
Assistive Device Tax Credits									•

c. *Amendments—federal programs.* The approval process to amend an award or a contract for the department’s federal programs is as follows:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
HOME									•
CDBG									
EDSA				•				•	
All other CDBG assistance									•
Neighborhood Stabilization Program									•

d. *Amendments—other department-administered programs.* The approval process to amend an award or a contract for other programs administered by the department is as follows:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TCC	TSB	Board	Director
Brownfield Redevelopment Program		•							•
Targeted Small Business Financial Assistance Program							•		•
Export Trade Assistance Program									•
Accelerated Career Education Program			•					•	
Targeted Jobs Withholding Tax Credit Program									•

ITEM 99. Renumber subrule **187.4(4)** as **187.4(3)**.

ITEM 100. Amend paragraphs **187.5(3)“b”** to **“e”** as follows:

b. If the department determines that the recipient is in default, the department may seek recovery of all program funds plus interest, assess penalties, negotiate alternative repayment schedules, suspend or discontinue collection efforts, and take other appropriate action as the ~~department~~ department board deems necessary.

c. Determination of appropriate repayment plan. Upon determination that the recipient has not met the contract obligations, the department will notify the recipient of the amount to be repaid to the department. If the enforcement of such penalties would endanger the viability of the recipient, the ~~department~~ department board may extend the term of the loan to ensure payback, stability, and survival of the recipient. In certain instances, additional flexibility in a repayment plan may be necessary to ensure payback, stability, and survival of the recipient. Flexibility in a repayment plan may include, but is not

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limited to, deferring principal payments or collecting monthly payments below the amortized amount. In these cases, review and approval by the board, committee or director, as applicable, are necessary before the department may finalize the repayment plan with the recipient.

d. The department shall attempt to collect the amount owed. Negotiated settlements, write-offs or discontinuance of collection efforts is subject to final review and approval by the board, committee or director, as applicable, and described in paragraph "f."

e. If the department or board refers defaulted contracts to outside counsel for collection, then the terms of the agreement between the department and the outside counsel regarding scope of counsel's authorization to accept settlements shall apply. No additional approvals by the board, committee or director shall be required.

ITEM 101. Adopt the following new paragraph **187.5(3)"f"**:

f. The tables below describe the approval procedures that shall be followed for all negotiated settlements, write-offs or discontinuance of collection efforts for state direct financial assistance programs, federal programs, and other programs administered by the department.

(1) Direct financial assistance programs:

PROGRAM	RECOMMENDATION BY:							FINAL DECISION BY:	
	APAC	BRN	CWD	DDC	LCG	TSB	TCC	Board	Director
Grow Iowa Values Financial Assistance Program:									
130% wage component				•				•	
100% wage component				•				•	
Entrepreneurial component				•				•	
Infrastructure component				•				•	
Value-added agriculture component	•							•	
Disaster recovery component				•				•	
Loan and Credit Guarantee Program					•			•	
Other Iowa Values Fund (2009) activities:									
Marketing								•	
Labor shed study								•	
Technical assistance and information technology								•	
Opportunities and threats								•	
All other IVF assistance								•	
Innovation and Commercialization Fund:									
Demonstration Fund							•	•	
Information Technology Training Program							•	•	

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ITEM 102. Amend paragraph **187.5(4)“a”** as follows:

a. Repayment. If an eligible business or eligible housing business has received incentives or assistance under the EZ program or the ~~HQJC program~~ HQJP and fails to meet and maintain any one of the requirements of the program or applicable rules, the business is subject to repayment of all or a portion of the incentives and assistance that it has received.

ITEM 103. Amend **261—Chapter 187**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 15, 15E and 15G as amended by 2009 Iowa Acts, Senate File 344.

ITEM 104. Amend rule 261—189.2(15) as follows:

261—189.2(15) January 15 31 report by IDED to legislature. ~~IDED~~ IDED's legal and compliance group will use the data it collects from businesses to prepare a report on the programs covered in 261—Chapter 173 to be included in IDED's consolidated annual report, which is due to the legislature by January ~~15~~ 31 each year pursuant to Iowa Code section 15.104(9) as amended by 2009 Iowa Acts, Senate File 344, section 20. ~~This report by the department will include the statutorily required information pursuant to the following Iowa Code reporting requirements and may also include any information about programs administered by the department:~~

1. ~~—§15.104(9) Grow Iowa values fund report required, including information about awards made under the renewable fuel infrastructure fund pursuant to Iowa Code section 15G.206.~~
2. ~~—§15.113, report on CEBA and HQJC.~~
3. ~~—§15E.111(8), report on VAAPFAP.~~

ITEM 105. Amend **261—Chapter 189**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 15, 15E and 15G as amended by 2009 Iowa Acts, Senate File 344.

[Filed Emergency 6/24/09, effective 7/1/09]

[Published 7/15/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/09.

ARC 7956B

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 36, “Film, Television, and Video Project Promotion Program,” Iowa Administrative Code.

These amendments are intended to implement 2009 Iowa Acts, Senate File 480, which makes several changes to the Film, Television, and Video Project Promotion Program. These amendments:

1. Establish application deadlines. Due to numerous program changes, including a credit amount cap, notice of procedural deadlines will be clearly posted in advance.
2. Require a minimum amount of funding prior to application approval. This new requirement will delay projects that are not yet financially viable from entering the process until they are better financed.
3. Allow the Department to charge a registration fee. 2009 Iowa Acts, Senate File 480, allows the Department to charge applicants a registration fee, which will be used to support industry training, to sponsor industry events and to market the program.
4. Allow the Department to negotiate the percentage used to calculate the benefit with a producer and investor. This provision will allow the Department to negotiate a percentage which is less than the full amount possible.
5. Allow portions of compensation paid to the principal producer, principal director, and principal cast members to become eligible expenditures. Presently, the compensation paid to the principal

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producer, principal director, and principal cast members cannot be considered a qualified expenditure. This change will allow portions of moneys paid to the principal producer, principal director, and principal cast members to become qualified expenditures if, and only if, new spending thresholds are met.

6. Require the principal producer, principal director, and principal cast members to become Iowa taxpayers. This change applies the same criteria for becoming a qualified vendor to the principal producer, principal director, and principal cast members as are applied to other vendors.

7. Limit the qualifying amount of compensation paid to all other labor and personnel. In addition to limiting the amount of qualifying compensation for the principal producer, principal director, and principal cast members, these amendments establish limits for all other labor and personnel so that these other qualified expenditures do not exceed the qualified expenditures for the principal producer, principal director, and principal cast members.

8. Allow the Department and the Department of Revenue to establish a list of negotiable expenditure items. Presently, most spending items besides compensation paid to the principal producer, principal director, and principal cast members are qualified expenditures. This change will increase the benefit to the state by allowing some spending items to qualify if, and only if, new spending thresholds are met.

9. Remove a reference to obsolete documentation. As the program has evolved, the requirement that producers use the Department's documentation was loosened to allow producers to use their own reporting documentation if the documentation is approved in advance. This change removes a reference to the original documentation requirement.

10. Spread the vendor benefit, the income exclusion, over four years. Under the existing program, qualified vendors are allowed to exclude all qualified income from their Iowa income tax liability in the year that it is earned. The change will spread the exclusion over four years at 25 percent per year. The benefit is additive so that vendors will be able to exclude 25 percent in each year of qualified earnings.

The Iowa Economic Development Board adopted the amendments on June 18, 2009.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest because 2009 Iowa Acts, Senate File 480, will become effective on July 1, 2009, and the legislative changes will apply to all projects registered on or after July 1, 2009.

The Department finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendments should be waived and the amendments be made effective on July 1, 2009, the same time that 2009 Iowa Acts, Senate File 480, became effective. These amendments confer a benefit on the public by ensuring that the program rules are updated to reflect recent statutory changes and to allow the Department to process applications for pending projects in a timely manner.

These amendments are also published herein under Notice of Intended Action as **ARC 7955B** to allow for public comment.

These amendments became effective on July 1, 2009.

These amendments are intended to implement Iowa Code sections 15.391 to 15.393 as amended by 2009 Iowa Acts, Senate File 480.

The following amendments are adopted.

ITEM 1. Amend rule **261—36.2(15)**, definition of "Act," as follows:

"Act" means ~~2007 Iowa Acts, House File 892~~ Iowa Code sections 15.391 to 15.393 as amended by 2009 Iowa Acts, Senate File 480, that ~~authorizes~~ authorize tax credits for film, television, and video projects.

ITEM 2. Amend rule 261—36.3(15) as follows:

261—36.3(15) Request for registration of a film, television, or video project. To be eligible to receive tax credits under this program, a request for registration shall be submitted to IDED. Requests for registration of projects must be received ~~at least one week prior to the commencement of the production activities in the state~~ in accordance with deadlines posted by the department. The Iowa film

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office at IDED will specify the form and content of the requests, which, at a minimum, shall document that the project:

36.3(1) to 36.3(5) No change.

36.3(6) Has commitments for at least 50 percent of the funding.

36.3(7) The department may charge a nonrefundable fee for registration of a project under the program. The fee shall be paid to the department. The amount of the fee shall equal 1/8 of 1 percent of the value of the tax credit, and 1/16 of 1 percent of the estimated credit value shall be paid upon confirmation of the project's eligibility to contract with the state under the program. The remaining balance shall be paid upon calculation of the total project qualified spending. Registration fees collected by the department under this subrule shall be used to support industry training, to sponsor industry events and to market the program. One-half of the fees collected will be used for industry training, 25 percent of the fees collected will be used to sponsor industry events and 25 percent of the fees collected will be used to market the program.

ITEM 3. Amend subrule 36.4(2) as follows:

36.4(2) Projects included on IDED's list of registered film, television, or video projects will be eligible for the tax credits authorized by the Act, determined by the department and stipulated in the project contract.

ITEM 4. Amend subrule 36.5(2) as follows:

36.5(2) *Contract required.* The department shall prepare a contract, which includes, but is not limited to, a description of the project to be completed by the business; terms and conditions for receipt of tax credit benefits; the amount of the tax credit and the repayment requirements or other penalties imposed in the event the recipient does not fulfill its obligations described in the contract.

ITEM 5. Amend paragraph **36.7(1)“b”** as follows:

b. The tax credit shall ~~equal~~ not exceed 25 percent of the qualified expenditures on a project. The department may negotiate the amount of the tax credit.

ITEM 6. Amend subrule 36.7(2) as follows:

36.7(2) *Qualified expenditures.*

a. A qualified expenditure by a taxpayer is a payment to an Iowa resident or an Iowa-based business for the sale, rental, or furnishing of tangible personal property or for services directly related to the registered project including, but not limited to:

1. to 12. No change.

13. Labor and personnel as described in 36.7(2)“b.” ~~“Labor and personnel” does not include the director, producers, or cast members other than extras and stand ins.~~

14. to 26. No change.

b. Labor and personnel. For purposes of this subrule, “labor and personnel” includes the following:

(1) Compensation that is paid to the principal producer, principal director, and principal cast members is a qualified expenditure if the principal producer, principal director, or principal cast member is an Iowa resident or an Iowa-based business and if the compensation paid meets one of the following conditions:

1. If the total of qualified expenditures is at least \$10 million but less than \$20 million, the qualifying compensation paid to each principal producer, principal director, and principal cast member shall not exceed \$250,000 each.

2. If the total of qualified expenditures is at least \$20 million, the qualifying compensation paid to each principal producer, principal director, and principal cast member shall not exceed \$1 million each.

(2) Compensation that is paid to personnel other than the principal producer, principal director, or principal cast members qualifies if the compensation meets one of the following conditions:

1. If the total of qualified expenditures is less than \$10 million, the qualifying compensation paid to labor and personnel other than the principal producer, the principal director, and principal cast members shall not exceed \$150,000 for each detailed budget line item or for each budget accounting subcode.

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2. If the total of qualified expenditures is at least \$10 million but less than \$20 million, the qualifying compensation paid to labor and personnel other than the principal producer, the principal director, and the principal cast members shall not exceed \$200,000 for each detailed budget line item or for each budget accounting subcode.

3. If the total of qualified expenditures is at least \$20 million, the qualifying compensation paid to labor and personnel other than the principal producer, the principal director, and the principal cast members shall not exceed \$300,000 for each detailed budget line item or for each budget accounting subcode.

c. The department and the department of revenue shall establish a list of eligible expenditures and negotiable expenditures.

ITEM 7. Amend paragraph **36.7(3)“a”** as follows:

a. After ~~verifying project completion and verification of~~ the eligibility for a tax credit under this program, IDED shall issue a film, television, and video project promotion program tax credit certificate to be attached to the taxpayer’s tax return.

ITEM 8. Amend subrule 36.7(4) as follows:

36.7(4) Approval of tax credit—reporting. All qualified expenditures made for a registered project must be submitted ~~on Form Z, Schedule of Qualified Expenses, or~~ in a format approved by the department prior to production once the producer has completed the project. No additional claims will be accepted once the Schedule of Qualified Expenses or previously approved documentation has been received by the Iowa film office.

ITEM 9. Amend paragraph **36.8(1)“b”** as follows:

b. The tax credit shall ~~equal~~ not exceed 25 percent of the investment in the project. Under rule 261—36.8(15), an individual may claim a tax credit of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the partnership, limited liability company, S corporation, estate, or trust.

ITEM 10. Amend paragraph **36.8(2)“a”** as follows:

a. After ~~verifying project completion and verification of~~ the eligibility for a tax credit under this program, the Iowa department of economic development shall issue a film, television, and video project promotion program tax credit certificate to be attached to the taxpayer’s tax return.

ITEM 11. Amend subrule 36.9(1) as follows:

36.9(1) For ~~tax years beginning on or after January 1, 2007,~~ the tax year in which a qualified expenditure occurred, and for the ensuing three tax years, a taxpayer may claim a reduction in adjusted gross income ~~is allowed~~ not to exceed in a tax year 25 percent of the amount of the qualified expenditure for purposes of taxes imposed in Iowa Code chapter 422, divisions II and III, for payments received from the sale, rental, or furnishing of tangible personal property or services directly related to the production of a project registered under this chapter which meets the criteria of a qualified expenditure under rule 261—36.7(15).

ITEM 12. Amend **261—Chapter 36**, implementation sentence, as follows:

These rules are intended to implement ~~2007 Iowa Code Supplement sections~~ Iowa Code sections 15.391 to 15.393 as amended by 2009 Iowa Acts, Senate File 480.

[Filed Emergency 6/22/09, effective 7/1/09]

[Published 7/15/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/09.

ARC 7954B

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 new Chapter 76, “Aggregate Tax Credit Limit for Certain Economic Development Programs,” Iowa Administrative Code.

These rules implement the new program authorized by 2009 Iowa Acts, Senate File 483. The rules describe the tax credit cap, the programs subject to the cap, the procedures for allocating the cap, and the reporting requirements.

The Iowa Economic Development Board adopted these rules on June 18, 2009.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable and contrary to the public interest because without the procedure for allocating the aggregate tax credit limit, as required by law, the Department would not be able to make awards to constituents under the programs subject to the cap.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these rules should be waived and the rules be made effective on July 1, 2009, to correspond to the start of the state’s fiscal year. These rules confer a benefit on the public by not disrupting the operation of the programs subject to the tax credit cap.

These rules are also published herein under Notice of Intended Action as **ARC 7953B** to allow for public comment.

These rules became effective on July 1, 2009.

These rules are intended to implement 2009 Iowa Acts, Senate File 483.

The following amendment is adopted.

Adopt the following new 261—Chapter 76:

CHAPTER 76

AGGREGATE TAX CREDIT LIMIT FOR CERTAIN ECONOMIC DEVELOPMENT PROGRAMS

261—76.1(83GA,SF483) Authority. The authority for establishing rules governing the aggregate tax credit limit for certain economic development programs under this chapter is 2009 Iowa Acts, Senate File 483.

261—76.2(83GA,SF483) Purpose. The purpose of the aggregate tax credit limit for certain economic development programs is to limit the amount of tax credits awarded during a fiscal year.

261—76.3(83GA,SF483) Definitions.

“*Board*” means the Iowa economic development board established in Iowa Code section 15.103.

“*Department*” means the Iowa department of economic development.

261—76.4(83GA,SF483) Amount of the tax credit cap. The department shall not authorize tax credit awards made under the programs identified in rule 261—76.5(83GA,SF483) in excess of \$185 million per fiscal year.

261—76.5(83GA,SF483) Programs subject to the cap.

76.5(1) Awards made under the following economic development programs are subject to the tax credit cap:

- a. The assistive device tax credit program.
- b. The enterprise zone program (business and housing awards).
- c. The film, television, and video project promotion program.
- d. The high quality jobs program.

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

76.5(2) In addition to the programs listed in subrule 76.5(1), the corporate tax research credit under the quality jobs enterprise zone program is also subject to the tax credit cap pursuant to 2009 Iowa Acts, Senate File 483, but this program is no longer utilized by the department. The quality jobs enterprise zone program was replaced with the high quality jobs program.

261—76.6(83GA,SF483) Allocating the tax credit cap. At a scheduled meeting of the board prior to the start of a fiscal year, the board will allocate \$185 million among the programs listed in rule 261—76.5(83GA,SF483). The board is not required to allocate a portion of the cap to every program listed. The board may allocate a portion of the cap that is shared by other programs with a common purpose, for example, the business awards made under the enterprise zone program and high quality jobs program. Throughout the fiscal year, the board may review the allocation as necessary, but shall review the allocation at least one time during the fiscal year. Based on its review, the board may make adjustments to the allocation as deemed necessary.

261—76.7(83GA,SF483) Exceeding the cap. When the department recommends one or more awards that, when combined with awards already approved during the fiscal year, exceed the \$185 million cap, the board may authorize the department to exceed the cap and approve the award. The aggregate award amount in excess of \$185 million will be counted against the tax credit cap for the following fiscal year.

261—76.8(83GA,SF483) Reporting to the department of revenue. The department shall submit an initial report to the department of revenue by August 15, 2009, which shows the initial allocation of the \$185 million cap. At the start of each subsequent fiscal year, the department shall prepare a report to summarize final allocation for the fiscal year that just ended, the total amount of awards made under each program identified in rule 261—76.5(83GA,SF483) during that fiscal year, and the initial allocation for the current fiscal year. The report shall be submitted to the department of revenue on or before August 15 of each year.

These rules are intended to implement 2009 Iowa Acts, Senate File 483.

[Filed Emergency 6/22/09, effective 7/1/09]

[Published 7/15/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/09.

ARC 7949B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 314, "Renewable Fuel Infrastructure Program Administration," Iowa Administrative Code.

This amendment is intended to address the situation in which a project is already completed when an award is made. The amendment changes the starting date for calculating the three- or five-year period during which the grant recipient must continue to dispense renewable fuel.

The current rules provide that a grant recipient must continue to dispense renewable fuel for a period of three or five years (duration varies by program component) from project completion. The three- or five-year period will have passed for projects already completed when the award is made. In such cases, the day the grant recipient signs the contract with IDED, the recipient will have met the three- or five-year "continued use of renewable fuel" requirement because the requirement is tied to the date of project completion (a date that has already occurred), not to a date stated in the contract.

The final amendment provides that, for completed projects, the three- or five-year continued-use obligation begins on the date of the first disbursement of grant funds by IDED, not on the date of project

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completion. For projects under construction or not yet begun, the three- or five-year continued-use obligation begins on the date the project is completed.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7763B** on May 6, 2009. A public hearing was held on May 26, 2009. No comments concerning the proposed amendment were received from the public. There are no changes as a result of the public hearing. The final amendment is identical to the proposed amendment that was published under Notice of Intended Action.

The Iowa Economic Development Board adopted the amendment June 18, 2009.

The Department finds, pursuant to Iowa Code section 17A.5(2)“b,” that the normal effective date of the amendment should be waived and the amendment be made effective upon filing with the Administrative Rules Coordinator on June 19, 2009. The emergency implementation is necessary because Renewable Fuel Infrastructure Board-approved completed projects cannot fulfill a contract requirement without this amendment. The amendment ensures that each contract between the Department and a recipient is fulfilled according to its three- or five-year term requirement.

The Department is taking the following steps to notify potentially affected parties of the effective date of the rule: publishing the final rules in the Iowa Administrative Bulletin, providing free copies on request, and having copies available wherever requests for information about the program are likely to be made.

This amendment is intended to implement Iowa Code sections 15G.201 to 15G.206.

This amendment became effective on June 19, 2009.

The following amendment is adopted.

Amend paragraph **314.5(2)“e”** as follows:

~~e. Recite the penalty for the storage or dispensing, within the stated time frame of three years or five years from submission of verified documentation of project completion, of motor fuel other than the type of renewable fuel for which the grant was awarded.~~

(1) Awards for projects under construction or not yet started. The three- or five-year obligation to continue dispensing renewable fuel begins on the date the project is completed.

(2) Awards for projects already completed. The three- or five-year obligation to continue dispensing renewable fuel begins on the date the department issues the first disbursement of grant funds, not on the date of project completion.

[Filed Emergency After Notice 6/19/09, effective 6/19/09]

[Published 7/15/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/09.

ARC 7943B

HISTORICAL DIVISION[223]

Adopted and Filed Emergency

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

The amendments to Chapter 48 are necessary to clarify changes to this program resulting from changes in the law enacted by 2009 Iowa Acts, Senate File 481. These amendments will permit developers to claim tax credits for preservation work on qualified buildings. Their work will employ people, stimulate economic growth, help to restore historic properties in disaster areas, and provide housing and business spaces in the completed projects.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are unnecessary, as public comment was sought and received prior to the rule making and the amendments confer a benefit to constituents. The amendments must be filed immediately to allow applicants time to prepare for a July 1 filing window. There is an immediate need for applicants that

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will bring a significant number of jobs to the state and for applicants that need to commence work on buildings that were adversely affected by disasters in 2008.

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and these amendments should be made effective on June 16, 2009, as they confer a benefit on and remove a restriction from the constituents. There will be an immediate positive economic impact on the state as these amendments will help constituents renovate historic buildings that were damaged in 2008 state and federal disaster areas.

The Department adopted these amendments on June 16, 2009.

These amendments became effective on June 16, 2009.

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

The following amendments are adopted.

ITEM 1. Amend rule ~~223—48.2(303,404A)~~, definitions of “Commercial property,” “Mixed-use property,” “Residential property” and “Tax credit year,” as follows:

“*Commercial property*” means a building used for retail, office, or other ~~business~~ uses not otherwise classified as residential use pursuant to the Iowa state building code defined in this rule.

“*Mixed-use property*” means a ~~an~~ eligible property that includes three or more residential units and may also contain a commercial property component in the same building.

“*Residential property*” means a building with two or fewer residential units, with each unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.

“*Tax credit year*” means the tax year in which a tax credit certificate holder is eligible to redeem a tax credit certificate based on the availability of tax ~~credit funds~~ credits for an eligible project.

ITEM 2. Adopt the following new definitions in rule ~~223—48.2(303,404A)~~:

“*Applicant*” means the person, partnership, corporation, qualifying nonprofit organization, or public agency applying for the tax credit. In most cases, this will be the entity holding a fee-simple interest in the property or any other person or entity recognized by the Internal Revenue Code for purposes of the applicable tax benefits. If an application is made by someone other than the fee-simple owner, the application must be accompanied by a written statement signed by the fee-simple owner indicating the fee-simple owner does not object to the applicant claiming the tax credit.

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

“*Disaster recovery project*” means an eligible property located in an area declared a disaster area by the governor of Iowa or by the president of the United States. The property must have been physically impacted as a result of the disaster.

“*Employment base*” means the number of jobs that exist at an eligible property on the date part one of the application is approved.

“*New permanent jobs*” means the number of new jobs that exist at an eligible property two years after the tax credit certificate is issued. New permanent jobs are calculated as those over and above the employment base.

“*Placed in service*” means the date on which a building receives a certificate of occupancy from the applicable city or county official or the date on which the building is placed in a condition or state of readiness and availability for a specifically assigned function, whether in a trade or business, in the production of income, in a tax-exempt activity, or in a personal activity.

“*Qualifying nonprofit organization*” means an organization, other than governmental bodies, described in Section 501 of the Internal Revenue Code unless the exemption is denied under Section 501, 502, 503 or 504 of the Internal Revenue Code.

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ITEM 3. Amend rule 223—48.4(303,404A) as follows:

223—48.4(303,404A) Qualified and nonqualified rehabilitation costs.

48.4(1) Qualified rehabilitation costs are as defined in Section 47, rehabilitation credit, of the Internal Revenue Code. ~~To view Section 47 online, visit www.nps.gov/history/local-law/FHPL_RehabCredit%20.pdf.~~

48.4(2) to 48.4(4) No change.

48.4(5) Only qualified rehabilitation costs incurred during the 24-month period immediately prior to the ~~project completion date~~ the building was placed in service may be used for determination of historic tax credits, excluding any costs incurred prior to inception of this program.

a. No change.

b. ~~Owners~~ Applicants who undertake rehabilitation projects without prior approval from the SHPO do so at their own risk.

48.4(6) No change.

ITEM 4. Amend rule 223—48.5(303,404A) as follows:

223—48.5(303,404A) Rehabilitation cost limits and amount of credit.

48.5(1) and 48.5(2) No change.

48.5(3) For residential or mixed-use property, the amount of rehabilitation costs shall not exceed \$100,000 per residential unit excluding any qualified rehabilitation costs for the public or commercial space and excluding any qualified rehabilitation costs for the weather surfaces of the building envelope including exterior windows and doors.

48.5(4) No change.

48.5(5) Applicants may develop subsequent projects for qualified rehabilitation costs not previously included in a tax credit application for a building which had tax credits previously reserved or awarded. Each subsequent application shall meet eligibility requirements as stated in subrules 48.5(1) to 48.5(4) and shall be reviewed individually and independently. ~~The cumulative total for applications for buildings funded through the small projects funding queue shall not exceed \$500,000. Any application for a building previously funded through the small projects funding queue that causes the cumulative total for that building to exceed \$500,000 may be considered for funding in accordance with rule 223—48.8(303,404A).~~

a. Applicants who select to phase their work under the federal historic tax credit program may submit individual state applications for each phase of the federal project. Phased federal projects shall not apply for the small projects fund.

b. For applicants receiving credits through the small projects fund, the cumulative total for multiple applications for a single building shall not exceed \$500,000 in qualified rehabilitation costs. The SHPO will not accept an application for a building previously receiving credits through the small projects fund that causes the cumulative total to exceed \$500,000. The applicant may either:

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

(2) Apply for only the qualified rehabilitation costs up to a cumulative total of \$500,000. If the applicant has already received and claimed a tax credit certificate on the applicant's annual tax return, the applicant shall select this option.

ITEM 5. Amend rule 223—48.6(303,404A) as follows:

223—48.6(303,404A) Application and review process.

48.6(1) All applications for historic tax credits shall be on the current state fiscal year's forms and in accordance with the current state fiscal year's instructions provided by the SHPO. All applications must be complete and include all required supporting documentation before being considered for review and before beginning the review periods outlined in subrule

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48.6(3). Application forms are available from the Tax Incentives Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319-0290. Applications may also be downloaded from the following Web site: www.state.ia.us/government/dea/shsi/preservation/financial_assistance/state_tax_credit/ia_state_tax_credit.html department of cultural affairs—state historical society of Iowa Web site.

a. Part one of the application identifies the eligibility of the property for the historic tax credit. Part one of the application is accepted year-round. Part one of the application must include all requested information. SHPO staff shall notify the applicant ~~in writing~~ if part one of the application is incomplete. Incomplete applications will not be processed.

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

c. Part three of the application provides the information and documentation required to request certification of project completion and includes an economic impact questionnaire. Part three of the application shall be submitted within six months of the date on which the building is placed in service or, if the project is complete, part three of the application may be submitted simultaneously with part two of the application. Part three of the application must include all requested information including certification in accordance with subrule 48.4(6). SHPO staff shall notify the applicant ~~in writing~~ if part three of the application is incomplete. Incomplete applications will not be processed. Incomplete applications may be subject to abandonment as outlined in rule ~~223—48.11(303,404A) 223—48.12(303,404A).~~

d. Amendments to applications. An applicant shall amend an approved part one of the application or an approved part two of the application if the property changes ownership or if the applicant's name or address changes. An applicant may amend an approved part two of the application to notify SHPO of, and to request review of, modifications to the original description of the rehabilitation project. Amendments to part two of the application shall not include modification of the rehabilitation costs estimated in the originally approved part two of the application. Amendments to part two of the application shall not result in the reservation of additional tax credits for a project.

e. An application will not be accepted for a building placed in service more than five years before part two of the application is submitted.

48.6(2) No change.

48.6(3) ~~SHPO staff shall review and respond in writing to part two or part three of each completed application or to amendments to part two of an application (see rule 223—48.8(303,404A)) within 90 days of receipt.~~ SHPO staff shall review and respond to each part of a completed or amended application within 90 days of receipt when submitted pursuant to subrule 48.6(1). If an applicant submits more than one part of the application simultaneously, SHPO staff shall review each part sequentially and the 90-day review period for part two or three of the application will begin upon approval of the previous part.

a. ~~If an applicant submits more than one part of an application simultaneously, SHPO staff shall review each part sequentially.~~

b. ~~If an applicant submits more than one part of an application simultaneously, SHPO staff shall respond in writing to each completed application part sequentially, within 90 days of approval of the previous part of the application.~~

48.6(4) A part two of an application that includes the same scope of work as a rehabilitation project which qualifies for the federal rehabilitation credit under Section 47 of the Internal Revenue Code shall automatically be approved when submitted reviewed in accordance with ~~rule 223—48.8(303,404A)~~ subrule 48.6(7) and to the extent that all historic tax credits appropriated for the fiscal year have not already been reserved.

48.6(5) Response to application parts.

a. No change.

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b. Review of part two of the application shall result in one of three responses which may be provided to the department of revenue:

(1) and (2) No change.

(3) The rehabilitation described in part two of the application is not consistent with the historic character of the property or the district in which it is located, and the project does not meet the Standards. The application will not be approved and SHPO will not reserve tax credits for the project.

c. Review of part three of the application shall result in one of two responses which may be provided to the department of revenue:

(1) No change.

(2) The rehabilitation is not consistent with the historic character of the property or the district in which it is located, and the project does not meet the Standards. If the work cannot be corrected to meet the Standards, the SHPO shall recapture the tax credit reservation in accordance with the provisions of rule 223—48.12(303,404A).

d. No change.

48.6(6) No change.

48.6(7) Approval of part two of the application.

a. Upon approval of part two of the application with no conditions, the SHPO shall reserve tax credits for the project in an amount equal to 25 percent of the estimated qualified rehabilitation costs for the ~~next available tax credit year~~ earliest year in which tax credits are available in the appropriate fund, and the applicant may proceed to implement the project.

b. Upon approval of part two of the application with conditions, the SHPO shall reserve tax credits for the project in an amount equal to 25 percent of the estimated qualified rehabilitation costs for the ~~next available tax credit year~~ earliest year in which tax credits are available in the appropriate fund. The applicant may proceed to implement the project, and the applicant shall document compliance with the conditions.

c. No change.

48.6(8) Approval of part three of the application. Upon approval of part three of the application, the SHPO shall issue a tax credit certificate to the applicant in an amount equal to 25 percent of the qualified rehabilitation costs as estimated in part two of the application for the tax credit year originally reserved for the project upon approval of part two of the application, unless the qualified rehabilitation costs in part three of the application differ from the estimated qualified rehabilitation costs in part two of the application.

a. If the qualified rehabilitation costs documented in part three of the application are less than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue a certificate in an amount equal to 25 percent of the final qualified rehabilitation costs and return any unused tax credits to the available tax credit pool for other projects in the same funding queue tax credit fund from which they were reserved.

~~*b.* If the qualified rehabilitation costs documented in part three of the application are greater than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue a tax credit certificate to the applicant in an amount equal to 25 percent of the documented qualified rehabilitation costs that exceed the qualified rehabilitation costs estimated in part two of the application for the next available tax credits in the same funding queue from which tax credits were initially awarded according to procedures established in rule 223—48.8(303,404A).~~

b. For projects with tax credits reserved from the small projects fund and final qualified rehabilitation costs of \$500,000 or less: If the final qualified rehabilitation costs documented in part three of the application are greater than the qualified rehabilitation costs estimated in part two of the application, the SHPO shall issue tax credit certificates totaling 25 percent of the final qualified rehabilitation costs, with the initial tax credit certificate issued in the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the small projects fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

c. For projects with tax credits reserved from the small projects fund and final qualified rehabilitation costs over \$500,000: The SHPO shall notify the applicant that the applicant may either:

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

(2) Claim only the final qualified rehabilitation costs up to \$500,000. If the applicant chooses this option, the SHPO shall issue tax credit certificates totaling no more than \$125,000 for the project, with the initial tax credit certificate issued in the amount originally reserved for the project and the remainder for the earliest year in which tax credits are available in the small projects fund or, if no tax credits are available, in accordance with rule 223—48.8(303,404A).

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

ITEM 6. Adopt the following **new** subrules 48.6(9) and 48.6(10):

48.6(9) Disaster recovery projects. An applicant may apply for the disaster recovery fund as described in subrule 48.7(3) if the project meets the following requirements:

a. The initial submittal of part two of the application shall be made no later than the first filing window (see subrule 48.8(2)) that occurs after the five-year anniversary of the disaster declaration date. This time period may be waived in accordance with Iowa Code section 17A.9A. Petitions for waivers shall be directed to the Director, Department of Cultural Affairs, 600 E. Locust Street, Des Moines, Iowa 50319.

b. Disasters declared before January 1, 2008, will not be considered.

48.6(10) Projects creating new permanent jobs. An applicant may apply for the new permanent jobs fund as described in subrule 48.7(4) if the applicant meets the following requirements:

a. The applicant shall document the employment base for an eligible property on the date part one of the application is approved;

b. The applicant must provide information to SHPO documenting the creation of at least 500 new permanent jobs within two years of the date on which part three of the application is approved. This information shall be verified by the Iowa department of economic development using the process outlined in 261—Chapter 188, Iowa Administrative Code. If the Iowa department of economic development is unable to verify the number of new permanent jobs required, tax credits claimed by the applicant will be subject to repayment to the department of revenue and unclaimed credits shall be unavailable; and

c. The applicant (and any leaseholders or tenants, if applicable) must enter into a contract with the SHPO specifying the employment base, reporting mechanisms required to document 500 new permanent jobs, applicable dates for reporting, and the penalty incurred if reporting requirements are not met. If the contract is not executed before the building is placed in service, the SHPO shall recapture any tax credits reserved in accordance with rule 223—48.12(303,404A).

ITEM 7. Amend rule 223—48.7(303,404A) as follows:

223—48.7(303,404A) Funding queues Tax credit funds.

48.7(1) *The small projects fund.* The SHPO shall reserve 10 percent of ~~available tax credits~~ the tax credit allocation for any tax credit year in a small projects ~~funding queue for single projects with estimated fund for projects with final~~ qualified rehabilitation costs totaling \$500,000 or less.

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

b. If the small projects ~~funding queue fund~~ fund is fully reserved ~~before the end of a state fiscal year,~~ any applications for small projects received after full reservation of the small projects ~~funding queue~~

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fund may be eligible for the cultural and entertainment district (CED) funding queue or the statewide funding queue statewide fund.

48.7(2) *The cultural and entertainment district and great places fund.* The SHPO shall reserve 40 percent of available tax credits the tax credit allocation for any tax credit year in a CED funding queue cultural and entertainment district and great places project (CED-GP) fund for projects located in cultural and entertainment districts certified in accordance with Iowa Code section 303.3B or for projects identified in Iowa great places agreements developed in accordance with Iowa Code section 303.3C.

a. — At the end of each state fiscal year, any funds in the CED funding queue that have not been reserved for projects located in cultural and entertainment districts certified in accordance with Iowa Code section 303.3B or for projects identified in Iowa great places agreements developed in accordance with Iowa Code section 303.3C shall be transferred to the statewide funding queue for other projects.

b. — If the CED funding queue is fully reserved before the end of a state fiscal year, any applications for projects located in cultural and entertainment districts certified in accordance with Iowa Code section 303.3B or for projects identified in Iowa great places agreements developed in accordance with Iowa Code section 303.3C received after full reservation of the CED funding queue shall be eligible for the statewide funding queue.

48.7(3) *The disaster recovery fund.* The SHPO shall reserve 20 percent of the tax credit allocation for any tax credit year in a disaster recovery fund for projects located in an area declared a disaster area by the governor of Iowa or by the president of the United States. The eligible property must have been physically impacted as a result of the natural disaster as documented in accordance with the current state fiscal year's forms and instructions. The initial application for the project must be submitted within the time frame provided by subrule 48.6(9).

48.7(4) *The new permanent jobs fund.* The SHPO shall reserve 20 percent of the tax credit allocation for any tax credit year in a new permanent jobs fund for projects that involve the creation of more than 500 new permanent jobs within two years of the date on which part three of the application is approved.

48.7(3) 48.7(5) *The statewide fund.* The SHPO shall reserve 50 percent the remaining percentage of available tax credits in a statewide funding queue for any tax credit year the tax credit allocation for any tax year in a statewide fund, which is to be used for eligible projects throughout the state of Iowa. If the statewide fund is fully reserved before the end of the state fiscal year, subsequent applications will be accepted utilizing the procedures in rule 223—48.8(303,404A).

48.7(6) *Fund selection.* Part two of the application shall clearly indicate the fund for which the applicant is applying. Only one fund may be selected. Any applications not indicating a specific fund shall be considered for the statewide fund. If an application is not eligible for the fund selected, it shall be considered for the statewide fund.

48.7(7) *Disposition of unreserved credits.* In reference to the new permanent jobs fund, CED-GP fund, and disaster recovery fund, at the end of the filing window in any fiscal year, any tax credits that have not been reserved will be reallocated in the same fiscal year as follows:

a. Unreserved CED-GP fund and new permanent jobs fund credits will be reallocated to the disaster recovery fund.

b. Unreserved disaster recovery fund credits will be reallocated to the statewide fund.

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

ITEM 8. Amend rule 223—48.8(303,404A) as follows:

223—48.8(303,404A) Sequencing of applications for review.

48.8(1) *Order of review.* The SHPO anticipates the receipt of a large number of applications for historic tax credits for projects with qualified rehabilitation costs in excess of \$500,000 at the beginning of each state fiscal year. At the start of each state fiscal year, the SHPO will utilize a project review sequencing and prioritization system to establish the order in which applications will be reviewed.

a. Applications for projects with qualified rehabilitation costs under of \$500,000 making application or less applying for credits from the small project funding queue projects fund will be

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accepted and reviewed throughout the calendar year until all available credits from that ~~funding queue~~ fund are reserved. When all available credits are reserved from the small ~~project funding queue~~ projects fund, subsequent applications will be accepted utilizing the procedures in subrules 48.8(1) to 48.8(6) ~~for projects with qualified rehabilitation costs in excess of \$500,000~~ 48.8(2) to 48.8(7).

b. If all available credits are reserved before review of all projects submitted within the filing window specified in subrule 48.8(2), applications not reviewed will be returned to the applicant.

~~48.8(2) Filing window. Projects with qualified rehabilitation costs documented in part three of the application in excess of the estimated rehabilitation costs in part two pursuant to paragraph 48.6(8) "b" and Part two~~ applications for state historic tax credits received during the first ten working days of the state fiscal year shall be included in a project review sequencing system to determine the order in which they will be reviewed. The filing window for applications submitted in July 2009 will be extended to August 7, 2009.

~~48.8(3) Initial sequencing process.~~ An initial sorting process based on the status of the project application at the start of the state fiscal year will be used to associate applications with the appropriate initial sequencing category. Following initial sorting into a category and subcategory, each application within the assigned category and subcategory will be sequenced in accordance with ~~rule 223—48.8(303,404A)~~ subrule 48.8(4).

a. Category A projects do not need to be resubmitted during the filing window and are comprised of two subcategories in the following order:

(1) Projects reviewed in the previous year's sequencing and review process that did not receive a reservation for the full 25 percent of their qualified rehabilitation costs.

(2) ~~projects~~ Projects with final qualified rehabilitation costs documented in part three of the application in excess of the estimated rehabilitation costs in part two pursuant to paragraph 48.6(8) "b" and which could not be otherwise reserved from available credits in the appropriate ~~funding queue~~ fund.

b. Category B projects are comprised of projects for which part two of a state historic tax credit application was submitted during any previous year's filing window, as verified by records maintained at the SHPO, and was included in that year's sequencing system, and did not receive a tax credit reservation. Category B projects must be resubmitted during the current year's filing window and must specify a fund pursuant to subrule 48.7(6). Category B projects will be divided into subcategories ~~according to the state fiscal year of original submission.~~ arranged in the following order:

(1) Projects will be included in a subcategory for the state fiscal year of original submission provided the project was included in each successive state fiscal year's sequencing system and did not receive a tax credit reservation. ~~Category B projects must be resubmitted during the present year's filing window.~~ These subcategories will be arranged chronologically beginning with the earliest state fiscal year.

(2) Any projects for which applications were not submitted in successive state fiscal years will be included in a subcategory after those defined in subparagraph 48.8(3) "b" (1).

~~e.~~ ~~Category C projects are comprised of projects with part two of a state historic tax credit application that includes the same scope of work approved for federal rehabilitation tax credits, as documented by a signed part two of the federal tax credit application approved prior to the first business day of the state fiscal year, and applications with rehabilitation costs in excess of \$500,000 which are not eligible for the federal program. Applications eligible for this category must include one of the following:~~

~~(1) A new part two of the application with part one of the application already on file;~~

~~(2) New parts one and two of the application; or~~

~~(3) New parts one, two and three of the application.~~

d. c. Category D C projects are comprised of an entirely new part two of a state historic tax credit application not meeting the requirements for any other category and having been received within the specified filing window. Projects may consist of parts one and two of the application, parts two and three of the application with a part one having already been submitted, or parts one, two and three of the application. Category C projects must be submitted during the current year's filing window and must specify a fund pursuant to subrule 48.7(6).

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48.8(4) *Secondary sequencing process.* Using a random number generator, SHPO staff will assign unique, random numbers to all applications that are eligible for inclusion in the review sequencing system within each category and subcategory of the initial sequencing system. Applications within each category, ~~and subcategory,~~ shall then be placed in numeric order from lowest to highest. SHPO staff shall then create a master ~~review~~ sequence list, with category A applications, ~~reviewed~~ arranged by subcategory, sequenced first; category B applications, arranged by subcategory ~~starting with the earliest state fiscal year of original submission,~~ reviewed sequenced next; and category C applications ~~reviewed next;~~ and category D applications ~~reviewed~~ sequenced last.

48.8(5) No change.

48.8(6) *Outside observer.* The initial sequencing process, the secondary sequencing process, and the development of the master ~~review~~ sequence list will be observed and certified by an official state witness.

ITEM 9. Adopt the following new subrule 48.8(7):

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

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

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

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

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

ITEM 10. Amend rule 223—48.9(303,404A) as follows:

223—48.9(303,404A) Reserved tax credits.

48.9(1) Upon written approval of part two of the project application, the SHPO shall reserve an estimated tax credit under the name of the applicant(s) in an amount equal to 25 percent of the estimated qualified rehabilitation costs for the ~~next available tax credit year~~ earliest year in which tax credits are available.

48.9(2) and **48.9(3)** No change.

ITEM 11. Adopt the following new subrule 48.9(4):

48.9(4) Of the amount of tax credits that may be reserved in state fiscal years 2010, 2011, and 2012:

a. For state fiscal year 2010, SHPO will not reserve more than \$20 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2009. SHPO will not reserve more than \$30 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2010.

b. For state fiscal year 2011, SHPO will not reserve more than \$20 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2010. SHPO will not reserve more than \$30 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2011.

c. For state fiscal year 2012, SHPO will not reserve more than \$20 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2011. SHPO will not reserve more than \$30 million worth of tax credits that can be claimed on a tax return for a taxable year beginning on or after January 1, 2012.

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ITEM 12. Amend rule 223—48.10(303,404A) as follows:

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

48.10(1) No change.

48.10(2) In lieu of commencement of actual construction prior to the end of the state fiscal year in which the SHPO approved part two of the application, an applicant may notify the SHPO that the project identified in part two of the application was awarded low-income housing tax credits (LIHTC) from the Iowa finance authority in the same state fiscal year in which the SHPO approved part two of the application.

48.10(3) In the event actual construction on a project does not commence prior to the end of the state fiscal year in which the SHPO approved part two of the application in accordance with subrule 48.10(1) or 48.10(2), the SHPO shall recapture the tax credit reservation ~~and utilize those tax credit funds for additional applications~~ in accordance with the provisions of rule ~~223—48.8(303,404A)~~ 223—48.12(303,404A).

ITEM 13. Rescind rule 223—48.11(303,404A) and adopt the following **new** rule in lieu thereof:

223—48.11(303,404A) Project completion.

48.11(1) Once a tax credit reservation is made for a project, construction must be completed and the building must be placed in service within 36 months of the date on which part two of the application is approved. For projects with tax credits reserved prior to July 1, 2009, construction must be completed and the building must be placed in service on or before June 30, 2011. The applicant must submit part three of the application within six months of the date on which the building is placed in service regardless of the 36-month deadline, unless part three of the application is submitted simultaneously with part two.

48.11(2) In the event actual construction on a project is not completed and the building is not placed in service within the time period allowed in accordance with subrule 48.11(1), the SHPO shall recapture the tax credit reservation in accordance with the provisions of rule 223—48.12(303,404A).

ITEM 14. Rescind rule 223—48.12(303,404A) and adopt the following **new** rule in lieu thereof:

223—48.12(303,404A) Abandonment and recapture of tax credit reservation.

48.12(1) *Project abandonment due to inability to meet commencement deadline.* If the applicant has not provided the SHPO documentation of project commencement in accordance with rule 223—48.10(303,404A), the SHPO shall, by registered U.S. mail or courier sent to the last-known address of the applicant, request that the appropriate documentation be filed within 30 days of the date of the letter. If the SHPO has not received the documentation by the 30-day deadline, then the SHPO shall notify the applicant by registered U.S. mail or courier that the project has been abandoned and the tax credit reservation has been recaptured. If either letter is returned as undeliverable, the letter shall be filed and the tax credit reservation processed in accordance with subrule 48.12(5). Application processing fees for part two of the application as allowed by rule 223—48.16(303,404A) will not be returned.

48.12(2) *Project abandonment due to inability to meet project completion deadline.* If the applicant has not provided the SHPO documentation of project completion in accordance with rule 223—48.11(303,404A), the SHPO shall, by registered U.S. mail or courier sent to the last-known address of the applicant, request that part three of the application be filed within 30 days of the date of the letter. If the SHPO has not received part three of the application by the 30-day deadline, then the SHPO shall notify the applicant by registered U.S. mail or courier that the project has been abandoned and the tax credit reservation has been recaptured. If either letter is returned as undeliverable, the letter shall be filed and the tax credit reservation processed in accordance with subrule 48.12(5). Application processing fees for part two of the application as allowed by rule 223—48.16(303,404A) will not be returned.

48.12(3) *Project abandonment at the request of an applicant.* An applicant may choose to abandon tax credits reserved in accordance with subrule 48.6(7) at any time after the date on which the tax credit was reserved. A tax credit reservation may be voluntarily abandoned for any reason, including

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abandonment of a reservation from the small projects fund for consideration in another fund in accordance with paragraph 48.5(5) “b” or paragraph 48.6(8) “c.” Submittal of a new application will require the submittal of a new processing fee. Processing fees for the original part two application(s) as allowed by rule 223—48.16(303,404A) will not be returned. To abandon a tax credit reservation, the applicant shall send a letter to the SHPO requesting that the tax credit project be abandoned. The SHPO shall notify the applicant by registered U.S. mail or courier that the project has been abandoned and the tax credit reservation has been recaptured. SHPO shall process the tax credit reservation in accordance with subrule 48.12(5).

48.12(4) Tax credit recapture if part three of the application is not approved. If as part of the SHPO review of part three of the application pursuant to subrule 48.6(5) rehabilitation work is found to be inconsistent with the historic character of the property or the district in which it is located and the applicant is unwilling or unable to correct the work accordingly, the SHPO shall notify the applicant by registered U.S. mail or courier that the tax credit reservation has been recaptured and shall process the tax credit reservation in accordance with subrule 48.12(5).

48.12(5) Tax credit return to appropriate fund. The SHPO shall return any recaptured tax credit reservations to the tax credit fund from which they were reserved.

ITEM 15. Amend rule 223—48.16(303,404A) as follows:

223—48.16(303,404A) Application processing fees. A nonrefundable fee for application processing of parts two and three of an application will be charged for review of requests for certification of a rehabilitation project for historic tax credits. An initial review fee will be due with the filing of part two of an application. An additional fee for review of completed rehabilitation work will be due with the filing of part three of an application. Fees will be based on the amount of qualified rehabilitation costs. The fee schedule is as follows:

Part 2 Review Fee	For projects with qualified rehabilitation cost of:	
Residential (1-2 units) & barns	Under \$50,000	No cost
Residential (1-2 units) & barns	\$50,000 and over	\$250
Commercial or mixed use properties (includes residential 3+ units)	Any amount	\$500
Part 3 Review Fee		
For projects with qualified rehabilitation cost of:		
Residential (1-2 units) & barns	Under \$50,000	No cost
Residential (1-2 units) & barns	\$50,000 and over	\$250
Commercial or mixed use properties (includes residential 3+ units)	Under \$50,000	\$250
Commercial or mixed use properties (includes residential 3+ units)	\$50,000 to \$1,000,000	.5 percent (.005) of qualified rehabilitation costs
Commercial or mixed use properties (includes residential 3+ units)	Over \$1,000,000	\$5,000
<u>For projects with qualified rehabilitation costs of:</u>	<u>Part 2 Processing Fee</u>	<u>Part 3 Processing Fee</u>
<u>\$50,000 or less</u>	<u>No cost</u>	<u>No cost</u>
<u>\$50,001 to \$100,000</u>	<u>\$250</u>	<u>\$250</u>
<u>\$100,001 to \$500,000</u>	<u>\$500</u>	<u>\$500</u>

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<u>\$500,001 to \$1,000,000</u>	<u>\$750</u>	<u>0.5 percent of qualified rehabilitation costs (i.e., 0.005 × costs)</u>
<u>\$1,000,001 to \$6,000,000</u>	<u>\$1,000</u>	
<u>Over \$6,000,000</u>	<u>\$1,500</u>	\$30,000

ITEM 16. Amend rule 223—48.17(303,404A) as follows:

223—48.17(303,404A) Appeals.

48.17(1) Applicants may appeal a decision of the ~~state historic preservation office~~ SHPO on any of the following bases:

- a. Action was outside statutory authority;
- b. Decision was influenced by a conflict of interest;
- c. Action violated state law or administrative rules;
- d. Insufficient public notice was given; or
- e. Alteration of the review and certification process was detrimental to the applicant.

48.17(2) to 48.17(4) No change.

ITEM 17. Adopt the following new subrule 48.17(5):

48.17(5) Applicants may appeal SHPO decisions provided under subrule 48.6(5) regarding eligibility of a property to be placed on the National Register as determined during part one of the application and review process or regarding whether a proposed scope of work meets the Standards as determined during part two of the application and review process. The SHPO shall provide procedural guidance to the applicant should the applicant choose to appeal to the National Park Service under this subrule.

ITEM 18. Amend **223—Chapter 48**, implementation sentence, as follows:

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

[Filed Emergency 6/16/09, effective 6/16/09]

[Published 7/15/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/09.

ARC 7957B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Chapter 83, "Medicaid Waiver Services," and Chapter 90, "Case Management for People With Mental Retardation, Chronic Mental Illness, or Developmental Disabilities," Iowa Administrative Code.

These amendments make the following changes related to the provision of case management services under the Medicaid program:

- Redefine the scope of case management services in 441—Chapter 90 to closely match the language of federal regulations published at 72 Federal Register 68,077 (December 4, 2007) that, following a moratorium, became effective on July 1, 2009. These amendments ensure that case management services funded by Iowa Medicaid are consistent with the federal regulations.

- Delete the scope of service for case management for the home- and community-based (HCBS) habilitation services and for the elderly and brain injury waiver programs and instead refer to the case management scope of service in 441—Chapter 90. This will ensure that case management provided through these programs meets the same service requirements as case management provided under 441—Chapter 90.

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- Clarify the role of the case manager in ensuring the health, safety, and welfare of members, including requirements for monitoring in response to incident reports.
- Remove the requirement for preauthorization for members not covered under the Iowa Plan managed behavioral care contract and add quality assurance oversight.
- Lengthen from 30 days to 60 days the period that case management may be provided to Medicaid members before they transition from an institution to a community setting.
- Change the basis of reimbursement for case management from a monthly unit of service to a 15-minute unit.

Notice of Intended Action on these amendments was originally published in the Iowa Administrative Bulletin on March 11, 2009, as **ARC 7631B**. An Amended Notice of Intended Action was published in the Iowa Administrative Bulletin on April 22, 2009, as **ARC 7732B**. The Department held a public hearing on each of these filings and received written comments from 78 people. In response to these comments, the Department has made the following changes to the amendments as published in the Amended Notice of Intended Action:

- Deleted the proposed change to paragraph 78.27(5)“e” (Item 2 in the Amended Notice of Intended Action), because transitional case management is not an allowable service under HCBS habilitation services.
- Deleted the proposed phrase “who reside in a community setting or are transitioning to a community setting” from the introductory paragraph of subrule 78.27(6). The addition of this phrase is unnecessary because there is no eligibility for transitional case management.
- Added language to subrule 79.1(2), provider category “HCBS waiver service providers,” numbered item “17,” to make the upper rate limit for case management provided through the elderly waiver the quarterly update of the reimbursement rate for a 15-minute unit instead of a flat limit of \$70 per month. Legislation at 2009 Iowa Acts, House File 811, section 1(2), transfers additional funds to the Department to fund this service and provides for quarterly adjustment of the reimbursement rate as necessary to maintain projected expenditures within the amounts budgeted for the fiscal year.
- Changed the wording of numbered paragraph “7” in the definition of “Major incident” in rule 441—90.1(249A) to read “Involves a member’s location being unknown by provider staff who are assigned protective oversight.” The change is intended to clarify that the rule does not require each provider to know the member’s location at all times and is congruent with revisions to incident reporting requirements for home- and community-based habilitation and waiver services.
- Replaced most of the proposed amendment to subrule 90.2(3) with a cross reference to qualifications for transitional case management set forth in subrule 90.5(3).
- Added new paragraph “a” to subrule 90.5(3) to clarify that only adult members who qualify for targeted case management under the mental retardation, developmental disability, or chronic mental illness targeted population are eligible to receive transitional case management. Transitional case management is not an allowable service under the brain injury waiver, elderly waiver, or HCBS habilitation services. The succeeding paragraphs are relettered accordingly.
- Revised language in subrule 90.8(1) to conform to the final incident reporting procedure adopted for home- and community-based services providers. Changes from the noticed language include restriction of external reporting to major incidents, extension of the time frame for reporting from 24 hours to the end of the next calendar day, and addition of references to the planned automated reporting system.
- Added language to subrule 90.8(2) to clarify the expectations for emergency coverage and to delay the effective date of that provision to October 1, 2009. The intent of this subrule is for the case management agency to be the final “back-up” resource in case the provisions of the individual crisis plan fail.

Specific waivers are not provided because these amendments should apply to all Medicaid case management services. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on June 23, 2009.

The Department finds that these amendments confer a benefit on Medicaid members and the public by bringing the rules into compliance with federal requirements and meeting the Department’s commitments

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for increased oversight of members' safety and welfare. The amendments also benefit case management providers under the elderly waiver by allowing more funding for cost-based reimbursement. 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 Iowa Code sections 249A.4, 249A.26, and 249A.27 and 2009 Iowa Acts, House File 811, section 1(2).

These amendments became effective on July 1, 2009.

The following amendments are adopted.

ITEM 1. Amend paragraphs **78.27(2)"d"** and **"e"** as follows:

d. Needs assessment. The member's case manager has completed an assessment of the member's need for service, and, based on that assessment, the Iowa Medicaid enterprise medical services unit has determined that the member is in need of home- and community-based habilitation services. A member who is not eligible for Medicaid case management services under 441—Chapter 90 shall receive case management as a home- and community-based habilitation service. The designated case manager shall:

(1) Complete a needs-based evaluation that meets the standards for assessment established in 441—subrule ~~24.4(2)~~ 90.5(1) before services begin and annually thereafter.

(2) Use the evaluation results to develop a comprehensive service plan as specified in subrule 78.27(4).

e. Plan for service. The department has approved the member's plan for home- and community-based habilitation services. A service plan that has been validated through ISIS shall be considered approved by the department. Home- and community-based habilitation services provided before department approval of a member's eligibility for the program cannot be reimbursed.

(1) The member's comprehensive service plan shall be completed annually according to the requirements of subrule 78.27(4). A service plan may change at any time due to a significant change in the member's needs.

~~(2) The member shall receive at least one billable unit of service other than case management per calendar quarter.~~

~~(3) (2)~~ The member's habilitation services shall not exceed the maximum number of units established for each service in 441—subrule 79.1(2).

~~(4) (3)~~ The cost of the habilitation services shall not exceed unit expense maximums established in 441—subrule 79.1(2).

ITEM 2. Amend subrule 78.27(6) as follows:

78.27(6) Case management. Case management assists members in gaining access to needed ~~home and community based habilitation services, as well as~~ medical, social, educational, housing, transportation, vocational, and other appropriate services, regardless of the funding source for the services in order to ensure the health, safety, and welfare of the member.

a. Scope. Case management services shall be provided as set forth in ~~rule~~ rules 441—90.5(249A) and 441—90.8(249A). ~~The case manager shall be responsible for the following activities:~~

~~(1) Explaining the member's right to freedom of choice.~~

~~(2) Ensuring that all unmet needs of the member are identified in the service plan.~~

~~(3) Retaining the comprehensive service plan, as specified in rule 441—79.3(249A).~~

~~(4) Explaining to the member what abuse is, and how to report abuse.~~

~~(5) Explaining to the member how to make a complaint about the member's services or providers.~~

~~(6) Monitoring the service plan, with review occurring regularly.~~

~~(7) Meeting with the member face to face at least quarterly.~~

~~(8) Assessing and revising the service plan at least annually to determine achievement, continued need, or changes in goals or intervention methods. The review shall include the member using the service and shall involve the interdisciplinary team.~~

~~(9) Notifying the member of any changes in the service plan by sending the member a notice of decision. When the change is an adverse action such as a reduction in services, the notice shall be sent ten days before the change and shall include appeal rights.~~

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b. Exclusion. Payment shall not be made for case management provided to a member who is eligible for case management services under 441—Chapter 90.

ITEM 3. Amend subrule 78.37(17) as follows:

78.37(17) Case management services. Case management services are services that assist ~~a consumer~~ Medicaid members who reside in a community setting or are transitioning to a community setting in gaining access to needed medical, social, educational, housing, transportation, vocational, and other appropriate services needed for the consumer to remain in the consumer's home in order to ensure the health, safety, and welfare of the member. Case management is provided at the direction of the ~~consumer member~~ and the interdisciplinary team established pursuant to 441—subrule 83.22(2).

a. Case management services shall ~~include:~~ be provided as set forth in rules 441—90.5(249A) and 441—90.8(249A).

~~(1) —A comprehensive assessment of the consumer's needs, which must be made within 30 days of referral to case management.~~

~~(2) —Development and implementation of a service plan to meet those needs.~~

~~(3) —Coordination, authorization, and monitoring of all services.~~

~~(4) —A face-to-face meeting by the case manager with the consumer at least quarterly.~~

~~(5) —Monitoring of the consumer's health, safety, and welfare.~~

~~(6) —Evaluation of outcomes.~~

~~(7) —Periodic reassessment and revision of the service plan as needed but at least annually.~~

~~(8) —Assurance that consumers have a choice of providers.~~

b. Case management shall not include the provision of direct services by the case managers.

c. Payment for case management shall not be made until the consumer is enrolled in the waiver. Payment shall be made only for case management ~~activity~~ services performed on behalf of the consumer during a month when the consumer is enrolled.

~~*d.* —A unit of service is one month.~~

ITEM 4. Amend subrule 78.43(1) as follows:

78.43(1) Case management services. Individual case management services means ~~activities provided, using an interdisciplinary process, to persons with a brain injury to ensure that the consumer has received a comprehensive evaluation and diagnosis, to give assistance to the consumer in obtaining appropriate services and living arrangements, that assist members who reside in a community setting or are transitioning to a community setting in gaining access to coordinate the delivery of needed medical, social, educational, housing, transportation, vocational, and other appropriate services, and to provide monitoring in order to ensure the continued appropriate provision of services and the appropriateness of the selected living arrangement~~ health, safety, and welfare of the member.

a. Case management services shall be provided as set forth in rules 441—90.5(249A) and 441—90.8(249A).

b. ~~The service is to~~ shall be delivered in such a way as to enhance the capabilities of consumers and their families to exercise their rights and responsibilities as citizens in the community. The goal is to enhance the ability of the consumer to exercise choice, make decisions, take risks ~~which~~ that are a typical part of life, and fully participate as members of the community.

c. ~~It is essential that the~~ The case manager must develop a relationship with the consumer so that the abilities, needs and desires of the consumer can be clearly identified and communicated and the case manager can help to ensure that the system and specific services are responsive to the needs of the individual consumers.

d. ~~Those Members~~ who are at the ICF/MR level of care ~~where the~~ whose county has voluntarily chosen to participate in the HCBS brain injury waiver are eligible for targeted case management and, therefore, are not eligible for case management as a waiver service.

~~Case management services shall consist of the following components:~~

a. ~~—Intake, which includes ensuring that there is sufficient information to identify all areas of need for services and appropriate living arrangements.~~

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- ~~b. — Assurance that a service plan is developed which addresses the consumer’s total needs for services and living arrangements.~~
- ~~e. — Assistance to the consumer in obtaining the services and living arrangements identified in the service plan.~~
- ~~d. — Coordination and facilitation of decision making among providers to ensure consistency in the implementation of the service plan.~~
- ~~e. — Monitoring of the services and living arrangements to ensure their continued appropriateness for the consumer.~~
- ~~f. — Crisis assistance to facilitate referral to the appropriate providers to resolve the crisis. The intent and purpose of the individual case services are to facilitate the consumer’s access to the service system and to enable consumers and their families to make decisions on their own behalf by providing:

 - ~~(1) — Information necessary for decision making.~~
 - ~~(2) — Assistance with decision making and participation in the decision making process affecting the consumer.~~
 - ~~(3) — Assistance in problem solving.~~
 - ~~(4) — Assistance in exercising the consumer’s rights.~~~~

ITEM 5. Amend paragraph 79.1(1)“d” as follows:

~~d. Monthly fee Fee for service with cost settlement. Providers~~ Effective July 1, 2009, providers of MR/CMI/DD case management services ~~are shall be~~ reimbursed on the basis of a payment rate for a month’s provision 15-minute unit of service for each client enrolled in an MR/CMI/DD case management program for any portion of the month based on reasonable and proper costs for service provision. The fee will be determined by the department with advice and consultation from the appropriate professional group and will reflect the amount of resources involved in service provision.

(1) Providers are reimbursed throughout each fiscal year on the basis of a projected monthly unit rate for each participating provider. ~~The projected rate is~~ based on reasonable and proper costs of operation, pursuant to federally accepted reimbursement principles (generally Medicare or OMB A-87 principles) ~~with~~.

(2) Payments are subject to annual retrospective cost settlement based on submission of actual costs of operation and service utilization data by the provider on ~~financial and statistical reports Form 470-0664, Financial and Statistical Report.~~ The cost settlement represents the difference between the amount received by the provider during the year for covered services and the amount supported by the actual costs of doing business, determined in accordance with an accepted method of cost appointment.

(3) The methodology for determining the reasonable and proper cost for service provision assumes the following:

- ~~(1) 1.~~ The indirect administrative costs shall be limited to 20 percent of other costs.
- ~~(2) 2.~~ Mileage shall be reimbursed at a rate no greater than the state employee rate.
- ~~(3) 3.~~ The rates a provider may charge are subject to limits established at 79.1(2).
- ~~(4) 4.~~ Costs of operation shall include only those costs ~~which that~~ pertain to the provision of services which are authorized under rule 441—90.3(249A).

ITEM 6. Amend subrule 79.1(2), provider category “HCBS waiver service providers,” numbered item “17,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
17. Case management	Fee schedule <u>with cost settlement. See 79.1(1)“d.”</u>	For brain injury waiver: \$598.68 per month <u>Retrospective cost-settled rate.</u> For elderly waiver: \$70 per month <u>Quarterly revision of reimbursement rate as necessary to maintain projected expenditures within the amounts budgeted under</u>

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the appropriations made for the medical assistance program for the fiscal year.

ITEM 7. Amend subrule **79.1(2)**, provider category “Home- and community-based habilitation services,” numbered item “1,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
1. Case management	Fee schedule based on MR/CMI/DD case management rates as set under with cost settlement. See 79.1(1)“d.”	\$598.68 per month. <u>Retrospective cost-settled</u> <u>rate.</u>

ITEM 8. Amend subrule **79.1(2)**, provider category “MR/CMI/DD case management providers,” as follows:

<u>Provider category</u>	<u>Basis of reimbursement</u>	<u>Upper limit</u>
MR/CMI/DD <u>Targeted</u> case management providers	Monthly fee Fee for service with cost settlement. See 79.1(1)“d.”	Retrospective cost-settled rate.

ITEM 9. Amend subparagraph **79.1(24)“a”(1)** as follows:

- (1) ~~A~~ Effective July 1, 2009, a unit of case management is ~~one month~~ 15 minutes.

ITEM 10. Amend subparagraph **79.3(2)“d”(33)** as follows:

(33) Case management services, including HCBS case management services:

1. Form 470-3956, MR/CMI/DD Case Management Service Authorization Request, for services authorized before May 1, 2007.
2. Notice of decision for service authorization.
3. Service notes or narratives.
4. Social history.
5. ~~Individual treatment~~ Comprehensive service plan.
6. Reassessment of member needs.
7. Incident reports in accordance with 441—subrule 24.4(5).

ITEM 11. Amend paragraph **83.22(2)“a”** as follows:

a. Case management. As a condition of eligibility, all consumers Consumers under the elderly waiver shall receive case management services from a provider qualified pursuant to 441—subrule 77.33(21). Case management services shall be provided as set forth in rules 441—90.5(249A) and 441—90.8(249A). ~~The case manager shall be responsible for doing the following:~~

- (1) ~~Making a comprehensive assessment of the consumer’s needs within 30 days of referral to case management.~~
- (2) ~~Initiating development and review of the service plan as required by this subrule.~~
- (3) ~~Ensuring that the consumer exhausts all services available under the state Medicaid plan before accessing the waiver.~~
- (4) ~~Ensuring that all unmet needs of the consumer are identified in the service plan.~~
- (5) ~~Explaining the following to the consumer:~~
 1. ~~What abuse is and how to report abuse.~~
 2. ~~How to file a complaint about the consumer’s services or providers.~~
 3. ~~The consumer’s right to freedom of choice.~~
- (6) ~~Verifying that providers of consumer directed attendant care are adequately skilled to meet the needs of the consumer.~~

ITEM 12. Amend **441—Chapter 90**, title, as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

TARGETED CASE MANAGEMENT FOR PEOPLE WITH MENTAL RETARDATION,
CHRONIC MENTAL ILLNESS, OR DEVELOPMENTAL DISABILITIES

ITEM 13. Amend **441—Chapter 90**, preamble, as follows:

PREAMBLE

These rules define and structure medical assistance targeted case management services provided in accordance with Iowa Code section 225C.20 for ~~consumers~~ Medicaid members with mental retardation (~~MR~~), chronic mental illness (~~CMI~~), or a developmental disability (~~DD~~) and ~~consumers~~ members eligible for the home- and community-based services (HCBS) children's mental health waiver. Provider accreditation standards are set forth in 441—Chapter 24.

Case management is a method to manage multiple resources effectively for the benefit of Medicaid ~~consumers~~ members. The service is designed to ~~help consumers gain~~ ensure the health, safety, and welfare of members by assisting them in gaining access to appropriate and necessary medical services and interrelated social ~~and~~ educational, housing, transportation, vocational, and other services. ~~Case management ensures that necessary evaluations are conducted; individual service and treatment plans are developed, implemented, and monitored; and reassessment of consumer needs and services occurs on an ongoing and regular basis.~~

ITEM 14. Rescind the definition of "MR/CMI/DD case management" in rule **441—90.1(249A)**.

ITEM 15. Amend rule **441—90.1(249A)**, definitions of "Adult" and "Targeted population," as follows:

"*Adult*" means a person 18 years of age or older on the first day of the month in which service begins.

"*Targeted population*" means people who meet one of the following criteria:

1. An adult who is identified with a primary diagnosis of mental retardation, chronic mental illness or developmental disability; or
2. A child who is eligible to receive HCBS mental retardation waiver or HCBS children's mental health waiver services according to 441—Chapter 83; ~~or~~
3. ~~A child who has a primary diagnosis of mental retardation or developmental disability, resides in a child welfare decategorization county, and is likely to become eligible to receive HCBS mental retardation waiver services.~~

ITEM 16. Adopt the following new definitions in rule **441—90.1(249A)**:

"*Major incident*" means an occurrence involving a member using the service that:

1. Results in a physical injury to or by the member that requires a physician's treatment or admission to a hospital; or
2. Results in a member's death or the death of another person; or
3. Requires emergency mental health treatment for the member; or
4. Requires the intervention of law enforcement; or
5. Requires a report of child abuse pursuant to Iowa Code section 232.69 or a report of dependent adult abuse pursuant to Iowa Code section 235B.3; or
6. Constitutes a prescription medication error or a pattern of medication errors that leads to the outcome in paragraph "1," "2," or "3."
7. Involves a member's location being unknown by provider staff who are assigned protective oversight.

"*Member*" means a person who has been determined to be eligible for Medicaid under 441—Chapter 75.

"*Rights restriction*" means limitations not imposed on the general public in the areas of communication, mobility, finances, medical or mental health treatment, intimacy, privacy, type of work, religion, place of residence, and people with whom a person may share a residence.

"*Targeted case management*" means services furnished to assist members who are part of a targeted population and who reside in a community setting or are transitioning to a community setting in gaining access to needed medical, social, educational, housing, transportation, vocational, and other services

HUMAN SERVICES DEPARTMENT[441](cont'd)

in order to ensure the health, safety, and welfare of the members. Case management is provided to a member on a one-to-one basis by one case manager.

ITEM 17. Amend rule 441—90.2(249A) as follows:

441—90.2(249A) Eligibility. A person who meets all of the following criteria shall be eligible for ~~MR/CMI/DD targeted~~ case management:

90.2(1) The person is eligible for Medicaid or is conditionally eligible under 441—subrule 75.1(35).

90.2(2) The person is a member of the targeted population.

90.2(3) The person ~~does not reside~~ resides in a ~~medical institution~~ community setting or is ~~within 30 days of discharge from a medical institution~~ qualifies for transitional case management as set forth in subrule 90.5(3).

90.2(4) The person has applied for ~~MR/CMI/DD targeted~~ case management in accordance with the policies of the provider.

90.2(5) The ~~person has been authorized~~ person's need for ~~MR/CMI/DD targeted~~ case management has been determined in accordance with rule 441—90.3(249A).

ITEM 18. Amend rule 441—90.3(249A), catchwords, as follows:

441—90.3(249A) Authorization and Determination of need for service.

ITEM 19. Rescind and reserve subrule **90.3(1)**.

ITEM 20. Amend subrules 90.3(2) and 90.3(3) as follows:

90.3(2) Need for service. Assessment of the need for targeted case management is required at least annually as a condition of payment under the medical assistance program. The ~~department case management provider~~ shall determine the initial and ongoing need for service based on ~~evidence presented by the MR/CMI/DD case management provider, including~~ diagnostic reports, documentation of provision of services, and information supplied by the ~~consumer member~~ and other appropriate sources. The evidence shall be documented in the member's file and shall demonstrate that all of the following criteria are met:

a. The ~~consumer member~~ has a need for ~~MR/CMI/DD targeted~~ case management to manage ~~multiple resources pertaining to~~ needed medical, and interrelated social, and educational, housing, transportation, vocational, and other services for the benefit of the ~~consumer member~~.

b. The ~~consumer member~~ has functional limitations and lacks the ability to independently access and sustain involvement in necessary services.

c. The ~~consumer member~~ is not receiving other paid benefits under the medical assistance program or under a Medicaid managed health care plan that serve the same purpose as ~~MR/CMI/DD targeted~~ case management.

90.3(3) Managed health care. For ~~consumers members~~ receiving ~~MR/CMI/DD targeted~~ case management under a ~~Medicaid managed health care~~ the Iowa plan for behavioral health as described in 441—Chapter 88, Division IV, the department delegates authorization and determination of need for service to the ~~managed health care Iowa plan~~ contractor.

a. The ~~managed health care Iowa plan~~ contractor shall authorize determine the need for targeted case management services according to the criteria and procedures set forth in this chapter subrule 90.3(2).

b. The Iowa plan contractor is not required to pay for targeted case management services that it has not authorized or that are provided during a month of Medicaid ineligibility.

ITEM 21. Rescind and reserve subrule **90.3(4)**.

ITEM 22. Amend rule 441—90.4(249A) as follows:

441—90.4(249A) Application. The provider shall process an application for ~~MR/CMI/DD targeted~~ case management no later than 30 days after receipt of the application. The provider shall refer the applicant to the department's service unit if other services are needed or requested.

HUMAN SERVICES DEPARTMENT[441](cont'd)

90.4(1) *Application ~~record~~ process and documentation.* The application shall include the ~~consumer's~~ member's name, the nature of the request for services, and a summary of any evaluation activities completed. The provider shall inform the applicant in writing of the applicant's right to choose the provider of case management services and, at the applicant's request, shall provide a list of other case management agencies from which the applicant may choose. The provider shall maintain this documentation for at least five years.

90.4(2) No change.

90.4(3) *Delayed services.* The application shall be approved and the ~~consumer member~~ put on the referral list for assignment to a case manager when ~~MR/CMI/DD~~ targeted case management cannot begin immediately because there is no opening on a caseload. The provider shall notify the applicant or the applicant's legally authorized representative in writing of approval and placement on the referral list. If an applicant is on a referral list for more than 90 days from the date of application, this shall be considered a denial of service.

90.4(4) *Denying applications.* The provider shall deny applications for service when:

a. to d. No change.

e. The applicant is receiving ~~MR/CMI/DD~~ targeted case management from another Medicaid provider; or

f. The applicant does not have a need for ~~MR/CMI/DD~~ targeted case management.

ITEM 23. Rescind rule 441—90.5(249A) and adopt the following **new** rule in lieu thereof:

441—90.5(249A) Service provision.

90.5(1) *Covered services.* The following shall be included in the assistance that case managers provide to members in obtaining services:

a. *Assessment.* The case manager shall perform a comprehensive assessment and periodic reassessment of the member's individual needs using Form 470-4694, Targeted Case Management Comprehensive Assessment, to determine the need for any medical, social, educational, housing, transportation, vocational or other services. The comprehensive assessment shall address all of the member's areas of need, strengths, preferences, and risk factors, considering the member's physical and social environment. A face-to-face reassessment must be conducted at a minimum annually and more frequently if changes occur in the member's condition. The assessment and reassessment activities include the following:

(1) Taking the member's history, including current and past information and social history in accordance with 441—subrule 24.4(2), and updating the history annually.

(2) Identifying the needs of the member and completing related documentation.

(3) Gathering information from other sources, such as family members, medical providers, social workers, legally authorized representatives, and others as necessary to form a complete assessment of the member.

b. *Service plan.* The case manager shall develop and periodically revise a comprehensive service plan based on the comprehensive assessment, which shall include a crisis intervention plan based on the risk factors identified in the risk assessment portion of the comprehensive assessment. The case manager shall ensure the active participation of the member and work with the member or the member's legally authorized representative and other sources to choose providers and develop the goals. This plan shall:

(1) Document the parties participating in the development of the plan.

(2) Specify the goals and actions to address the medical, social, educational, housing, transportation, vocational or other services needed by the member.

(3) Identify a course of action to respond to the member's assessed needs, including identification of all providers, services to be provided, and time frames for services.

(4) Document services identified to meet the needs of the member which the member declined to receive.

(5) Include an individualized crisis intervention plan that identifies the supports available to the member in an emergency. A crisis intervention plan shall identify:

HUMAN SERVICES DEPARTMENT[441](cont'd)

1. Any health and safety issues applicable to the individual member based on the risk factors identified in the member's comprehensive assessment.

2. An emergency backup support and crisis response system, including emergency backup staff designated by providers, to address problems or issues arising when support services are interrupted or delayed or the member's needs change.

(6) Include a discharge plan.

(7) Be revised at least annually, and more frequently if significant changes occur in the member's medical, social, educational, housing, transportation, vocational or other service needs or risk factors.

c. Referral and related activities. The case manager shall perform activities to help the member obtain needed services, such as scheduling appointments for the member, and activities that help link the member with medical, social, educational, housing, transportation, vocational or other service providers or programs that are capable of providing needed services to address identified needs and risk factors and to achieve goals specified in the service plan.

d. Monitoring and follow-up. The case manager shall perform activities and make contacts that are necessary to ensure the health, safety, and welfare of the member and to ensure that the service plan is effectively implemented and adequately addresses the needs of the member. At a minimum, monitoring shall include assessing the member, the places of service (including the member's home when applicable), and all services. Monitoring may also include review of service provider documentation. Monitoring shall be conducted to determine whether:

(1) Services are being furnished in accordance with the member's service plan, including the amount of service provided and the member's attendance and participation in the service.

(2) The member has declined services in the service plan.

(3) Communication is occurring among all providers to ensure coordination of services.

(4) Services in the service plan are adequate, including the member's progress toward achieving the goals and actions determined in the service plan.

(5) There are changes in the needs or status of the member. Follow-up activities shall include making necessary adjustments in the service plan and service arrangements with providers.

e. Contacts. Case management contacts shall occur as frequently as necessary and shall be conducted and documented as follows:

(1) The case manager shall have at least one face-to-face contact with the member every three months.

(2) The case manager shall have at least one contact per month with the member, the member's legally authorized representative, the member's family, service providers, or other entities or individuals. This contact may be face-to-face or by telephone. The contact may also be by written communication, including letters, E-mail, and fax, when the written communication directly pertains to the needs of the member. A copy of any written communication must be maintained in the case file.

(3) The case manager may bill for contacts with non-eligible persons if the contacts are directly related to identifying the member's needs and care as necessary for the purpose of helping the member access services, identifying needs and supports to assist the member in obtaining services, providing case managers with useful feedback, and alerting case managers to changes in the member's needs.

(4) When applicable, documentation of case management contacts shall include:

1. The name of the service provider.

2. The need for and occurrences of coordination with other case managers within the same agency or of referral or transition to another case management agency.

90.5(2) Exclusions. Payment shall not be made for activities otherwise within the definition of case management when any of the following conditions exist:

a. The activities are an integral component of another covered Medicaid service.

b. The activities constitute the direct delivery of underlying medical, social, educational, housing, transportation, vocational or other services to which a member has been referred. Such services include, but are not limited to:

(1) Services under parole and probation programs.

(2) Public guardianship programs.

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- (3) Special education programs.
- (4) Child welfare and child protective services.
- (5) Foster care programs.

c. The activities are integral to the administration of foster care programs, including but not limited to the following:

- (1) Research gathering and completion of documentation required by the foster care program.
- (2) Assessing adoption placements.
- (3) Recruiting or interviewing potential foster care parents.
- (4) Serving legal papers.
- (5) Home investigations.
- (6) Providing transportation.
- (7) Administering foster care subsidies.
- (8) Making placement arrangements.

d. The activities for which a member may be eligible are integral to the administration of another nonmedical program, such as a guardianship, child welfare or child protective services, parole, probation, or special education program, except for case management that is included in an individualized education program or individualized family service plan consistent with Section 1903(c) of the Social Security Act.

e. The activities duplicate institutional discharge planning.

90.5(3) Transition to a community setting. Case management services may be provided to a member transitioning to a community setting during the 60 days before the member's discharge from a medical institution when the following requirements are met:

a. The member is an adult who qualifies for targeted case management under a targeted population. Transitional case management is not an allowable service under the HCBS brain injury waiver, the HCBS elderly waiver, or HCBS habilitation services.

b. Case management services shall be coordinated with institutional discharge planning, but shall not duplicate institutional discharge planning.

c. The amount, duration, and scope of case management services shall be documented in the member's plan of care, which must include case management services before and after discharge, to facilitate a successful transition to community living.

d. Payment shall be made only for services provided by community case management providers.

e. Claims for reimbursement for case management shall not be submitted until the member's discharge from the medical institution and enrollment in community services.

90.5(4) Rights restrictions. Member rights may be restricted only with the consent of the member or the member's legally authorized representative and only if the service plan includes:

- a. Documentation of why there is a need for the restriction;
- b. A plan to restore those rights or a reason why restoration is not necessary or appropriate; and
- c. Documentation that periodic evaluations of the restriction are conducted to determine continued need.

90.5(5) Documentation. Service documentation shall also meet the requirements set forth in rule 441—79.3(249A) and 441—subrule 24.4(4).

ITEM 24. Strike "MR/CMI/DD" wherever it appears in rules **441—90.6(249A)** and **441—90.7(249A)** and insert "targeted" in lieu thereof.

ITEM 25. Strike "consumer" wherever it appears in rules **441—90.6(249A)** and **441—90.7(249A)** and insert "member" in lieu thereof.

ITEM 26. Adopt the following **new** rule 441—90.8(249A):

441—90.8(249A) Provider requirements.

90.8(1) Incident reporting.

a. When a major incident occurs during the provision of case management services:

(1) The case management provider shall notify the following persons of the incident by the end of the next calendar day after the incident:

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1. The case management supervisor.
 2. The member's legally authorized representative.
- (2) By the end of the next calendar day after the incident, the case manager who observed the incident shall also report as much information as is known about the incident to the department's bureau of long-term care either:
1. By direct data entry into the Iowa Medicaid Provider Access System, or
 2. By faxing or mailing Form 470-4698, Critical Incident Report, according to the directions on the form.
- (3) The following information shall be reported:
1. The name of the member involved.
 2. The date and time the incident occurred.
 3. A description of the incident.
 4. The names of all case management staff and others who were present at the time of the incident or who responded after becoming aware of the incident. The confidentiality of other members or nonmembers who were present must be maintained by the use of initials or other means.
 5. The action that the case manager took to manage the incident.
 6. The resolution of or follow-up to the incident.
 7. The date the report is made and the handwritten or electronic signature of the person making the report.
- (4) The case manager shall monitor the situation as required in paragraph 90.5(1) "d" to ensure the member's needs continue to be met. Submission of the initial report will generate a workflow in the Individualized Services Information System (ISIS) for follow-up by the case manager.
- (5) The case management provider shall maintain the completed report in a centralized file, with a notation in the member's file.
- b.* When an incident report for a major incident is received from any provider, the case manager shall monitor the situation as required in paragraph 90.5(1) "d" to ensure the member's needs continue to be met.
 - c.* When any major incident occurs, the case manager shall reevaluate the risk factors identified in the risk assessment portion of the comprehensive assessment as required in paragraph 90.5(1) "a" in order to ensure the continued health, safety, and welfare of the member.
- 90.8(2) Emergency coverage.** Effective October 1, 2009, a provider of case management shall have an on-call system to ensure that, in the event of an emergency, members have access to a case manager 24 hours per day, including weekends and holidays. Expectations and parameters for emergency coverage are as follows:
- a.* The emergency on-call system should be one component of the member's individualized crisis intervention plan and should not be the only emergency resource for the member. The system should not replace emergency services such as 911, crisis intervention lines, or emergency services from provider agencies.
 - b.* The case manager should never provide direct service, but rather is expected to arrange and coordinate services to make sure the member is safe.
 - c.* Case management providers may screen calls to identify nonemergency calls that can wait until regular business hours or to divert calls to other resources when appropriate.
 - d.* Time spent on responding to calls is billable time for the case management provider. Overhead costs may be included in the case management rate as an indirect cost.
- 90.8(3) Quality assurance.** Providers shall cooperate with quality assurance activities conducted by the Iowa Medicaid enterprise to ensure the health, safety, and welfare of Medicaid members. These activities may include, but are not limited to:
- a.* Postpayment reviews of case management services,
 - b.* Review of incident reports,
 - c.* Review of reports of abuse or neglect, and

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- d. Technical assistance in determining the need for service.

[Filed Emergency After Notice 6/23/09, effective 7/1/09]

[Published 7/15/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/09.

ARC 7941B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, sections 5 to 12, the Iowa Finance Authority hereby adopts new Chapter 32, “Iowa Jobs Program,” Iowa Administrative Code.

The purpose of these rules is to implement 2009 Iowa Acts, Senate File 376, sections 5 to 12, by regulating the operation of the Iowa Jobs Program.

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

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 new program, which is designed to provide disaster relief and economic stimulus. The Authority is also simultaneously publishing a Notice of Intended Action as **ARC 7942B** herein to allow for public comment.

The Authority finds that adoption of these rules confers a benefit on the public in that these rules promote disaster recovery and economic stimulus. The Authority finds that these rules should be implemented as soon as feasible in order to facilitate the awarding of allocations under the program. Furthermore, 2009 Iowa Acts, Senate File 376, section 12, specifically provides for this emergency rule making. Therefore, these rules are filed pursuant to Iowa Code sections 17A.5(2)“b”(1) and (2), and the normal effective date of these rules is waived.

The Authority adopted these rules on June 15, 2009.

These rules became effective June 15, 2009.

These rules are intended to implement Iowa Code section 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, sections 5 to 12.

The following amendment is adopted.

Adopt the following **new** 265—Chapter 32:

CHAPTER 32

IOWA JOBS PROGRAM

265—32.1(16,83GA,SF376) Purpose. The Iowa jobs board is charged by the Iowa legislature and the governor with establishing, overseeing and providing approval of the administration of the Iowa jobs program. The board will encourage and support public construction projects relating to disaster relief and mitigation and to local infrastructure.

265—32.2(16,83GA,SF376) Definitions. When used in this chapter, the following definitions apply unless the context otherwise requires:

“*Authority*” or “*IFA*” means the Iowa finance authority.

“*Board*” means the Iowa jobs board as established in 2009 Iowa Acts, Senate File 376, section 5.

“*Disaster*” means the severe storms, tornadoes, and flooding that occurred in Iowa between May 25, 2008, and August 13, 2008, and designated by FEMA as FEMA-1763-DR; additionally, the Iowa jobs board may, by resolution, designate an event that occurs subsequent to June 15, 2009, as a disaster.

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“Financial feasibility” means the ability of a project, once completed, to be maintained and operated for its useful life with funds either generated by the project itself or from an identifiable source of funds available for such purpose.

“Future flood prevention” means measures intended to mitigate or lessen the damages caused by future flooding.

“Indirect jobs” means jobs created by suppliers of materials used in the construction or operation of the project.

“Induced jobs” means jobs collaterally created throughout the economy by a project as employed workers and firms buy other goods and services.

“Iowa jobs program review committee” or *“review committee”* means the committee established by 2009 Iowa Acts, Senate File 376, section 9(2), and constituted as described in this chapter.

“Local infrastructure” means:

1. Projects relating to disaster rebuilding;
2. Reconstruction and replacement of local public buildings;
3. Flood control and flood protection; and
4. Future flood prevention.

“Local infrastructure” does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

“Local support” means endorsement of a proposed project by local individuals, organizations, or governmental bodies that have a substantial interest in a project.

“Program” means the Iowa jobs program established in 2009 Iowa Acts, Senate File 376, sections 5 to 12.

“Public construction project” means a project for the construction of local infrastructure by a county, city, or public organization.

“Public organization” means a nonprofit organization that sponsors or supports the public needs of one or more local Iowa communities and that was in operation prior to January 1, 2009; provided that (1) such organization is described in Section 501(c)(3) or 501(c)(4) of the Internal Revenue Code and is exempt from federal tax under Section 501(a) of the Internal Revenue Code, and (2) such organization is determined by the board not to be affiliated with or controlled by a for-profit organization.

“Recipient” means an entity under contract with the Iowa jobs board to receive Iowa jobs funds and undertake a funded project.

“Sustainability” means the use, development, and protection of resources at a rate and in a manner that enables people to meet their current needs while allowing future generations to meet their own needs; “sustainability” requires simultaneously meeting environmental, economic and community needs.

265—32.3(16,83GA,SF376) Allocation of funds. All Iowa jobs funds shall be awarded and used as specified in 2009 Iowa Acts, Senate File 376, and these rules. Any portion of an amount allocated for projects that remains unexpended or unencumbered one year after the allocation has been made by the board may be reallocated by the board to another project category, at the discretion of the board. All bond proceeds shall be expended within three years from when the allocation was initially made. The total amount of allocations for future flood prevention, reconstruction and replacement of local public buildings, disaster rebuilding, flood control and flood protection projects (pursuant to the local infrastructure competitive grant program) shall not exceed \$165 million for the fiscal year beginning July 1, 2009.

265—32.4(16,83GA,SF376) Local infrastructure competitive grant program. The board shall assist in the development and completion of public construction projects relating to disaster relief and mitigation and to local infrastructure by overseeing and providing approval of the administration of a local infrastructure competitive grant program, as set forth herein.

32.4(1) Iowa jobs program review committee. The Iowa jobs program review committee shall comprise five members, consisting of the following members of the Iowa jobs board: three of the general public members, as appointed to the review committee by the Iowa jobs chair, the executive

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director of the Iowa finance authority (or designee), and the director of Iowa workforce development (or designee). The review committee shall comply with Iowa Code chapter 21 and with Iowa Code sections 69.16 and 69.16A. From its public members, the review committee shall elect a chair and a vice chair. Two-thirds of the review committee members eligible to vote shall constitute a quorum authorized to act in the name of the review committee.

32.4(2) *Eligible applicants.* Eligible applicants for Iowa jobs local infrastructure competitive grant program funds shall be Iowa cities, Iowa counties, and public organizations.

32.4(3) *Eligible projects and forms of assistance.* For a project to be eligible to receive a competitive grant from the board, the project must be a public construction project in the state of Iowa with a demonstrated substantial local, regional, or statewide economic impact. Financial assistance shall be awarded only in the form of grants. An applicant for a competitive grant shall not receive more than \$50 million in financial assistance from the Iowa jobs restricted capitals fund.

a. Any award of a competitive grant to a project shall be limited as follows:

(1) Up to 75 percent of the total cost of a project for replacing or rebuilding existing disaster-related damaged property; or

(2) Up to 50 percent of the total cost for all other projects.

b. The authority, with the approval of the chair and vice chair of the Iowa jobs board, shall have the ability to make technical corrections to an award that are within the intent of the terms of a board-approved award.

32.4(4) *Ineligible projects.* The board shall not approve an application for a competitive grant for either of the following purposes:

a. To refinance a loan existing prior to the date of the initial financial assistance application.

b. For a project that has previously received financial assistance under the program, unless the applicant demonstrates that the financial assistance would be used for a significant expansion of such a project.

32.4(5) *Threshold application requirements.* To be considered for a competitive grant, an application shall meet all of the following threshold requirements:

a. Prior to filing an application, the applicant must file, on the form and in the manner prescribed by the authority, a notice of intent to apply not less than 20 days prior to submitting its application;

b. The application must be submitted by an eligible applicant, must be complete and on forms or in the format specified for such purpose by the authority (the authority may, in its discretion, require the use of a Web-based application format), and must be received by the authority by the applicable deadline;

c. The proposed project must be for the development and completion of one or more public construction projects relating to disaster relief and mitigation or to local infrastructure;

d. There must be demonstrated local support for the proposed project;

e. The proposed public construction project must have a demonstrated substantial local, regional, or statewide economic impact; and

f. The application must coordinate any federal funds with state, local, and private funds and shall avoid any duplication of benefits that would limit or cause the loss of federal funding.

Prior to submitting an application to the review committee, the authority may contact the applicant to clarify information contained in the application. An application may be amended one time prior to being sent to the review committee. Applications may be otherwise amended with the approval of a majority of the review committee.

32.4(6) *Application procedure.*

a. Applications shall be reviewed and scored in rounds. The deadline for submission for the first round of applications shall be August 3, 2009. Subsequent rounds shall be quarterly. Applications for each such round shall be due not later than January 1, April 1, July 1, and October 1 of each year, respectively.

b. Subject to availability of funds, applications will be reviewed by IFA staff on an ongoing basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be requested, in writing, to submit additional information. For applications

IOWA FINANCE AUTHORITY[265](cont'd)

that meet the threshold requirements, authority staff shall submit to the members of the review committee a copy of the application along with a review, analysis, and evaluation of complete applications.

c. The review committee members will score the applications according to the criteria set forth in subrule 32.4(7), and IFA staff shall compile the scores. To be eligible for a grant, a proposed project must receive a minimum score of at least 100 points. The review committee shall meet at least quarterly to review the ratings. Those applications meeting the minimum criteria shall be referred to the Iowa jobs board with a recommendation of final approval, denial, or deferral.

d. Once an application has been referred to the Iowa jobs board, the applicant may, upon request of the applicant and at the discretion of the chair of the board, make a presentation to the board. The board may impose reasonable limitations on the length and format of such presentations.

e. If the board determines that an application should be approved, the board shall send the application to negotiations. Negotiations shall be conducted by IFA staff, who may work in cooperation with members of the Iowa jobs board. The negotiators shall negotiate the terms and conditions of a grant agreement to recommend to the board.

f. Following negotiations, the negotiating team shall report back to the Iowa jobs board as to whether it was able to agree with the applicant on the terms of a proposed grant agreement and, if so, the proposed terms and conditions resulting from the negotiations. The Iowa jobs board shall then vote, without further substantive revision, on whether to agree to the negotiated terms.

g. If the negotiated terms are agreed to by the Iowa jobs board, a grant agreement memorializing the negotiated terms shall be executed by the chair or vice chair of the Iowa jobs board.

h. Application resources for the Iowa jobs program are available at the Iowa jobs Web site: www.ijobsiowa.gov.

i. IFA may provide technical assistance as necessary to applicants. IFA staff may conduct on-site evaluations of proposed projects.

32.4(7) Application review criteria. The Iowa jobs program review committee shall evaluate and rank applications based on the following criteria:

a. *The total number and quality of jobs to be created and the benefits likely to accrue to areas distressed by high unemployment (0-40 points).* The number of jobs created and other measures of economic impact to areas distressed by high unemployment, including long-term tax generation, shall be evaluated. Rating factors for this criterion include, but are not necessarily limited to, the following:

(1) Number of jobs. The number of jobs reasonably projected to be created or retained and the number of hours anticipated for each such job shall be compared and ranked.

(2) Quality of jobs. The wages to be paid for each position to be created or retained, the average benefits (including health benefits) to be provided, as well as other subjective qualitative factors, such as work conditions and safety, shall be compared and ranked.

(3) Other benefits likely to accrue to areas distressed by high unemployment, such as the degree to which the project enhances the quality of life in a region and contributes to the community's efforts to retain and attract a skilled workforce.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

b. *Financial feasibility, including the ability of projects to fund depreciation costs or replacement reserves, and the availability of other federal, state, local, and private sources of funds (0-40 points).* The feasibility of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

(1) A financial analysis of the project, which shall include a description of sources of funding, project budget, and detailed projections of the project's revenues and expenses for the projected useful life of the project;

(2) An analysis of the operational plan, which shall provide detailed information about how the proposed project will be operated and maintained, including a time line for implementing the project;

(3) The availability of other federal, state, local, and private sources of funds for the project.

In order to be eligible for funding, proposals must score at least 20 points on this criterion.

c. *Sustainability and energy efficiency.* The sustainability and energy efficiency of the proposed project shall be evaluated. Rating factors for this criterion include, but are not limited to, the following:

IOWA FINANCE AUTHORITY[265](cont'd)

(1) Sustainability (0-20 points). The extent to which the project has taken sustainability planning principles into consideration.

1. The project shall be evaluated based on the following specific factors:

- Efficient and effective use of land resources and existing infrastructure by encouraging compact development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land; conservation of open space and farmland and preservation of critical environmental areas; and promotion of the safety, livability, and revitalization of existing urban and rural communities. Compact development maximizes public infrastructure investment and promotes mixed uses, greater density, bicycle and pedestrian networks, and interconnection with the existing street grid.

- Provision for a variety of transportation choices, including public transit and pedestrian and bicycle traffic.

- Construction and promotion of developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials.

- Capture, retention, infiltration and harvesting of rainfall using storm water best management practices such as permeable pavement, bioretention cells, bioswales, and rain gardens to protect water resources.

- The extent to which project design, construction, and use incorporate renewable energy sources including, but not limited to, solar, wind, geothermal, and biofuels, and support the following state of Iowa plans and goals: (1) office of energy independence's Iowa energy independence plan; and (2) general reduction of greenhouse gas emissions.

2. Alternatively, in lieu of being evaluated on each of the criteria set forth above, projects which receive certification (either platinum level, gold level, silver level, or basic LEED certification) from the United States Green Building Council in the Leadership in Energy and Environmental Design (LEED) Green Building Rating System version 3.0, and which comply with the requirements of ASHRAE 90.1-2007, Energy Standard for Buildings Except Low-Rise Residential Buildings, published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, GA 30329, shall receive 20 points.

(2) Energy efficiency (0-20 points). The extent to which the project has taken energy efficiency planning principles into consideration.

1. In the case of new construction, whether the project meets the current state building energy code. The application for the project must include a letter from the engineer or architect to IFA certifying whether the proposed construction meets the current state building energy code. Additionally, the application should address whether the proposed project meets energy star standards. If the project is of such a nature that the current state building energy code does not apply to it, the letter shall so state.

2. In the case of rehabilitation of existing structures, an energy audit conducted by a certified energy rater should be provided on each building prior to the preparation of the final work rehabilitation order to determine the feasibility of meeting the requirements of the current state building energy code and energy star standards prior to the start of the rehabilitation. If it is determined to be feasible to meet the current state building energy code standards and energy star standards, appropriate specifications will be written into the work order. If it is not feasible to meet the requirements of the current state building energy code and energy star standards (or either of them), the application will provide information indicating what effective and cost-effective energy improvements will be included as a part of the rehabilitation project.

d. Benefits for disaster recovery (0-40 points). The likely benefits for disaster recovery of the proposed project shall be evaluated. Wherever applicable, rating factors for this criterion include, but are not limited to, the following:

(1) Whether the proposed project replaces or repairs a structure or facility damaged by the disaster and incorporates measures for reducing or eliminating future disaster losses;

(2) Whether the proposed project would help achieve the community's or region's overall post-disaster recovery vision;

IOWA FINANCE AUTHORITY[265](cont'd)

(3) Whether the proposed project benefits the economic recovery of individuals, businesses, or nonprofit organizations.

e. The project's readiness to proceed (0-40 points). The readiness of the project to proceed shall be evaluated. Wherever applicable, rating factors for this criterion include, but are not limited to, the following:

(1) Whether all engineering and architectural work required for construction to begin has been completed;

(2) Whether all financing for the project (other than competitive grant funds awarded under this chapter) has been committed and is available;

(3) Whether all real property interests (including easements and temporary construction easements) necessary for the construction of the project have been acquired;

(4) Whether all necessary governmental approvals, at the federal, state, and local levels (including, but not limited to, zoning variances, building permits, approval from the Army Corps of Engineers, etc.), have been obtained;

(5) Whether the project has demonstrated a reasonable likelihood of incurring at least 10 percent of the project's total projected development cost within three months of execution of the grant award agreement.

f. General scoring criteria.

(1) In instances where a given criterion is not applicable to a proposed project due to the nature of the project, the review committee members may adjust scoring so that the project is not disadvantaged as a result of the inapplicable criterion. For example, if an earthen levee is proposed as a means of flood control, it should not lose points relative to other proposed projects because it does not comply with the current state building energy code (which does not apply to earthen levees).

(2) Any proposed project that is identified in an Iowa great places agreement, pursuant to Iowa Code section 303.3C, shall have an additional two points added to its cumulative point total.

265—32.5(16,83GA,SF376) Noncompetitive grants.

32.5(1) The board shall award \$46,500,000 as follows for disaster relief and mitigation and local infrastructure grants for the following renovation and construction projects, notwithstanding any limitation on the state's percentage participation in funding as contained in Iowa Code section 29C.6(17):

a. For grants to a county with a population between 189,000 and 196,000 in the latest preceding certified federal census, to be distributed as follows:

(1) Ten million dollars for the construction of a new, shared facility between nonprofit human service organizations serving the public, especially the needs of low-income Iowans, including those displaced as a result of the disaster of 2008.

(2) Five million dollars for the construction or renovation of a facility for a county-funded workshop program serving the public and particularly persons with mental illness or developmental disabilities.

b. For grants to a city with a population between 110,000 and 120,000 in the latest preceding certified federal census, to be distributed as follows:

(1) Five million dollars for an economic redevelopment project benefiting the public by improving energy efficiency and the development of alternative and renewable energy technologies.

(2) Ten million dollars for a museum serving the public and dedicated to the preservation of an eastern European cultural heritage through the collection, exhibition, preservation, and interpretation of historical artifacts.

(3) Five million dollars for a theater serving the public and promoting culture, entertainment, and tourism.

(4) Five million dollars for a public library.

(5) Five million dollars for a public works building.

c. One million five hundred thousand dollars, to be distributed as follows:

IOWA FINANCE AUTHORITY[265](cont'd)

- (1) Five hundred thousand dollars to a city with a population between 600 and 650 in the latest preceding certified federal census, for a public fire station.
- (2) Five hundred thousand dollars to a city with a population between 1,400 and 1,500 in the latest preceding certified federal census, for a public fire station.
- (3) Five hundred thousand dollars for a city with a population between 7,800 and 7,850, for a public fire station.

32.5(2) Noncompetitive grant awards are contingent upon submission of a plan for each project by the applicable county or city governing board or, in the case of a project submitted pursuant to subparagraph 32.5(1) “b”(2), by the board of directors, to the Iowa jobs board no later than September 1, 2009, detailing a description of the project, the plan to rebuild, and the amount or percentage of federal, state, local, or private matching moneys which will be or have been provided for the project. Funds not utilized in accordance with this rule due to failure to submit a plan by the September 1 deadline shall revert to the Iowa jobs restricted capitals fund to be available for local infrastructure competitive grants.

32.5(3) A grant recipient under subparagraph 32.5(1) “b”(2) shall not be precluded from applying for a local infrastructure competitive grant pursuant to this rule and 2009 Iowa Acts, Senate File 376, section 9.

265—32.6(16,83GA,SF376) General grant conditions. As a condition of receipt of Iowa jobs funds, recipients shall agree, at a minimum, to all of the following:

32.6(1) *Documentation of jobs created or retained.* Following the receipt of grant funds pursuant to this chapter and for two years following the completion of the project, each recipient shall report to the authority quarterly the actual number of jobs created as a result of the project along with other information relating to the quality of such jobs, including hours and wages, as requested by the authority.

32.6(2) *Recipient obligations.* In the event a recipient fails to comply with the requirements of this program or the recipient’s grant agreement, the board may cancel the recipient’s grant and require the return of any grant funds previously disbursed pursuant to this program. Recipients shall agree to hold harmless and to indemnify the Iowa jobs board, the authority, the state of Iowa, and their officers, employees and agents from any claims, costs or liabilities arising out of the development or operation of the project.

32.6(3) *Grant acknowledgment.* Each project shall recognize in a prominent location and manner the fact that the project was made possible, in part, through a grant from the Iowa jobs program. During the construction period the recognition (including a display of the Iowa jobs logo) may be located on temporary signage. The completed project shall feature a permanent acknowledgment, such as a plaque or a similar commemoration. Other benefactors of the project may be similarly acknowledged as well.

32.6(4) *Use of Iowa jobs Web site.* All positions that need to be filled for a project shall be posted on Iowa workforce development’s Iowa jobs Web site: www.iowajobs.org/.

265—32.7(16,83GA,SF376) Calculation of jobs created. For purposes of this chapter, new employment positions created and filled (or to be created and filled) as a result of the project and existing positions that would not have been continued were it not for Iowa jobs funding shall be counted when estimating the number of jobs to be created during the application process and when counting the number of actual jobs created in post-grant reporting. Both permanent and temporary positions filled by the grantee, a contractor, or a subcontractor (or sub-subcontractor, etc.), including construction work, shall be counted. To be counted, a position must be compensated. Indirect jobs and induced jobs shall not be counted.

265—32.8(16,83GA,SF376) Grant awards. The Iowa jobs board may fund a component of a proposed project if the entire project does not qualify for funding. The board shall review awards made to ensure geographic diversity. In order to promote geographic diversity, the board may defer grant decisions on applications from areas which have received previous grant awards to allow applications from other parts of the state to be considered.

IOWA FINANCE AUTHORITY[265](cont'd)

265—32.9(16,83GA,SF376) Administration of awards.

32.9(1) A grant agreement shall be executed between successful applicants (under both the competitive and noncompetitive grant programs) and the Iowa jobs board. These rules and applicable state laws and regulations shall be part of the contract. The board reserves the right to negotiate wage rates as well as other terms and conditions of the contract.

32.9(2) The recipient must execute and return the contract to the Iowa jobs board within 45 days of transmittal of the final contract from the Iowa jobs board. Failure to do so may be cause for the Iowa jobs board to terminate the award.

32.9(3) Certain projects may require that permits or clearances be obtained from other state, local, or federal agencies before the activity may proceed. Awards may be conditioned upon the timely completion of these requirements.

32.9(4) Awards may be conditioned upon commitment of other sources of funds necessary to complete the project.

32.9(5) Any substantive change to a contract shall be considered an amendment. Substantive changes include time extensions, budget revisions, and significant alterations that change the scope, location, objectives or scale of an approved project. Amendments must be requested in writing by the recipient and are not considered effective until approved by the Iowa jobs board and confirmed in writing by IFA staff following the procedure specified in the contract between the recipient and the Iowa jobs board.

These rules are intended to implement Iowa Code section 16.5(1) “r” and 2009 Iowa Acts, Senate File 376, sections 5 to 12.

[Filed Emergency 6/15/09, effective 6/15/09]

[Published 7/15/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/09.

ARC 7947B

WORKERS’ COMPENSATION DIVISION[876]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 86.8, the Workers’ Compensation Commissioner hereby amends Chapter 8, “Substantive and Interpretive Rules,” Iowa Administrative Code.

This amendment updates references to the tables which determine payroll taxes.

In compliance with Iowa Code section 17A.4(3), the Workers’ Compensation Commissioner finds that notice and public participation are unnecessary. Rule 876—8.8(85,17A) is noncontroversial and, further, Iowa Code section 85.61(6) requires adoption of current tables to determine payroll taxes by July 1 of each year. The Division must wait until the Internal Revenue Service and the Iowa Department of Revenue determine whether there will be changes in their publications on July 1 of the current year.

The Division also finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective July 1, 2009, as it confers a benefit upon the public to ensure speedy and uniform compliance with the Division’s legislative mandate.

The Division has determined that this amendment will not necessitate additional annual expenditures exceeding \$100,000 or combined expenditures exceeding \$500,000 within five years by all affected persons, including the agency. Therefore, no fiscal impact statement accompanies this rule making.

The Division has determined that this amendment will have no impact on small business within the meaning of Iowa Code section 17A.4A.

This amendment does not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers’ Compensation Division rules.

This amendment is intended to implement Iowa Code section 85.61(6).

This amendment became effective on July 1, 2009.

WORKERS' COMPENSATION DIVISION[876](cont'd)

The following amendment is adopted.

Amend rule 876—8.8(85,17A) as follows:

876—8.8(85,17A) Payroll tax tables. Tables for determining payroll taxes to be used for the period July 1, ~~2008~~ 2009, through June 30, ~~2009~~ 2010, are the tables in effect on July 1, ~~2008~~ 2009, for computation of:

1. Federal income tax withholding according to the percentage method of withholding for weekly payroll period. (Internal Revenue Service, ~~Circular E, Employer's Tax Guide, Publication 15~~ New Wage Withholding and Advance Earned Income Credit Payment Tables, Publication 15-T [~~2008~~ Rev. March 2009].)

2. Iowa Withholding Tax Guide. (Iowa Department of Revenue Iowa Withholding Tax Rate Tables [Effective April 1, 2006].)

3. Social Security and Medicare withholding (FICA) at the rate of 7.65 percent. (Internal Revenue Service, Circular E, Employer's Tax Guide, Publication 15 [~~2008~~ 2009].)

This rule is intended to implement Iowa Code section 85.61(6).

[Filed Emergency 6/18/09, effective 7/1/09]

[Published 7/15/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/09.

ARC 7940B**ATTORNEY GENERAL[61]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 715A.9A(6), the Attorney General hereby adopts new Chapter 35, "Identity Theft Passport," Iowa Administrative Code.

This new chapter establishes the process by which identity theft victims, as described in Iowa Code section 715A.8, may apply for identity theft passports pursuant to Iowa Code section 715A.9A(2) and by which the Department will evaluate the applications and issue identity theft passports pursuant to Iowa Code section 715A.9A.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 28, 2009, as **ARC 7528B**. No comments were received, and no changes to the Notice have been made.

These rules are intended to implement Iowa Code section 715A.9A.

These rules will become effective August 19, 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 35] is being omitted. These rules are identical to those published under Notice as **ARC 7528B**, IAB 1/28/09.

[Filed 6/15/09, effective 8/19/09]

[Published 7/15/09]

[For replacement pages for IAC, see IAC Supplement 7/15/09.]

ARC 7948B**ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts new Chapter 113, "Community Microenterprise Development Organization Grant Program," Iowa Administrative Code.

The rules are intended to support microenterprise development through community microenterprise development organization grants authorized by Iowa Code section 15.240. This financial assistance will help build the capacity of community microenterprise development organizations to provide technical assistance to microenterprises, entrepreneurs and small businesses.

The rules describe the purpose of the program; provide program definitions; establish eligibility requirements; describe application submittal, review and approval procedures; and explain contract administration provisions.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 6, 2009, as **ARC 7765B**. These rules were simultaneously Adopted and Filed Emergency and were published as **ARC 7764B**.

A public hearing was held on May 27, 2009, to receive comments on these rules. The Department did not receive any written or oral comments on the new rules. The final rules are identical to the proposed rules.

The Iowa Economic Development Board adopted these rules on June 18, 2009.

These rules will become effective on August 19, 2009, at which time the Adopted and Filed Emergency rules published on May 6, 2009, as **ARC 7764B** are hereby rescinded.

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

These rules are intended to implement Iowa Code section 15.240.

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 113] is being omitted. These rules are identical to those published under Notice as **ARC 7765B** and Adopted and Filed Emergency as **7764B**, IAB 5/6/09.

[Filed 6/19/09, effective 8/19/09]

[Published 7/15/09]

[For replacement pages for IAC, see IAC Supplement 7/15/09.]

ARC 7944B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby adopts Chapter 35, "Air Emissions Reduction Assistance Program," Iowa Administrative Code.

The purpose of the chapter is to establish a financial assistance program to distribute funds initially appropriated to Iowa through the federal American Recovery and Reinvestment Act of 2009 (ARRA). The ARRA funds will be distributed to eligible applicants through grants. The ARRA addresses emissions from diesel vehicles and equipment currently used for on-road applications, such as buses and heavy-duty diesel trucks, and non-road applications, such as construction, agriculture or mining. Eligible projects include engine idling reduction and retrofit technologies, engine replacement, vehicle replacement, and use of clean diesel emerging technologies.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 8, 2009, as **ARC 7678B**. These rules were also Adopted and Filed Without Notice and were published in the Iowa Administrative Bulletin on April 8, 2009, as **ARC 7679B**.

A public hearing was held on May 11, 2009. The Department did not receive any oral or written comments at the public hearing. The Department did not receive any written comments before the public comment period closed on May 12, 2009. No changes have been made since publication of the Notice.

These rules are intended to implement Iowa Code section 455B.103(5).

These rules will become effective on August 19, 2009, at which time the Adopted and Filed Without Notice rules are hereby rescinded.

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 35] is being omitted. These rules are identical to those published under Notice as **ARC 7678B** and Adopted and Filed Without Notice as **ARC 7679B**, IAB 4/8/09.

[Filed 6/17/09, effective 8/19/09]

[Published 7/15/09]

[For replacement pages for IAC, see IAC Supplement 7/15/09.]

ARC 7946B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission hereby amends Chapter 134, "Underground Storage Tank Licensing and Certification Programs," Iowa Administrative Code.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

These amendments rescind rules 567—134.18(455B) to 567—134.28(455B) and adopt new rules 567—134.18(455B) to 567—134.29(455B) in Part C of 567—Chapter 134. In addition, the amendments revise the title of Part C and amend definitions and add new definitions to rule 567—134.17(455B).

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 11, 2009, as **ARC 7620B**. The Department held three public hearings. The Department received four comments at the hearings. Three of the comments discussed industry's concern over costs and liability stemming from the new duty to report, and one opposed the requirement that removers must be certified groundwater professionals before they can do tank closure sampling.

The following changes have been made to the Notice of Intended Action:

1. The Department has amended the duty to report rule, 567—134.22(455B), so that UST professionals report suspected and confirmed releases on a Department-prescribed form to the UST owner and operator with recommendations as to what further investigatory and response actions the owner and operator should take. The UST professional is not required to directly report suspected releases to the Department. The UST professional is required to report confirmed releases by sending a copy of the reporting form within seven days to the Department. Rule 567—134.22(455B) now reads as follows:

“567—134.22(455B) Duty to report. Any UST professional licensed under Part C of this chapter shall timely report suspected and confirmed releases within 24 hours of discovery (6 hours if a hazardous condition exists) as described in rule 567—135.6(455B) to the owner and operator on a form prescribed by the department. The UST professional shall recommend to the owner and operator any release confirmation actions or other investigatory and response actions which in the UST professional's judgment would be consistent with the requirements of rule 567—135.6(455B). The UST professional shall submit a copy of the form to the department within seven days of discovering a confirmed release. The UST professional is not responsible for reporting a suspected release as described in rule 567—135.6(455B) directly to the department.”

2. The Department has chosen to adopt the rule that allows a licensed UST remover to conduct the soil and groundwater sampling required as part of a UST closure investigation if the remover is a certified groundwater professional under 567—Chapter 134, Part A, or if the remover contracts with a certified groundwater professional. The Department feels this is necessary to ensure that reliable soil and groundwater testing occurs as part of the closure process. Subrule 134.28(2) has been revised accordingly. The Department intends to initiate rule making to amend 567—subrule 135.15(3) to further clarify that certified groundwater professionals will be required to conduct the closure investigation unless the Department approves an alternative as part of the permanent closure of USTs. Subrule 134.28(2) now reads as follows:

“134.28(2) Responsibilities and documentation of work performed. A licensed remover shall be on site during the performance of all UST closure-related work, including subcontracted work, for which the owner/operator has contracted to have completed by the remover. Removers are responsible for ensuring that all work performed complies with the safety requirements of OSHA. Removers shall submit to the department a notification of closure form 30 days prior to the scheduled removal or fill in place as required in 567—subrule 135.15(2). Removers shall submit to the department the closure report within 45 days of removal or fill in place as required in 567—paragraph 135.15(3)“e.” Removers shall ensure that all local permits and notice requirements are satisfied. Removers shall have on their person at all times while on a UST job site a 40-hour general site worker program identification card or any valid refresher card that complies with OSHA standards. The closure investigation required by 567—subrule 135.15(3) may be conducted by a licensed remover if the remover is a certified groundwater professional licensed under Part A of this chapter. If the remover is not a certified groundwater professional, the remover may subcontract with a certified groundwater professional.”

3. An amendment has been added to update the implementation sentence for Part C.

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

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

These amendments shall become effective on August 19, 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 [134.17 to 134.29] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 7620B**, IAB 3/11/09.

[Filed 6/17/09, effective 8/19/09]

[Published 7/15/09]

[For replacement pages for IAC, see IAC Supplement 7/15/09.]

ARC 7964B

INSURANCE DIVISION[191]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 514D.3, 514D.4, 514D.9 and 507B.12, the Insurance Division hereby amends Chapter 15, "Unfair Trade Practices," and Chapter 37, "Medicare Supplement Insurance Minimum Standards," Iowa Administrative Code.

The rules in Chapter 37 provide for the standardization of coverage and simplification of terms and benefits of Medicare supplement policies. The amendments bring the current rules into conformance with revisions to the model regulation issued by the National Association of Insurance Commissioners (NAIC). The amendments also establish new Division II of Chapter 37 which contains portions of the NAIC model regulation on advertising of Medicare supplement policies. The amendments will be effective August 19, 2009, and Iowa insurance companies and producers must comply with the rules beginning August 19, 2009, for policies sold or issued on or after August 19, 2009.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 20, 2009, as **ARC 7795B**. A public hearing was held on June 10, 2009, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa. No comments were received at the hearing. However, some nonsubstantive changes have been made to the Notice. In Item 12, for purposes of clarity, the Division made a change in the language in the introductory paragraph of new paragraph 37.7(1)"h" as published under Notice. That paragraph now reads as follows:

"h. If an issuer makes a written offer to an insured who holds one or more of the issuer's 1990 Standardized Medicare supplement policies or certificates (as described in rule 191—37.9(514D)) to allow the insured to exchange that policy during a specified period of time for a 2010 standardized plan (as described in rule 191—37.10(514D)), the offer and subsequent exchange shall comply with the following requirements:"

Also, in Item 26, to correct inconsistencies and incorrect references and to improve readability, some technical changes were made to the charts for Plans A to D, F or High Deductible Plan F, G, and K to N in new paragraph 37.17(4)"d."

These amendments will become effective August 19, 2009.

These amendments are intended to implement Iowa Code chapters 507B and 514D.

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 [15.3(14), 37.2, 37.3, 37.5 to 37.26, 37.50 to 37.59] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 7795B**, IAB 5/20/09.

[Filed 6/24/09, effective 8/19/09]

[Published 7/15/09]

[For replacement pages for IAC, see IAC Supplement 7/15/09.]

ARC 7965B**INSURANCE DIVISION[191]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 507B.12, the Insurance Division hereby amends Chapter 15, "Unfair Trade Practices," Iowa Administrative Code.

The rules in Chapter 15 establish certain minimum standards and guidelines of conduct by identifying unfair methods of competition and unfair or deceptive acts or practices in the business of insurance, as prohibited by Iowa Code chapter 507B. The new subrule provides that an action by an insurer not in compliance with the Genetic Information Nondiscrimination Act of 2008 (P.L. 110-233, 122 Stat. 881) is an unfair trade practice under Chapter 15.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 20, 2009, as **ARC 7797B**. A public hearing was held on June 10, 2009, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. No comments were received at the hearing. The amendment was also Adopted and Filed Emergency and was published on May 20, 2009, as **ARC 7796B**, effective May 22, 2009.

The amendment is intended to implement Iowa Code chapter 507B.

This amendment will become effective August 19, 2009, at which time the Adopted and Filed Emergency amendment is hereby rescinded.

The following amendment is adopted.

Adopt the following **new** subrule 15.11(5):

15.11(5) Genetic information. Any action by an insurer that is not in compliance with Title I of the Genetic Information Nondiscrimination Act of 2008 (Public Law 110-233, 122 Stat. 881) shall be considered an unfair trade practice and shall be subject to the penalties of Iowa Code chapter 507B and of these rules.

[Filed 6/24/09, effective 8/19/09]

[Published 7/15/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/09.

ARC 7950B**REAL ESTATE COMMISSION[193E]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 543B.9, 543B.18, and 543B.15, the Real Estate Commission hereby amends Chapter 14, "Seller Property Condition Disclosure," Iowa Administrative Code.

The amendment to subrule 14.1(6) removes question 20 from the Residential Property Seller Disclosure Statement. This amendment is in response to Iowa Code section 558A.4(1) as amended by 2008 Iowa Acts, Senate File 2246, section 1, enacted July 1, 2008, that removes the requirement that properties located in a real estate improvement district be disclosed.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7639B** on March 25, 2009. No comments were received by the public.

This amendment was adopted by the Commission on June 18, 2009.

This amendment shall become effective on August 19, 2009.

This amendment is intended to implement Iowa Code sections 543B.9, 543B.18 and 558A.4(1).

The following amendment is adopted.

REAL ESTATE COMMISSION[193E](cont'd)

Rescind Question 20 in the Residential Property Seller Disclosure Statement in subrule **14.1(6)**.

[Filed 6/22/09, effective 8/19/09]

[Published 7/15/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/09.

ARC 7963B

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby adopts an amendment to Chapter 7, "Practice and Procedure Before the Department of Revenue," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXI, No. 24, p. 2599, on May 20, 2009, as **ARC 7793B**.

This amendment creates new rule 701—7.61(17A) to describe the Department of Revenue's process to petition for rule making as allowed in Iowa Code chapter 17A. The general state model rule is the basis for the Department's rule.

This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective August 19, 2009, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This amendment is intended to implement Iowa Code chapter 17A.

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 [7.61] is being omitted. This amendment is identical to that published under Notice as **ARC 7793B**, IAB 5/20/09.

[Filed 6/24/09, effective 8/19/09]

[Published 7/15/09]

[For replacement pages for IAC, see IAC Supplement 7/15/09.]

ARC 7962B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to Iowa Code section 17A.4 and chapters 476, 478, and 479, the Utilities Board (Board) gives notice that on June 23, 2009, the Board issued an order in Docket No. RMU-2009-0003, In re: Updates and Corrections to Natural Gas and Electric Technical Standards [199 IAC Chapters 10, 19, 20, and 25], "Order Adopting Amendments." The Board is adopting amendments to 199 IAC 10.12, 10.17, 19.2(5)"g," 19.5(2), 19.6(3)"d," 19.8(3), 20.5(2), 20.6(3)"a" and 25.2(5)"a" to update the technical standards and make certain corrections to the safety rules applicable to natural gas and electric service. This proceeding was initiated by order issued April 15, 2009. Notice of Intended Action for the proposed amendments was published in IAB Vol. XXXI, No. 23 (5/6/09), p. 2436, as **ARC 7749B**.

Comments were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate) and Interstate Power and Light Company (IPL). Consumer Advocate stated that it had no comments or objections to the proposed amendments.

IPL supported incorporation of updated technical standards in the Board's rules. IPL suggested that the reference to Section 4.2 in ANSI Z223.1/NPFA 54-2009 in 199 IAC 19.8(3) may be incorrect. IPL stated that the requirement to take the necessary steps to ensure that there is no flow of gas through the meter, which is a warning that the customer's piping or appliances are not safe for gas turn on, is in

UTILITIES DIVISION[199](cont'd)

Section 8.2.2 and not Section 4.2 of ANSI Z223.1/NPFA 54-2009. IPL proposed the change be made in the adopted amendments.

The Board has considered the change proposed by IPL and will remove the reference to Section 4.2 in ANSI Z223.1/NPFA 54-2009. However, the Board considers Section 8.2.3 to be a better link than Section 8.2.2 to the no-flow test methodology which is referenced in this rule. The Board has amended the standard to reference Section 8.2.3 as the appropriate reference since it references Annex D (formerly Appendix D). The Board has also adopted the change from “Appendix D” to “Annex D” and certain other changes to titles and references that reflect changes made by the publishers of the standards.

Finally, the Board in reviewing the updates for the safety standards for electric metering and meter testing has found that there is a 2008 update to the standard in 199 IAC 20.6(3) that was not included in the Notice of Intended Action published on May 6, 2009. The Board has included the update in the amendments adopted in this rule making to bring this standard up to date. The order adopting the amendments can be found on the Board’s Web site at <http://www.state.ia.us/iub>.

These amendments are intended to implement Iowa Code section 17A.4 and chapters 476, 478, and 479.

These amendments will become effective on August 19, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule 10.12(1) as follows:

10.12(1) All pipelines, underground storage facilities, and equipment used in connection therewith shall be designed, constructed, operated, and maintained in accordance with the following standards:

a. 49 CFR Part 191, “Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports,” as amended through ~~June 27, 2007~~ August 19, 2009.

b. 49 CFR Part 192, “Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards,” as amended through ~~June 27, 2007~~ August 19, 2009.

c. 49 CFR Part 199, “Drug and Alcohol Testing,” as amended through ~~June 27, 2007~~ August 19, 2009.

d. ASME B31.8 - ~~2003~~ 2007, “Gas Transmission and Distribution Piping Systems.”

e. and *f.* No change.

Conflicts between the standards established in paragraphs 10.12(1) “*a*” through “*f*” or between the requirements of rule 199—10.12(479) and other requirements which are shown to exist by appropriate written documentation filed with the board shall be resolved by the board.

ITEM 2. Amend rule 199—10.17(479) as follows:

199—10.17(479) Accidents and incidents. Any pipeline incident or accident which is reportable to the U.S. Department of Transportation under 49 CFR Part 191 as amended through ~~June 27, 2007~~ August 19, 2009, shall also be reported to the board, except that the minimum economic threshold of damage required for reporting to the board is \$15,000. Duplicate copies of any written accident reports and safety-related condition reports submitted to the U.S. Department of Transportation shall be provided to the board.

ITEM 3. Amend paragraph **19.2(5)“g”** as follows:

g. *Reports to federal agencies.* Copies of reports submitted pursuant to 49 CFR Part 191 as amended through ~~June 27, 2007~~ August 19, 2009, “Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports,” shall be filed with the board. Utilities operating in other states shall provide to the board data for Iowa only.

ITEM 4. Amend subrule 19.5(2) as follows:

19.5(2) Standards incorporated by reference.

a. The design, construction, operation, and maintenance of gas systems and liquefied natural gas facilities shall be in accordance with the following standards where applicable:

UTILITIES DIVISION[199](cont'd)

(1) 49 CFR Part 191, "Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," as amended through ~~June 27, 2007~~ August 19, 2009.

(2) 49 CFR Part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards," as amended through ~~June 27, 2007~~ August 19, 2009.

(3) 49 CFR Part 193, "Liquefied Natural Gas Facilities: Federal Safety Standards," as amended through ~~June 27, 2007~~ August 19, 2009.

(4) 49 CFR Part 199, "Drug and Alcohol Testing," as amended through ~~June 27, 2007~~ August 19, 2009.

(5) ASME B31.8 - ~~2003~~ 2007, "Gas Transmission and Distribution Piping Systems."

(6) NFPA No. 59-~~2004~~ 2008, "~~Standard for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants.~~" "Utility LP-Gas Plant Code."

(7) No change.

b. The following publications are adopted as standards of accepted good practice for gas utilities:

(1) ANSI Z223.1/NFPA 54-~~2006~~ 2009, "National Fuel Gas Code."

(2) NFPA 501A-~~2005~~ 2009, "Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities."

ITEM 5. Amend paragraph **19.6(3)"d"** as follows:

d. Measurement of Gas Flow by Turbine Meters, ANSI/ASME MFC-4M-1986 (~~R1997~~) (Reaffirmed 2008).

ITEM 6. Amend subrule 19.8(3) as follows:

19.8(3) Turning on gas. Each utility upon the installation of a meter and turning on gas or the act of turning on gas alone shall take the necessary steps to assure itself that there exists no flow of gas through the meter which is a warning that the customer's piping or appliances are not safe for gas turn on (Ref: Sec. ~~4.2 8.2.3~~ and ~~Appendix Annex D~~, ANSI Z223.1/NFPA 54-~~2006~~ 2009).

ITEM 7. Amend subrule 20.5(2) as follows:

20.5(2) Standards incorporated by reference. The utility shall use the applicable provisions in the publications listed below as standards of accepted good practice unless otherwise ordered by the board.

a. Iowa Electrical Safety Code, as defined in 199 IAC [199], Chapter 25.

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

c. American National Standard Requirements for Instrument Transformers, ANSI/IEEE C57.13.1-~~1981 (R1999)~~ 2006; and C57.13.3-~~1983 (R1994)~~ 2006.

d. American National Standard for Electric Power Systems and Equipment Voltage Ratings (60 Hertz), ANSI C84.1-2006.

e. Grounding of Industrial and Commercial Power Systems, IEEE 142-~~1994~~ 2007.

f. to h. No change.

ITEM 8. Amend paragraph **20.6(3)"a"** as follows:

a. American National Standard Code for Electricity Metering, ANSI C12.1-~~2004~~ 2008.

ITEM 9. Amend paragraph **25.2(5)"a"** as follows:

a. The "National Electrical Code," ANSI/NFPA 70-~~2005~~ 2008, is adopted as a standard of accepted good practice for customer-owned electrical facilities beyond the utility point of delivery, except for installations subject to the provisions of the state fire marshal standards in 661 IAC 504.1(103).

[Filed 6/24/09, effective 8/19/09]

[Published 7/15/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/15/09.

AGENCY	RULE	DELAY
HUMAN SERVICES DEPARTMENT[441]	79.1(1)“d,” 79.1(2), 79.1(24)“a”(1), 78.27(2)“d” [IAB 7/15/09, ARC 7957B]	Effective date of July 1, 2009, delayed 70 days by the Administrative Rules Review Committee at its meeting held June 25, 2009. [Pursuant to §17A.4(7)]