IOWA ADMINISTRATIVE BULLETIN

Published Biweekly VOLUME XXXVI NUMBER 6
September 18, 2013 Pages 653 to 760

CONTENTS IN THIS ISSUE

Pages 664 to 760 include **ARC 1010C** to **ARC 1032C**

PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making
2013

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

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
8	**Friday, September 27, 2013**	**October 16, 2013**
9	**Friday, October 11, 2013**	**October 30, 2013**
10	**Wednesday, October 23, 2013**	**November 13, 2013**

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

The following rules will be reviewed at the regular, statutory meeting of the Administrative Rules Review Committee to be held on Tuesday, October 8, 2013, in Room 116, State Capitol, Des Moines, Iowa. **NOTE:** An additional meeting day may be necessary; the tentative date would be **Monday, October 7, 2013**. Additional information about the October meeting and additional rules to be reviewed at the meeting will appear in the Supplemental Agenda to be published in the October 2, 2013, Iowa Administrative Bulletin.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Agricultural lime sampling procedures and fee, 43.20(2), 43.32, 43.34, 43.35(1) Notice **ARC 1006C** 9/4/13
Chronic wasting disease (CWD), 64.104, 64.106 to 64.111, 64.113, 64.114 Filed **ARC 1024C** 9/18/13

AUDITOR OF STATE[81]

Periodic examination fee, 21.2 Filed **ARC 1023C** 9/18/13

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Temporary permit for volunteer services, 13.3(3), 15.3(17) Filed **ARC 0984C** 9/4/13
Expanded function training approval, 20.15 Filed **ARC 0985C** 9/4/13
Sedation and nitrous oxide inhalation analgesia, 29.1 to 29.5, 29.9(1), 29.10 to 29.14
Notice **ARC 1008C** 9/4/13

ECONOMIC DEVELOPMENT AUTHORITY[261]

Employee stock ownership plan (ESOP) formation assistance, ch 56 Notice **ARC 1021C** 9/18/13

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]"umbrella"

Master educator license—degree from regionally accredited college or university, 13.8
Notice **ARC 0987C** 9/4/13
Teaching endorsements for health, music and physical education, 13.28(8), 13.28(13), 13.28(14) Filed **ARC 0986C** 9/4/13
Engineering and STEM endorsements, 13.28(31), 13.28(32), 17.1(3) Notice **ARC 0993C** 9/4/13
Superintendent/AEA administrator—demonstration of required experience, 18.10 Notice **ARC 0988C** 9/4/13
Prohibited relationships between licensees and former students, 25.3(1)
Notice of Termination **ARC 1010C** 9/18/13
Prohibited conduct between licensees and former students, 25.3(1) Notice **ARC 0992C** 9/4/13

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Air quality—nonattainment areas, amendments to chs 20, 22, 31, 33 Notice **ARC 1016C** 9/18/13
Air quality, 22.1(2), 22.8, 22.103(2), 28.1 Filed **ARC 1013C** 9/18/13
Hazardous air pollutants—adoption by reference of federal RICE NESHAP standards, 23.1(4) Filed **ARC 1014C** 9/18/13

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Prohibition on campaign contributions from corporations, 4.44(1) Notice **ARC 1020C** 9/18/13
Supporting documentation for complaint, 9.1(1) Notice **ARC 1019C** 9/18/13

HUMAN SERVICES DEPARTMENT[441]

Appeals based on the competitive procurement bid process, 7.1, 7.41 to 7.51 Notice **ARC 1000C** 9/4/13
PROMISE JOBS program—limited benefit plan, 41.24(8), 93.13 Notice **ARC 0999C** 9/4/13
Electronic access card use at prohibited locations, 41.25(11), 46.21, 46.24(3), 60.10(4), 60.16 Notice **ARC 1001C** 9/4/13
Residential care facilities—financial and statistical reports, 54.1 to 54.3, 54.8(1) Filed **ARC 0991C** 9/4/13
Medicaid eligibility for family planning services, 75.1(41)"a" Filed **ARC 0990C** 9/4/13
Consumer-directed attendant care—transition from individual providers to agency providers or consumer choice option, 77.30(7), 77.33(15), 77.34(8), 77.37(21), 77.39(24), 77.41(2)
Notice of Termination **ARC 1027C** 9/18/13
Nursing facilities—reimbursement, cost reports, recoupment of debts owed Medicaid, 78.19(1)"a," 79.1(2), 81.1, 81.6 Filed **ARC 0994C** 9/4/13
Intermediate care facilities for persons with an intellectual disability —financial and statistical reports, 82.5 Filed **ARC 0995C** 9/4/13
Child care centers and child development homes—licensure status, notifications, 109.2(6), 109.4(3), 109.6(6), 109.10(10), 110.7 Notice **ARC 1007C** 9/4/13
Child care centers and child development homes (CDHs)—provider immunization and health requirements; CDH provider files, 109.9(1), 110.5 Filed **ARC 0996C** 9/4/13

INSPECTIONS AND APPEALS DEPARTMENT[481]

Food and consumer safety, ch 30 Notice **ARC 1026C** 9/18/13
Food establishment and food processing plant inspections, ch 31 Notice **ARC 1025C** 9/18/13
Egg handlers, rescind ch 36 Filed **ARC 0989C** 9/4/13

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Burial sites and cemeteries, rescind ch 18; adopt ch 140 Notice **ARC 1004C** 9/4/13

IOWA FINANCE AUTHORITY[265]

HOME investment partnerships program, 39.1, 39.2, 39.4(1), 39.6(9), 39.7(3), 39.8(7), 39.9(8) Notice **ARC 0997C** 9/4/13

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Conveyance safety program—fees, 71.16 Notice **ARC 1009C** 9/4/13
Boiler inspection schedule, 90.6(2) Notice **ARC 1015C** 9/18/13
Boilers—control and safety device code adopted by reference, 91.1(6) Filed **ARC 1011C** 9/18/13

NATURAL RESOURCE COMMISSION[571]

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Snowmobile and all-terrain vehicle registration revenue cost-share programs, amend 28.1 to 28.18; adopt 47.30 to 47.47 Notice **ARC 1022C** 9/18/13
Waterfowl and coot hunting seasons, 91.1, 91.2(1), 91.3, 91.6 Filed Emergency After Notice **ARC 1003C** 9/4/13

PHARMACY BOARD[657]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Licensure by license transfer, 2.9 Filed **ARC 1031C** 9/18/13
Vaccine administration by pharmacists, 8.33 Filed Emergency After Notice **ARC 1030C** 9/18/13
Pilot and demonstration research projects—extension or renewal of time, 8.40(3) Filed **ARC 1032C** 9/18/13

PROFESSIONAL LICENSURE DIVISION[645]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Chiropractors—continuing education hours by presentation type, 44.3(2)"a"(1) Notice **ARC 1012C** 9/18/13
Hearing aid dispensers, amendments to chs 121 to 124 Filed **ARC 1005C** 9/4/13
Psychologists—licensure, continuing education, 240.2(1), 240.3(4), 240.4(1), 240.10, 241.3(2) Filed **ARC 1029C** 9/18/13

REVENUE DEPARTMENT[701]

Inheritance tax, 40.59, amendments to ch 86 Notice **ARC 1002C** 9/4/13
Historic preservation and cultural and entertainment district, agricultural assets transfer, custom farming contract, from farm to food donation, targeted jobs and endow Iowa tax credits, amendments to chs 41, 42, 46, 52, 58 Notice **ARC 0998C** 9/4/13
Commercial and industrial property tax replacement—county replacement claims, 80.49 Notice **ARC 1028C** 9/18/13

TRANSPORTATION DEPARTMENT[761]

Tourist-oriented directional signing, 119.2(2), 119.3, 119.4, 119.5(3) Notice **ARC 1018C** 9/18/13
Private directional signing, 120.1, 120.2, 120.5(3), 120.6(4), 120.7(3), 120.8(3), 120.9 Notice **ARC 1017C** 9/18/13

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Senator Thomas Courtney
2609 Clearview
Burlington, Iowa 52601

Senator Wally Horn
101 Stoney Point Road, SW
Cedar Rapids, Iowa 52404

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

Senator Roby Smith
2036 East 48th Street
Davenport, Iowa 52807

Joseph A. Royce
Legal Counsel
Capitol
Des Moines, Iowa 50319
Telephone (515)281-3084
Fax (515)281-8451

Representative Lisa Heddens
4115 Wembley Avenue
Ames, Iowa 50010

Representative Rick Olson
3012 East 31st Court
Des Moines, Iowa 50317

Representative Dawn Pettengill
P.O. Box A
Mt. Auburn, Iowa 52313

Representative Jeff Smith
1006 Brooks North Lane
Okoboji, Iowa 51355

Representative Guy Vander Linden
1610 Carbonado Road
Oskaloosa, Iowa 52577

Brenna Findley
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone (515)281-5211

DENTAL BOARD[650]

Sedation and nitrous oxide inhalation analgesia, 29.1 to 29.5, 29.9(1), 29.10 to 29.14 IAB 9/4/13 **ARC 1008C**	Board Office, Suite D 400 SW 8th St. Des Moines, Iowa	September 24, 2013 2 p.m.

EDUCATIONAL EXAMINERS BOARD[282]

Master educator license—degree from regionally accredited college or university, 13.8 IAB 9/4/13 **ARC 0987C**	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 25, 2013 1 p.m.
Engineering and STEM endorsements, 13.28(31), 13.28(32), 17.1(3) IAB 9/4/13 **ARC 0993C**	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 25, 2013 1 p.m.
Superintendent/AEA administrator—demonstration of required experience, 18.10 IAB 9/4/13 **ARC 0988C**	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 25, 2013 1 p.m.
Prohibited conduct between licensees and former students, 25.3(1) IAB 9/4/13 **ARC 0992C**	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 25, 2013 1 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Air quality—nonattainment areas, amendments to chs 20, 22, 31, 33 IAB 9/18/13 **ARC 1016C**	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Windsor Heights, Iowa	October 21, 2013 1 p.m.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Prohibition on campaign contributions from corporations, 4.44(1) IAB 9/18/13 **ARC 1020C**	Board Office, Suite 1A 510 E. 12th St. Des Moines, Iowa	October 17, 2013 1:30 to 2:30 p.m.
Supporting documentation for complaint, 9.1(1) IAB 9/18/13 **ARC 1019C**	Board Office, Suite 1A 510 E. 12th St. Des Moines, Iowa	October 17, 2013 2:30 to 3:30 p.m.

INSPECTIONS AND APPEALS DEPARTMENT[481]

Food and consumer safety, ch 30 IAB 9/18/13 **ARC 1026C**	Room 319 Lucas State Office Bldg. Des Moines, Iowa	October 9, 2013 10 a.m.
Food establishment and food processing plant inspections, ch 31 IAB 9/18/13 **ARC 1025C**	Room 319 Lucas State Office Bldg. Des Moines, Iowa	October 9, 2013 10 a.m.

INSURANCE DIVISION[191]

Burial sites and cemeteries, rescind ch 18; adopt ch 140 IAB 9/4/13 **ARC 1004C**	Division Offices, Fourth Floor Two Ruan Center 601 Locust St. Des Moines, Iowa	September 24, 2013 10 a.m.

LABOR SERVICES DIVISION[875]

Conveyance safety program—fees, 71.16 IAB 9/4/13 **ARC 1009C**	Capitol View Room 1000 East Grand Ave. Des Moines, Iowa	September 25, 2013 9:30 a.m. (If requested)
Boiler inspection schedule, 90.6(2) IAB 9/18/13 **ARC 1015C**	Capitol View Room 1000 East Grand Ave. Des Moines, Iowa	October 9, 2013 1:30 p.m. (If requested)

NATURAL RESOURCE COMMISSION[571]

Snowmobile registration revenue cost-share program, amend 28.1 to 28.18; adopt 47.30 to 47.47 IAB 9/18/13 **ARC 1022C**	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 8, 2013 2 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Chiropractors—continuing education hours by presentation type, 44.3(2)"a"(1) IAB 9/18/13 **ARC 1012C**	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	October 8, 2013 8:30 to 9 a.m.

REAL ESTATE COMMISSION[193E]

Residential property seller disclosure statement, 14.1(6) IAB 8/21/13 **ARC 0970C**	Commission Offices, Second Floor 1920 SE Hulsizer Rd. Ankeny, Iowa	September 24, 2013 9 a.m.

TRANSPORTATION DEPARTMENT[761]

Tourist-oriented directional signing, 119.2(2), 119.3, 119.4, 119.5(3) IAB 9/18/13 **ARC 1018C**	First Floor South Conference Room DOT Administration Bldg. 800 Lincoln Way Ames, Iowa	October 10, 2013 1 p.m. (If requested)
Private directional signing, 120.1, 120.2, 120.5(3), 120.6(4), 120.7(3), 120.8(3), 120.9 IAB 9/18/13 **ARC 1017C**	First Floor South Conference Room DOT Administration Bldg. 800 Lincoln Way Ames, Iowa	October 10, 2013 2 p.m. (If requested)

The following list will be updated as changes occur.

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

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

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

ADMINISTRATIVE SERVICES DEPARTMENT[11]
AGING, DEPARTMENT ON[17]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
- Agricultural Development Authority[25]
- Soil Conservation Division[27]

ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF INDUSTRY COUNCIL, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CAPITAL INVESTMENT BOARD, IOWA[123]
CITIZENS' AIDE[141]
CIVIL RIGHTS COMMISSION[161]
COMMERCE DEPARTMENT[181]
- Alcoholic Beverages Division[185]
- 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]
  - Real Estate Appraiser Examining Board[193F]
  - Interior Design Examining Board[193G]
- Utilities Division[199]

CORRECTIONS DEPARTMENT[201]
- Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]
- Arts Division[222]
- Historical Division[223]

EARLY CHILDHOOD IOWA STATE BOARD[249]
ECONOMIC DEVELOPMENT AUTHORITY[261]
- City Development Board[263]

IOWA FINANCE AUTHORITY[265]
EDUCATION DEPARTMENT[281]
- Educational Examiners Board[282]
- College Student Aid Commission[283]
- Higher Education Loan Authority[284]
- Iowa Advance Funding Authority[285]
- Libraries and Information Services Division[286]
- Public Broadcasting Division[288]
- School Budget Review Committee[289]

EGG COUNCIL, IOWA[301]
EMPOWERMENT BOARD, IOWA[349]
ENERGY INDEPENDENCE, OFFICE OF[350]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
HUMAN RIGHTS DEPARTMENT[421]
- Community Action Agencies Division[427]
- Criminal and Juvenile Justice Planning Division[428]
- Deaf Services Division[429]
- Persons With Disabilities Division[431]
- Latino Affairs Division[433]

ARC 1021C

ECONOMIC DEVELOPMENT AUTHORITY[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 2013 Iowa Code section 15.106A and of 2013 Iowa Acts, House File 648, section 9, the Economic Development Authority hereby gives Notice of Intended Action to adopt new Chapter 56, "Employee Stock Ownership Plan (ESOP) Formation Assistance," Iowa Administrative Code.

In 2013 Iowa Acts, House File 648, the General Assembly appropriated $500,000 to the Authority for purposes of providing financial assistance in the formation of employee stock ownership plans (ESOPs). The proposed rules establish a program to provide such assistance and describe the manner in which the Authority intends to implement and administer the program.

The Economic Development Authority Board approved this amendment on August 16, 2013, at the Board's monthly meeting.

Any interested person may make written suggestions or comments on this proposed amendment on or before October 8, 2013. Paper materials with suggestions and comments may be directed to Timothy J. Whipple, Legal Counsel, Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. Electronic submissions may be sent to tim.whipple@iowa.gov.

After analysis and review of this rule making, no negative impact on jobs has been found, and the Authority finds that the new program is likely to substantially benefit the Iowa economy by helping retain businesses in Iowa and by transferring the wealth-producing capacity of an ESOP to its employee owners.

These rules are intended to implement 2013 Iowa Acts, House File 648.

The following amendment is proposed.

Adopt the following **new** 261—Chapter 56:

CHAPTER 56
EMPLOYEE STOCK OWNERSHIP PLAN (ESOP) FORMATION ASSISTANCE

261—56.1(85GA,HF648) Purpose. The authority is authorized to provide financial and technical assistance to businesses interested in establishing an employee stock ownership plan (ESOP). The purpose of this chapter is to create a program that will assist a business by (1) helping to determine whether an ESOP is a feasible form of ownership and (2) providing assistance to reduce the cost of forming an ESOP when it is feasible.

261—56.2(85GA,HF648) Definitions. For purposes of this chapter unless the context otherwise requires:

"Agreement" means a contract for financial assistance under the program describing the terms on which the financial assistance is to be provided.

"Applicant" means a business applying for assistance under the program.

"Authority" means the economic development authority created in Iowa Code section 15.105.

"Board" means the members of the economic development authority appointed by the governor and in whom the powers of the authority are vested pursuant to Iowa Code section 15.105.

"Business" means a corporation eligible to become a qualified Iowa ESOP.

"Director" means the director of the authority.

"Financial assistance" means a payment made by the authority to an applicant approved for funding under the program.

"Program" means the ESOP formation assistance program established pursuant to this chapter.

"Qualified Iowa ESOP" means the same as defined in the department of revenue's rules for the determination of net income at 701—subrule 40.38(10).

261—56.3(85GA,HF648) Program description.

56.3(1) *Amount, form, and timing of assistance.* The program provides financial assistance to businesses interested in establishing an ESOP. An applicant to the program may be approved for financial assistance in an amount equal to 50 percent of the cost incurred for obtaining a feasibility study conducted by an independent financial professional. The total amount of financial assistance provided to an applicant will not exceed $25,000. The financial assistance may be provided in two tranches. The first tranche will be provided as a reimbursement of 25 percent of the cost of a feasibility study and will be remitted upon completion of the feasibility study. The second tranche will be provided as a reimbursement of 25 percent of the cost of the feasibility study and will be remitted only upon completion of an ESOP formation. A business that does not successfully complete the formation of an ESOP will not receive the second tranche. A business will be required to provide to the authority documentation establishing the costs incurred and the successful completion of all necessary transactions.

56.3(2) *Application.*

a. Each fiscal year in which funding is available, the authority will accept applications for assistance under the program and make funding decisions on a rolling basis.

b. Information on submitting an application under the program may be obtained by contacting the economic development authority. The contact information is:

Iowa Economic Development Authority
Office of General Counsel
200 East Grand Avenue
Des Moines, Iowa 50309
(515)725-3000
businessfinance@iowa.gov
http://iowaeconomicdevelopment.com/

56.3(3) *Approval of assistance.* The authority, with the assistance of an ESOP advisory panel, will consider, evaluate, and recommend applications for financial assistance under the program. The ESOP advisory panel will consist of individuals selected by the director who have demonstrated expertise in the formation and operation of ESOPs. Authority staff and the members of the advisory panel will review applications for financial assistance and score the applications according to the criteria described in rule 261—56.4(85GA,HF648). Applications deemed to meet the minimum scoring criteria will be submitted to the director for a final funding decision.

56.3(4) *Contract required.* If the director approves an applicant for financial assistance under the program, the authority will prepare an agreement stating the terms on which the financial assistance is to be provided, and the applicant shall execute the agreement before funds are disbursed under the program.

56.3(5) *Use of funds.* An applicant shall use funds provided only for the purpose of reducing the cost of forming an ESOP. The authority may require documentation or other information establishing the actual costs incurred for such formation. The financial assistance shall be provided to the applicant after the costs are incurred and on a reimbursement basis.

261—56.4(85GA,HF648) Program eligibility, application scoring, and funding decisions.

56.4(1) *Program eligibility.* To be eligible under the program, an applicant shall meet all of the following requirements:

a. The applicant shall be a business interested in establishing an ESOP. To establish that this criterion is met, the applicant shall state the reasons for its interest in establishing an ESOP.

b. The applicant shall be, or be willing to become, an IRS subchapter C or subchapter S corporation. To establish that this criterion is met, the applicant shall include a copy of its articles and documentation establishing the applicable IRS election. An applicant not yet a corporation may be required to execute a letter of intent.

c. The applicant shall have a valuation that is sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide information estimating the value of the business. This information may be a good-faith estimate. The authority will not set a specific minimum valuation; however, applicants are advised that a business with valuation less than $5 million may not be considered a feasible candidate for an ESOP.

d. The applicant shall have a number of employees and a total payroll that are sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide relevant payroll information. The authority will not set a specific minimum number of employees; however, applicants are advised that a business with fewer than 25 employees may not be a feasible candidate for an ESOP.

e. The applicant shall have a cash flow level sufficient to make an ESOP feasible. To establish that this criterion is met, the applicant shall provide relevant financial statements. The authority will not set a minimum cash flow level; however, applicants are advised that a business with cash flow less than $500,000 may not be a feasible candidate for an ESOP.

f. The applicant is not a retail business.

g. The applicant is not a publicly traded company.

h. The applicant has not completed a feasibility study for purposes of exploring an ESOP formation.

i. The applicant has not engaged a feasibility service provider prior to July 1, 2013. An applicant who has engaged a service provider as of the time of application shall provide a copy of the engagement letter to the authority.

56.4(2) *Application scoring.* A business meeting the requirements of subrule 56.4(1) may apply to the authority for financial assistance under the program. The authority will review applications for completeness and engage an ESOP advisory panel for assistance in evaluating the applications. As part of the evaluation process, an applicant will be required to interview with authority staff and with members of the ESOP advisory panel about the applicant's business, future plans, and interest in forming an ESOP. Authority staff and members of the ESOP advisory panel will evaluate the applications and give them an average numerical score between 0 and 100. The numerical score will reflect the extent to which an applicant is a feasible candidate for an ESOP. In determining the numerical score, the authority and the members of the advisory panel will take into account the extent to which each applicant meets the requirements of subrule 56.4(1). The authority will keep records of the scoring process and make those records available to applicants.

56.4(3) *Funding decisions.* Each application, including its numerical score, will be referred to the director with a recommended funding decision. The director will make the final funding decision on each application, taking into consideration the score and the funding recommendation of the ESOP advisory panel. The director may not approve funding for an application that receives an average score of less than 50 points.

261—56.5(85GA,HF648) Contract required. Each applicant that is approved for financial assistance under the program shall enter into an agreement with the authority. The agreement shall establish the terms on which the financial assistance is to be provided.

These rules are intended to implement 2013 Iowa Acts, House File 648, section 9.

ARC 1010C

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Termination

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 0678C** on April 3, 2013, proposing to amend Chapter 25, "Code of Professional Conduct and Ethics," Iowa Administrative Code.

The Notice proposed to prohibit romantic or sexual relationships between licensees and former students for 180 days following the student's graduation, if the licensee and the student had a direct or supervisory relationship prior to the student's graduation.

The Board elected to terminate this rule making in order to further consider input from the field and the Administrative Rules Review Committee. The Board made changes to the language that was previously proposed and initiated a new rule making with publication of Notice of Intended Action **ARC 0992C** in the Iowa Administrative Bulletin on September 4, 2013.

After analysis and review of this rule making, there is no anticipated impact on jobs.

ARC 1016C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 22, "Controlling Pollution," Chapter 31, "Nonattainment Areas," and Chapter 33, "Special Regulations and Construction Permit Requirements for Major Stationary Sources—Prevention of Significant Deterioration (PSD) of Air Quality," Iowa Administrative Code.

The proposed rule making will adopt regulations from 40 CFR 51.165 to incorporate federal review and permitting procedures that allow facilities to construct or modify existing sources in areas that are not in attainment with the National Ambient Air Quality Standards (NAAQS). The construction of new major sources of air pollution (or major modifications of existing sources of air pollution) in areas that are not in attainment with the NAAQS is governed by federal Clean Air Act Nonattainment New Source Review (NSR) regulations.

On November 22, 2011, the U.S. Environmental Protection Agency (EPA) designated portions of Council Bluffs as nonattainment for violating the 2008 lead NAAQS. On July 25, 2013, EPA designated portions of Muscatine as nonattainment for violating the 2010 sulfur dioxide (SO_2) NAAQS. To bring the areas back into "attainment" status, the State must complete a number of tasks. First, the Department must submit to EPA a State Implementation Plan (SIP) revision that will demonstrate how the area will meet the lead and SO_2 NAAQS by the time lines specified in the Clean Air Act. Adopting the federal nonattainment major NSR provisions is a required element of the SIP revision. Attaining the lead and SO_2 NAAQS as expeditiously as possible in Council Bluffs and Muscatine will minimize the adverse economic impact that comes from a nonattainment designation.

The Commission previously adopted requirements for nonattainment areas in rule 567—22.5(455B). The provisions of rule 567—22.5(455B) must be retained, as permits issued during previous nonattainment declarations remain in effect. In an effort to streamline administrative rules, however,

and to make them more user-friendly, all nonattainment rules will be moved into Chapter 31. The content of existing rule 567—22.5(455B) will be in rule 567—31.20(455B) and will apply only to areas designated nonattainment before May 18, 1998. The Department believes that retaining the content of rule 567—22.5(455B) (as new rule 567—31.20(455B)) will make the State's administrative rules for nonattainment major NSR no more or less stringent than the rules in 40 CFR 51.165 based on the federal regulations that were in effect when an area was designated nonattainment. The requirements for areas designated nonattainment on or after May 18, 1998, are in rules 567—31.3(455B) to 567—31.9(455B). This ensures a clear delineation between the nonattainment major NSR rules that applied to areas designated nonattainment before May 18, 1998, and those that apply to areas designated nonattainment on or after May 18, 1998.

The Commission is proposing the following amendments:

Item 1 amends rule 567—20.1(455B,17A) to update information about the content of Chapters 22 and 31. Rules for areas designated nonattainment are in Chapter 31.

Item 2 amends rule 567—20.2(455B) to revise the definition of "excess emissions" to update the references to the nonattainment major NSR and prevention of significant deterioration (PSD) rules.

Item 3 amends the introductory paragraph of subrule 22.1(1) to update the references to the nonattainment major NSR and PSD rules.

Item 4 amends subrule 22.1(2) to update the reference to the nonattainment major NSR rules.

Item 5 amends subparagraph 22.1(3)"b"(7) to update the references to the nonattainment major NSR and PSD rules.

Item 6 amends subrule 22.1(4) to update the references to the nonattainment major NSR and PSD rules.

Item 7 rescinds rule 567—22.5(455B) and replaces it with a new rule that requires applicable owners or operators of a stationary source to comply with the nonattainment major NSR program requirements in rule 567—31.20(455B). The content of existing rule 567—22.5(455B) is moved to rule 567—31.20(455B).

Item 8 rescinds and reserves rule 567—22.6(455B), including a reference to an outdated EPA guidance document that is no longer used by the Department or the Commission.

Item 9 amends subrule 22.7(1) to update the list of attainment or unclassifiable areas in the state.

Item 10 amends subparagraph 22.105(1)"a"(3) to update the references to the nonattainment major NSR and PSD rules.

Item 11 amends rule 567—31.1(455B) to revise the introductory paragraph.

Item 12 amends rule 567—31.2(455B) to update the federal regulations relating to conformity of general federal actions to Iowa's SIP. The adoption-by-reference date is updated, and redundant language is removed.

Item 13 adopts new rules 567—31.3(455B) to 567—31.20(455B) as the nonattainment major NSR rules. The federal regulations include many instructions to the states that could be confusing for businesses if the federal regulations were adopted by directly referencing the federal regulations. The Department is proposing to adopt the bulk of EPA's nonattainment rules in 40 CFR 51.165 into Chapter 31 and to adopt actual plantwide applicability limits (40 CFR 51.165(f)) by reference, except where specified. The content of existing rule 567—22.5(455B) is transferred to rule 567—31.20(455B) to streamline administrative rules and make them more user-friendly.

Item 14 amends rule 567—33.1(455B) to include a reference to Chapter 31 in the introductory paragraph.

Jobs Impact Statement

After analysis and review of this rule making, the Department has determined that jobs could be impacted. However, these amendments are implementing federally mandated regulations. This rule making does not impose on Iowa businesses any regulations not required by federal law.

The Department is minimizing the impact of the federal regulations to the greatest extent possible by directly referencing federal regulations where possible. Further, nonattainment major NSR rules that apply to nonattainment areas designated before May 18, 1998, are being combined in the same rule

chapter as the nonattainment NSR rule provisions for new nonattainment areas. This action streamlines the nonattainment NSR rules and makes them more user-friendly.

Any person may make written suggestions or comments on the proposed amendments on or before 4:30 p.m. on October 21, 2013. Written comments should be directed to Wendy Walker, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324; fax (515)725-9501; or by e-mail to wendy.walker@dnr.iowa.gov.

A public hearing will be held on October 21, 2013, at 1 p.m. in the conference rooms at the Department's Air Quality Bureau office located at 7900 Hickman Road, Windsor Heights, Iowa. All comments must be received no later than 4:30 p.m. on October 21, 2013.

Any person who intends to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact Wendy Walker at (515)725-9570, or by e-mail at wendy.walker@dnr.iowa.gov to advise of any specific needs.

These amendments are intended to implement Iowa Code subsections 455B.133(1) and 455B.133(4).

The following amendments are proposed.

ITEM 1. Amend rule 567—20.1(455B,17A) as follows:

567—20.1(455B,17A) Scope of title. The department has jurisdiction over the atmosphere of the state to prevent, abate and control air pollution, by establishing standards for air quality and by regulating potential sources of air pollution through a system of general rules or specific permits. The construction and operation of any new or existing stationary source which emits or may emit any air pollutant requires a specific permit from the department, unless exempted by the department.

This chapter provides general definitions applicable to this title and rules of practice, including forms, applicable to the public in the department's administration of the subject matter of this title.

Chapter 21 contains the provisions requiring compliance schedules, allowing for variances, and setting forth the emission reduction program. Chapter 22 contains the standards and procedures for the permitting of emission sources ~~and the special requirements for nonattainment areas~~. Chapter 23 contains the air emission standards for contaminants. Chapter 24 provides for the reporting of excess emissions and the equipment maintenance and repair requirements. Chapter 25 contains the testing and sampling requirements for new and existing sources. Chapter 26 identifies air pollution emergency episodes and the preplanned abatement strategies. Chapter 27 sets forth the conditions political subdivisions must meet in order to secure acceptance of a local air pollution control program. Chapter 28 identifies the state ambient air quality standards. Chapter 29 sets forth the qualifications for an observer for reading visible emissions. Chapter 31 contains the conformity of general federal actions to the Iowa state implementation plan or federal implementation plan and requirements for areas designated nonattainment. Chapter 32 specifies requirements for conducting the animal feeding operations field study. Chapter 33 contains special regulations and construction permit requirements for major stationary sources and includes the requirements for prevention of significant deterioration (PSD). Chapter 34 contains provisions for air quality emissions trading programs.

All dates specified in reference to the Code of Federal Regulations (CFR) are the dates of publication of the last amendments to the portion of the CFR being cited.

ITEM 2. Amend rule **567—20.2(455B)**, definition of "Excess emission," as follows:

"Excess emission" means any emission which exceeds ~~either the~~ any applicable emission standard prescribed in 567—Chapter 23 or rule 567—22.4(455B), 567—22.5(455B), 567—31.3(455B), or 567—33.3(455B) or any emission limit specified in a permit or order.

ITEM 3. Amend subrule 22.1(1), introductory paragraph, as follows:

22.1(1) *Permit required.* Unless exempted in subrule 22.1(2) or to meet the parameters established in paragraph *"c"* of this subrule, no person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon without first obtaining a construction permit, or conditional permit, or permit pursuant to rule 567—22.8(455B), or permits required pursuant to rules 567—22.4(455B), ~~and~~ 567—22.5(455B), 567—31.3(455B), and 567—33.3(455B) as required in this

subrule. A permit shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source or anaerobic lagoon.

ITEM 4. Amend subrule 22.1(2) as follows:

22.1(2) *Exemptions.* The requirement to obtain a permit in subrule 22.1(1) is not required for the equipment, control equipment, and processes listed in this subrule. The permitting exemptions in this subrule do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. Equipment, control equipment, or processes subject to rule 567—22.4(455B) and 567—Chapter 33, prevention of significant deterioration requirements, or rule 567—22.5(455B) or 567—31.3(455B), ~~special~~ requirements for nonattainment areas, may not use the exemptions from construction permitting listed in this subrule. Equipment, control equipment, or processes subject to 567—subrule 23.1(2), new source performance standards (40 CFR Part 60 NSPS); 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR Part 61 NESHAP); 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 63 NESHAP); or 567—subrule 23.1(5), emission guidelines, may still use the exemptions from construction permitting listed in this subrule provided that a permit is not needed to create federally enforceable limits that restrict potential to emit. If equipment is permitted under the provisions of rule 567—22.8(455B), then no other exemptions shall apply to that equipment.

Records shall be kept at the facility for exemptions that have been claimed under the following paragraphs: 22.1(2)*"a"* (for equipment > 1 million Btu per hour input), 22.1(2)*"b,"* 22.1(2)*"e,"* 22.1(2)*"r"* or 22.1(2)*"s."* The records shall contain the following information: the specific exemption claimed and a description of the associated equipment. These records shall be made available to the department upon request.

The following paragraphs are applicable to paragraphs 22.1(2)*"g"* and *"i."* A facility claiming to be exempt under the provisions of paragraph 22.1(2)*"g"* or *"i"* shall provide to the department the information listed below. If the exemption is claimed for a source not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project. If the exemption is claimed for a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the information listed below shall be provided to the department within 60 days of March 20, 1996. After that date, if the exemption is claimed by a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the source shall not operate until the information listed below is provided to the department:

- A detailed emissions estimate of the actual and potential emissions, specifically noting increases or decreases, for the project for all regulated pollutants (as defined in rule 567—22.100(455B)), accompanied by documentation of the basis for the emissions estimate;
- A detailed description of each change being made;
- The name and location of the facility;
- The height of the emission point or stack and the height of the highest building within 50 feet;
- The date for beginning actual construction and the date that operation will begin after the changes are made;
- A statement that the provisions of rules 567—22.4(455B), ~~and~~ 567—22.5(455B), and 567—31.3(455B) and 567—Chapter 33 do not apply; and
- A statement that the accumulated emissions increases associated with each change under paragraph 22.1(2)*"i,"* when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction on the particular change commences), have not exceeded significant levels, as defined in 40 CFR 52.21(b)(23) as amended through October 20, 2010, and adopted in ~~rule~~ rules 567—22.4(455B) and 567—33.3(455B), and will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. This statement shall be accompanied by documentation for the basis of these statements.

The written statement shall contain certification by a responsible official as defined in rule 567—22.100(455B) of truth, accuracy, and completeness. This certification shall state that, based on

information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

a. to *oo.* No change.

ITEM 5. Amend subparagraph **22.1(3)"b"(7)** as follows:

(7) Any additional information deemed necessary by the department to determine compliance with or applicability of rules 567—22.4(455B), ~~and~~ 567—22.5(455B), 567—31.3(455B) and 567—33.3(455B); and

ITEM 6. Amend subrule 22.1(4) as follows:

22.1(4) *Conditional permits.* The owner or operator of any new or modified major stationary source may elect to apply for a conditional permit in lieu of a construction permit. Electric power generating facilities with a total capacity of 100 megawatts or more are required to apply for a conditional permit.

a. Applicability determination. If requested in writing, the director will make a preliminary determination of nonattainment applicability pursuant to rules 567—22.4(455B), ~~and~~ 567—22.5(455B), 567—31.3(455B) and 567—33.3(455B) based upon the information supplied by the requester.

b. Conditional permit applications. Each application for a conditional permit shall be submitted to the department in writing and shall consist of the following items:

(1) to (6) No change.

(7) Any additional information deemed necessary by the department to determine compliance with or applicability of rules 567—22.4(455B), ~~and~~ 567—22.5(455B), 567—31.3(455B) and 567—33.3(455B).

ITEM 7. Rescind rule 567—22.5(455B) and adopt the following **new** rule in lieu thereof:

567—22.5(455B) Special requirements for nonattainment areas. As applicable, the owner or operator of a stationary source shall comply with the requirements for the nonattainment major NSR program as set forth in rule 567—31.20(455B).

ITEM 8. Rescind and reserve rule **567—22.6(455B)**.

ITEM 9. Amend subrule 22.7(1) as follows:

22.7(1) *Applicability.* The owner or operator of any source located in an area with attainment or unclassified status (as published at 40 CFR §81.316 amended ~~January 5, 2005~~ May 21, 2012) or located in an area with an approved state implementation plan (SIP) demonstrating attainment by the statutory deadline may apply for an alternative set of emission limits if:

a. and *b.* No change.

ITEM 10. Amend subparagraph **22.105(1)"a"(3)** as follows:

(3) Application related to 112(g), PSD or nonattainment. The owner or operator of a stationary source that is subject to Section 112(g) of the Act, that is subject to rule 567—22.4(455B) or 567—33.3(455B) (prevention of significant deterioration (PSD)), or that is subject to rule 567—22.5(455B) or 567—31.3(455B) (nonattainment area permitting) shall submit an application to the department within 12 months of commencing operation. In cases in which an existing Title V permit would prohibit such construction or change in operation, the owner or operator must obtain a Title V permit revision before commencing operation.

ITEM 11. Amend rule 567—31.1(455B) as follows:

567—31.1(455B) Permit requirements relating to nonattainment areas. ~~Special construction permit requirements in nonattainment areas are contained in rules 567—22.5(455B) and 22.6(455B).~~ This chapter implements the nonattainment major new source review (NSR) program contained in Part D of Title I of the federal Clean Air Act and as promulgated under 40 CFR 51.165 as amended through March 30, 2011, and 40 CFR 51, Appendix S, as amended through July 1, 2011.

The nonattainment major NSR program is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part D of Title

I of the federal Clean Air Act as amended on November 15, 1990. The nonattainment major NSR program applies only in areas that do not meet the national ambient air quality standards (NAAQS).

Section 107(d) of the federal Clean Air Act, 42 U.S.C. §7457(d), requires each state to submit to the Administrator of the federal Environmental Protection Agency a list of areas that exceed the NAAQS, that are lower than those standards, or that cannot be classified on the basis of current data.

Requirements for nonattainment areas designated on or after May 18, 1998, are in rules 567—31.3(455B) through 567—31.10(455B). Requirements for nonattainment areas designated before May 18, 1998, are in rule 567—31.20(455B). A list of Iowa's nonattainment area designations is found at 40 CFR 81.316 as amended through May 21, 2012.

ITEM 12. Amend rule 567—31.2(455B) as follows:

567—31.2(455B) Conformity of general federal actions to the Iowa state implementation plan or federal implementation plan. The federal regulations relating to determining conformity of general federal actions to state or federal implementation plans, 40 CFR ~~93, Subpart B~~ 93.150 and 93.152 through 93.165, as amended through ~~December 21, 1993~~ April 5, 2010, are adopted by reference ~~except 40 CFR 93.151~~.

~~**31.2(1)** Section 93.160(f) is modified to read:~~

~~(f) Written commitments to mitigation measures must be obtained prior to a positive conformity determination and such commitment must be fulfilled.~~

~~**31.2(2)** Section 93.160(g) is modified to read:~~

~~(g) After February 22, 1995, and EPA's approval of the corresponding state implementation plan change, any agreements, including mitigation measures, necessary for a conformity determination will be both state and federally enforceable. Enforceability through the Iowa state implementation plan will apply to all persons who agree to mitigate direct and indirect emissions associated with a federal action for a conformity determination.~~

ITEM 13. Adopt the following **new** rules 567—31.3(455B) to 567—31.20(455B):

NONATTAINMENT AREAS DESIGNATED ON OR AFTER MAY 18, 1998

567—31.3(455B) Nonattainment new source review requirements for areas designated nonattainment on or after May 18, 1998.

31.3(1) *Definitions.* For the purpose of nonattainment new source review, the following definitions shall apply:

"Act" means the Clean Air Act, 42 U.S.C. Sections 7401, et seq., as amended through November 15, 1990.

"Actual emissions" means:

1. The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs "2" through "4," except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under rule 567—31.9(455B). Instead, the definitions of projected actual emission and baseline actual emissions shall apply for those purposes.

2. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

3. The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

4. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Administrator" means the administrator for the U. S. Environmental Protection Agency (EPA) or designee.

"Allowable emissions" means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in 567—subrules 23.1(2) through 23.1(5) (new source performance standards, emissions standards for hazardous air pollutants, and federal emissions guidelines) or an applicable federal standard not adopted by the state, as set forth in 40 CFR Parts 60, 61 and 63;

2. The state implementation plan (SIP) emissions limitation, including those with a future compliance date; or

3. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

"Baseline actual emissions," for the purposes of this rule, means the rate of emissions, in tons per year, of a regulated NSR pollutant, as determined in accordance with paragraphs "1" through "4."

1. For any existing electric utility steam generating unit, baseline actual emissions means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding when the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph "1"(b) of this definition.

2. For an existing emissions unit (other than an electric utility steam generating unit), baseline actual emissions means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date the owner or operator begins actual construction of the project, or the date on which a complete permit application is received by the department for a permit required either under this rule or under a plan approved by the Administrator, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any non-compliant emissions that occurred while the source was operating above an emission limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emission limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emission limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions in an attainment demonstration or maintenance plan consistent with the requirements of subparagraph 31.3(3)*"b"*(7).

(d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period can be used for each regulated NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs "2"(b) and "2"(c) of this definition.

3. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit's potential to emit.

4. For a PAL for a major stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph "1," for other existing emissions units in accordance with the procedures contained in paragraph "2," and for a new emissions unit in accordance with the procedures contained in paragraph "3."

"Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operating this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

"Best available control technology" or *"BACT"* means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the department, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 567—subrules 23.1(2) through 23.1(5) (standards for new stationary sources, federal standards for hazardous air pollutants, and federal emissions guidelines), or federal regulations as set forth in 40 CFR Parts 60, 61 and 63 but not yet adopted by the state. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard, or combination thereof, may be prescribed instead to satisfy the requirement for the application of BACT. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"CFR" means the Code of Federal Regulations, with standard references in this chapter by title and part, so that "40 CFR 51" or "40 CFR Part 51" means "Title 40 Code of Federal Regulations, Part 51."

"Clean coal technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean coal technology demonstration project" means a project using funds appropriated under the heading "Department of Energy—Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the EPA. The federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Commence," as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Construction" means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in emissions.

"Continuous emissions monitoring system" or *"CEMS"* means all of the equipment that may be required to meet the data acquisition and availability requirements of this rule, to sample, to condition (if applicable), to analyze, and to provide a record of emissions on a continuous basis.

"Continuous emissions rate monitoring system" or *"CERMS"* means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

"Continuous parameter monitoring system" or *"CPMS"* means all of the equipment necessary to meet the data acquisition and availability requirements of this rule, to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and to record average operational parameter value(s) on a continuous basis.

"Electric utility steam generating unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric steam generating unit. For purposes of this rule, there are two types of emissions units as described in paragraphs "1" and "2."

1. A new emissions unit is any emissions unit which is (or will be) newly constructed and which has existed for less than two years from the date such emissions unit first operated.

2. An existing emissions unit is any emissions unit that does not meet the requirements in paragraph "1" of this definition. A replacement unit is an existing emissions unit.

"Federal land manager" means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

"Federally enforceable" means all limitations and conditions which are enforceable by the Administrator and the department, including those federal requirements not yet adopted by the state, developed pursuant to 40 CFR Parts 60, 61, and 63; requirements within 567—subrules 23.1(2) through 23.1(5); requirements within the SIP; any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, as amended through October 20, 2010, including operating permits issued under an EPA-approved program that is incorporated into the SIP and expressly requires adherence to any permit issued under such program.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

"Lowest achievable emission rate" or *"LAER"* means, for any source, the more stringent rate of emissions based on the following:

1. The most stringent emissions limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

2. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within or stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

"Major modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.

1. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds shall be considered significant for ozone.

2. A physical change or change in the method of operation shall not include:

(a) Routine maintenance, repair and replacement;

(b) Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation) or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) Use of an alternative fuel by reason of an order or rule Section 125 of the Act;

(d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) Use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before December 21, 1976, unless such change would be prohibited under any federally enforceable permit condition which was established after December 12, 1976, pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Subpart I or § 51.166; or the source is approved to use under any permit issued under regulations approved pursuant to this rule;

(f) An increase in the hours of operation or in the production rate, unless such change is prohibited under any federally enforceable permit condition which was established after December 21, 1976, pursuant to 40 CFR 52.21 or regulations approved pursuant to 40 CFR Part 51, Subpart I, or 40 CFR 51.166.

(g) Any change in ownership at a stationary source.

(h) Reserved.

(i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the SIP, and other requirements necessary to attain and maintain the national ambient air quality standard during the project and after it is terminated.

3. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under rule 567—31.9(455B) of this chapter for a PAL for that pollutant. Instead, the definition at 567—31.9(455B) shall apply.

4. For the purpose of applying the requirements of subrule 31.3(8) to modifications at major stationary sources of nitrogen oxides located in ozone nonattainment areas or in ozone transport regions, whether or not subject to Subpart 2, Part D, Title I of the Act, any significant net emissions increase of nitrogen oxides is considered significant for ozone.

5. Any physical change in, or change in the method of operation of, a major stationary source of volatile organic compounds that results in any increase in emissions of volatile organic compounds from any discrete operation, emissions unit, or other pollutant emitting activity at the source shall be considered a significant net emissions increase and a major modification for ozone, if the major stationary source is located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Act.

"Major stationary source" means:

1. Any stationary source of air pollutants that emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant, except that lower emissions thresholds shall apply in areas subject to Subpart 2, Subpart 3, or Subpart 4 of Part D, Title I of the Act, according to definitions in 31.3(1).

(a) 50 tons per year of volatile organic compounds in any serious ozone nonattainment area.

(b) 50 tons per year of volatile organic compounds in an area within an ozone transport region, except for any severe or extreme ozone nonattainment area.

(c) 25 tons per year of volatile organic compounds in any severe ozone nonattainment area.

(d) 10 tons per year of volatile organic compounds in any extreme ozone nonattainment area.

(e) 50 tons per year of carbon monoxide in any serious nonattainment area for carbon monoxide, where stationary sources contribute significantly to carbon monoxide levels in the area (as determined under rules issued by the Administrator as amended through [effective date of these rules]).

(f) 70 tons per year of PM_{10} in any serious nonattainment area for PM_{10};

2. For the purposes of applying the requirements of subrule 31.3(8) to stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, any stationary source which emits, or has the potential to emit, 100 tons per year or more of nitrogen oxides emissions, except that the following emission thresholds apply in areas subject to Subpart 2 of Part D, Title I of the Act:

(a) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as marginal or moderate.

(b) 100 tons per year or more of nitrogen oxides in any ozone nonattainment area classified as a transitional, submarginal, or incomplete or no data area, when such area is located in an ozone transport region.

(c) 100 tons per year or more of nitrogen oxides in any area designated under Section 107(d) of the Act as attainment or unclassifiable for ozone that is located in an ozone transport region.

(d) 50 tons per year or more of nitrogen oxides in any serious nonattainment area for ozone.

(e) 25 tons per year or more of nitrogen oxides in any severe nonattainment area for ozone.

(f) 10 tons per year or more of nitrogen oxides in any extreme nonattainment area for ozone; or

3. Any physical change that would occur at a stationary source not qualifying under subrule 31.3(1) as a major stationary source, if the change would constitute a major stationary source by itself.

4. A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

5. The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources: coal cleaning plants (with thermal dryers); kraft pulp mills; Portland cement plants; primary zinc smelters; iron and steel mills; primary aluminum ore reduction plants; primary copper smelters; municipal incinerators capable of charging more than 250 tons of refuse per day; hydrofluoric, sulfuric, or nitric acid plants; petroleum refineries; lime plants; phosphate rock processing plants; coke oven batteries; sulfur recovery plants; carbon black plants (furnace process); primary lead smelters; fuel conversion plants; sintering plants; secondary metal production plants; chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140; fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input; petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels; taconite ore processing plants; glass fiber processing plants; charcoal production plants; fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

"Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the SIP.

"Net emissions increase" means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the sum of the following exceeds zero: the increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated according to the applicability requirements of paragraph 31.3(2)*"b,"* and any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases shall be determined as provided in the "baseline actual emissions" definition, except that paragraphs "1"(c) and "2"(d) shall not apply.

1. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs;

2. An increase or decrease in actual emissions is creditable only if:

(a) The increase or decrease in actual emissions occurs within the contemporaneous time period, as noted in paragraph "1" of this definition; and

(b) The department has not relied on the increase or decrease in actual emissions in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs; and

(c) Reserved.

3. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

4. A decrease in actual emissions is creditable only to the extent that:

(a) The old level of actual emission or the old level of allowable emissions whichever is lower, exceeds the new level of actual emissions;

(b) It is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

(c) The department has not relied on a decrease in actual emissions in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I, or has not relied on a decrease in actual emissions in demonstrating attainment or reasonable further progress;

(d) The decrease in actual emissions has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change; and

5. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

6. Actual emissions shall not apply for determining creditable increases and decreases or after a change.

"Nonattainment major new source review (NSR) program" means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of this rule, or a program that implements 40 CFR Part 51, Appendix S, Sections I through VI, as amended on October 25, 2012. Any permit issued under such a program is a major NSR permit.

"Pollution prevention" means any activity that through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. "Pollution prevention" does not mean recycling (other than certain "in-process recycling" practices), energy recovery, treatment, or disposal.

"Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only

if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Predictive emissions monitoring system" or *"PEMS"* means all of the equipment necessary to monitor process and control device operational parameters (for example, control device secondary voltages and electric currents) and other information (for example, gas flow rate, O_2 or CO_2 concentrations), and calculate and record the mass emissions rate (for example, lb/hr) on a continuous basis.

"Prevention of significant deterioration (PSD) permit" means any permit that is issued under a major source preconstruction permit program that has been approved by the Administrator and incorporated into the plan to implement the requirements of 40 CFR 51.166, or under the program in 40 CFR 52.21.

"Project" means a physical change in, or change in the method of operation of, an existing major stationary source.

"Projected actual emissions" means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) following the date the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit's design capacity or its potential to emit of that regulated NSR pollutant and full utilization of the unit would result in a significant emissions increase or a significant net emissions increase at the major stationary source. In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

1. Shall consider all relevant information including, but not limited to, historical operational data, the company's own representations, the company's expected business activity and the company's highest projections of business activity, the company's filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and
2. Shall include fugitive emissions to the extent quantifiable, and emissions associated with startups, shutdowns, and malfunctions; and
3. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit's emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or
4. In lieu of using the method set out in paragraphs "1" through "3," may elect to use the emissions unit's potential to emit, in tons per year.

"Reasonable period" means an increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

"Regulated NSR pollutant" means the following:

1. Nitrogen oxides or any volatile organic compounds;
2. Any pollutant for which a national ambient air quality standard has been promulgated;
3. Any pollutant that is identified as a constituent or precursor of a general pollutant listed under paragraph "1" or "2," provided that such constituent or precursor pollutant may only be regulated under NSR as part of regulation of the general pollutant. Precursors identified by the Administrator for purposes of NSR are the following:

(a) Volatile organic compounds and nitrogen oxides are precursors to ozone in all ozone nonattainment areas.

(b) Sulfur dioxide is a precursor to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas.

(c) Nitrogen oxides are presumed to be precursors to $PM_{2.5}$ in all $PM_{2.5}$ nonattainment areas, unless the department demonstrates to the EPA's satisfaction or EPA demonstrates that emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area's ambient $PM_{2.5}$ concentrations.

(d) Volatile organic compounds and ammonia are presumed not to be precursors to $PM_{2.5}$ in any $PM_{2.5}$ nonattainment area, unless the department demonstrates to the EPA's satisfaction or EPA

demonstrates that emissions of volatile organic compounds or ammonia from sources in a specific area are a significant contributor to that area's ambient $PM_{2.5}$ concentrations; or

4. $PM_{2.5}$ emissions and PM_{10} emissions shall include gaseous emissions from a source or activity which condense to form particulate matter at ambient temperatures.

"Replacement unit" means an emissions unit for which all the criteria listed in paragraphs "1" through "4" of this definition are met. No creditable emission reductions shall be generated from shutting down the existing emissions unit that is replaced.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1) as amended through December 16, 1975, or the emissions unit completely takes the place of an existing emissions unit.

2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

3. The replacement does not alter the basic design parameters of the process unit.

4. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

"Reviewing authority" means the department of natural resources.

"Secondary emissions" means emissions which would occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purpose of this rule, "secondary emissions" must be specific, well defined, quantifiable, and impact the same general area as the stationary source or modification which causes the secondary emissions. "Secondary emissions" include emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction of operation of the major stationary source of major modification. "Secondary emissions" do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Significant" means:

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant Emission Rate

(a) Carbon monoxide: 100 tons per year (tpy)

(b) Nitrogen oxides: 40 tpy

(c) Sulfur dioxide: 40 tpy

(d) Ozone: 40 tpy of volatile organic compounds or nitrogen oxides

(e) Lead: 0.6 tpy

(f) PM_{10}: 15 tpy

(g) $PM_{2.5}$: 10 tpy of direct $PM_{2.5}$ emissions; 40 tpy of sulfur dioxide emissions; 40 tpy of nitrogen oxide emissions unless the department demonstrates to EPA's satisfaction that the emissions of nitrogen oxides from sources in a specific area are not a significant contributor to the area's ambient $PM_{2.5}$ concentrations.

2. Notwithstanding the significant emissions rate for ozone, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of volatile organic compounds that would result from any physical change in, or change in the method of operation of, a major stationary source locating in a serious or severe ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Act, if such emissions increase of volatile organic compounds exceeds 25 tons per year.

3. For the purposes of applying the requirements of subrule 31.3(8) to modifications at major stationary sources of nitrogen oxides located in an ozone nonattainment area or in an ozone transport region, the significant emission rates and other requirements for volatile organic compounds in paragraphs "1," "2," and "5" shall apply to nitrogen oxides emissions.

4. Notwithstanding the significant emissions rate for carbon monoxide, significant means, in reference to an emissions increase or a net emissions increase, any increase in actual emissions of

carbon monoxide that would result from any physical change in, or change in the method of operation of, a major stationary source in a serious nonattainment area for carbon monoxide if such increase equals or exceeds 50 tons per year, provided the department has determined that stationary sources contribute significantly to carbon monoxide levels in that area.

5. Notwithstanding the significant emissions rates for ozone under paragraphs "1" and "2," any increase in actual emissions of volatile organic compounds from any emissions unit at a major stationary source of volatile organic compounds located in an extreme ozone nonattainment area that is subject to Subpart 2, Part D, Title I of the Act shall be considered a significant net emissions increase.

"Significant emissions increase" means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

"Stationary source" means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

"Temporary clean coal technology demonstration project" means a clean coal technology demonstration project that is operated for a period of five years or less, and which complies with the SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

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

31.3(2) Applicability procedures.

a. This subrule adopts a preconstruction review program to satisfy the requirements of Sections 172(c)(5) and 173 of the Act for any area designated nonattainment for any national ambient air quality standard under Subpart C of 40 CFR Part 81 as amended on July 20, 2012, and shall apply to any new major stationary source or major modification that is major for the pollutant for which the area is designated nonattainment under Section 107(d)(1)(A)(i) of the Act, if the stationary source or modification would locate anywhere in the designated nonattainment area.

b. Each plan shall use the specific provisions of subparagraphs (1) through (6) of this paragraph. Deviations from these provisions will be approved only if the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in subparagraphs (1) through (6) of this paragraph.

(1) Except as otherwise provided in paragraph 31.3(2)*"c,"* and consistent with the definition of major modification, a project is a major modification for a regulated NSR pollutant if it causes two types of emissions increases—a significant emissions increase and a significant net emissions increase. The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

(2) The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to subparagraphs (3) through (6) of this paragraph. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will occur at the major stationary source. Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

(3) Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the projected actual emissions and the baseline actual emissions, for each existing emissions unit, equals or exceeds the significant amount for that pollutant.

(4) Actual-to-potential test for projects that only involve construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the potential to emit from each new emissions unit following completion of the project and the baseline actual emissions of these units before the project equals or exceeds the significant amount for that pollutant.

(5) Reserved.

(6) Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in subparagraphs (3) and (4) of this paragraph as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

c. The plan shall require that for any major stationary source for a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under rule 567—31.9(455B).

31.3(3) Creditable offsets.

a. For sources and modifications subject to any preconstruction review program, the baseline for determining credit for emissions reductions is the emissions limit in effect at the time the application to construct is filed, except that the offset baseline shall be the actual emissions of the source from which offset credit is obtained where;

(1) The demonstration of reasonable further progress and attainment of ambient air quality standards is based upon the actual emissions of sources located within a designated nonattainment area for which the preconstruction review program was adopted; or

(2) The SIP does not contain an emissions limitation for that source or source category.

b. Providing that:

(1) Where the emissions limit under the SIP allows greater emissions than the potential to emit of the source, emissions offset credit will be allowed only for control below this potential;

(2) For an existing fuel combustion source, credit shall be based on the allowable emissions under the SIP for the type of fuel being burned at the time the application to construct is filed. If the existing source commits to switch to a cleaner fuel at some future date, emissions offset credit based on the allowable (or actual) emissions for the fuels involved is not acceptable, unless the permit is conditioned to require the use of a specified alternative control measure which would achieve the same degree of emissions reduction should the source switch back to a dirtier fuel at some later date. The department should ensure that adequate long-term supplies of the new fuel are available before granting emissions offset credit for fuel switches,

(3) Emissions reductions achieved by shutting down an existing emission unit or curtailing production or operating hours may be generally credited for offsets if: such reductions are surplus, permanent, quantifiable, and federally enforceable; and the shutdown or curtailment occurred after the last day of the base year for the SIP planning process. For purposes of this subparagraph, the department may choose to consider a prior shutdown or curtailment to have occurred after the last day of the base year if the projected emissions inventory used to develop the attainment demonstration explicitly includes the emissions from such previously shutdown or curtailed emission units. However, in no event may credit be given for shutdowns that occurred before August 7, 1977.

Emissions reductions achieved by shutting down an existing emissions unit or curtailing production or operating hours and that do not meet the requirements above may be generally credited only if: the shutdown or curtailment occurred on or after the date the construction permit application is filed; or the applicant can establish that the proposed new emissions unit is a replacement for the shutdown or curtailed emissions unit, and the emissions reductions achieved by the shutdown or curtailment met the requirements of this subparagraph.

(4) No emissions credit may be allowed for replacing one hydrocarbon compound with another of lesser reactivity, except for those compounds listed in Table 1 of EPA's "Recommended Policy on Control of Volatile Organic Compounds" (42 FR 35314, July 8, 1977);

(5) All emission reductions claimed as offset credit shall be federally enforceable;

(6) Procedures relating to the permissible location of offsetting emissions shall be followed which are at least as stringent as those set out in 40 CFR Part 51, Appendix S, Section IV.D, as amended on October 25, 2012.

(7) Credit for an emissions reduction can be claimed to the extent that the department has not relied on it in issuing any permit under regulations approved pursuant to 40 CFR Part 51, Subpart I, or the state has not relied on it in demonstration attainment or reasonable further progress.

(8) Reserved.

(9) Reserved.

(10) The total tonnage of increased emissions, in tons per year, resulting from a major modification that must be offset in accordance with Section 173 of the Act shall be determined by summing the difference between the allowable emissions after the modification and the actual emissions before the modification for each emissions unit.

31.3(4) The department may provide that the provisions of this subrule do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories: coal cleaning plants (with thermal dryers); kraft pulp mills; Portland cement plants; primary zinc smelters; iron and steel mills; primary aluminum ore reduction plants; primary copper smelters; municipal incinerators capable of charging more than 250 tons of refuse per day; hydrofluoric, sulfuric, or nitric acid plants; petroleum refineries; lime plants; phosphate rock processing plants; coke oven batteries; sulfur recovery plants; carbon black plants (furnace process); primary lead smelters; fuel conversion plants; sintering plants; secondary metal production plants; chemical process plants—The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS codes 325193 or 312140; fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input; petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels; taconite ore processing plants; glass fiber processing plants; charcoal production plants; fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input; and any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

31.3(5) Enforceable procedures.

a. Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provision of the plan and any other requirements under local, state or federal law.

b. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforcement limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

31.3(6) Except as otherwise provided in paragraph 31.3(6)*"f,"* the following specific provisions apply with respect to any regulated NSR pollutant emitted from projects at existing emissions units at a major stationary source (other than projects at a source with a PAL) in circumstances where there is a reasonable possibility, within the meaning of paragraph 31.3(6)*"f,"* that a project that is not a part of a major modification may result in a significant emissions increase of such pollutant, and the owner or operator elects to use the method specified in paragraphs "1" through "3" of the definition of "projected actual emissions" for calculating projected actual emissions. Deviations from these provisions will be approved only if the state specifically demonstrates that the submitted provisions are more stringent than or at least as stringent in all respects as the corresponding provisions in paragraphs 31.3(6)*"a"* through *"f."*

a. Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

(1) A description of the project;

(2) Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

(3) A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph "3" of the definition of "projected actual emissions" and an explanation for why such amount was excluded, and any netting calculations, if applicable.

b. If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in paragraph

31.3(6)*"a"* to the department. Nothing in paragraph 31.3(6)*"b"* shall be construed to require the owner or operator of such a unit to obtain any determination from the reviewing authority before beginning actual construction.

c. The owner or operator shall monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions units identified in subparagraph 31.3(6)*"a"*(2); and calculate and maintain a record of the annual emissions, in tons per year on a calendar year basis, for a period of five years following resumption of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit.

d. If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under paragraph 31.3(6)*"c"* setting out the unit's annual emissions during the year that preceded submission of the report.

e. If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in paragraph 31.3(6)*"a,"* exceed the baseline actual emissions (as documented and maintained under subparagraph 31.3(6)*"a"*(3)), by a significant amount for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained under subparagraph 31.3(6)*"a"*(3). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

(1) The name, address and telephone number of the major stationary source;

(2) The annual emissions as calculated pursuant to paragraph 31.3(6)*"c"*; and

(3) Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

f. A "reasonable possibility" under this subrule occurs when the owner or operator calculates the project to result in either:

(1) A projected actual emissions increase of at least 50 percent of the amount that is a "significant emissions increase" (without reference to the amount that is a significant net emissions increase) for the regulated NSR pollutant; or

(2) A projected actual emissions increase that, added to the amount of emissions excluded under paragraph "3" of the definition of "projected actual emissions," sums to at least 50 percent of the amount that is a "significant emissions increase" (without reference to the amount that is a significant net emissions increase) for the regulated NSR pollutant. For a project for which a reasonable possibility occurs only within the meaning of this subparagraph, and not also within the meaning of subparagraph (1), then paragraphs 31.3(6)*"b"* through *"e"* do not apply to the project.

31.3(7) The owner or operator of the source shall make the information required to be documented and maintained pursuant to this subrule available for review upon a request for inspection by the department or the general public pursuant to the requirements contained in 40 CFR 70.4(b)(3)(viii) as amended through October 6, 2009.

31.3(8) The requirements of this subrule applicable to major stationary sources and major modifications of volatile organic compounds shall apply to nitrogen oxides emissions from major stationary sources and major modifications of nitrogen oxides in an ozone transport region or in any ozone nonattainment area, except in ozone nonattainment areas or in portions of an ozone transport region where the Administrator has granted a NO_X waiver applying the standards set forth under Section 182(f) of the Act and the waiver continues to apply.

31.3(9) Offset ratios.

a. In meeting the emissions offset requirements of subrule 31.3(3), the ratio of total actual emissions reductions to the emissions increase shall be at least 1:1 unless an alternative ratio is provided for the applicable nonattainment area in paragraphs 31.3(9)*"b"* through *"d."*

b. The plan shall require that in meeting the emissions offset requirements of subrule 31.3(3) for ozone nonattainment areas that are subject to Subpart 2, Part D, Title I of the Act, the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be as follows:

(1) In any marginal nonattainment area for ozone—at least 1.1:1;
(2) In any moderate nonattainment area for ozone—at least 1.15:1;
(3) In any serious nonattainment area for ozone—at least 1.2:1;
(4) In any severe nonattainment area for ozone—at least 1.3:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and
(5) In any extreme nonattainment area for ozone—at least 1.5:1 (except that the ratio may be at least 1.2:1 if the approved plan also requires all existing major sources in such nonattainment area to use BACT for the control of VOC); and

c. Notwithstanding the requirements of subrule 31.3(9) for meeting the requirements of subrule 31.3(3), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1.15:1 for all areas within an ozone transport region that is subject to Subpart 2, Part D, Title I of the Act, except for serious, severe, and extreme ozone nonattainment areas that are subject to Subpart 2, Part D, Title I of the Act.

d. In meeting the emissions offset requirements of subrule 31.3(3) for ozone nonattainment areas that are subject to Subpart 1, Part D, Title I of the Act (but are not subject to Subpart 2, Part D, Title I of the Act, including eight-hour ozone nonattainment areas subject to 40 CFR 51.902(b)), the ratio of total actual emissions reductions of VOC to the emissions increase of VOC shall be at least 1:1.

31.3(10) The requirements of this rule applicable to major stationary sources and major modifications of PM_{10} shall also apply to major stationary sources and major modifications of PM_{10} precursors.

31.3(11) In meeting the emissions offset requirements of subrule 31.3(3), the emissions offsets obtained shall be for the same regulated NSR pollutant unless interprecursor offsetting is permitted for a particular pollutant as specified in this subrule. The offset requirements in subrule 31.3(3) for direct $PM_{2.5}$ emissions or emissions of precursors of $PM_{2.5}$ may be satisfied by offsetting reductions in direct $PM_{2.5}$ emissions or emissions of any $PM_{2.5}$ precursor if such offsets comply with the interprecursor trading hierarchy and ratio established in the approved plan for a particular nonattainment area.

567—31.4(455B) Preconstruction review permit program.

31.4(1) Sources shall comply with the requirements of Section 110(a)(2)(D)(i) of the Act for any new major stationary source or major modification as defined in subrule 31.3(1). The definitions in subrule 31.3(1) for "major stationary source" and "major modification" planning to locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the Act, apply when that source or modification would cause or contribute to a violation of any national ambient air quality standard.

31.4(2) A major source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

Pollutant	Annual	Averaging time (hours)			
		24	8	3	1
SO_2	1.0 μg/m³	5 μg/m³		25 μg/m³	
PM_{10}	1.0 μg/m³	5 μg/m³			
$PM_{2.5}$	0.3 μg/m³	1.2 μg/m³			
NO_2	1.0 μg/m³				
CO			0.5 mg/m³		2 mg/m³

31.4(3) A proposed major source or major modification subject to this rule may reduce the impact of its emissions upon air quality by obtaining sufficient emission reductions to, at a minimum, compensate for its adverse ambient impact where the major source or major modification would otherwise cause or

contribute to a violation of any national ambient air quality standard. In the absence of such emission reductions, the proposed construction permit application shall be denied.

31.4(4) The requirements of this rule shall not apply to a major stationary source or major modification with respect to a particular pollutant if the owner or operator demonstrates that, as to that pollutant, the source or modification is located in an area designated as nonattainment pursuant to Section 107 of the Act.

567—31.5(455B) to **31.8(455B) Reserved.**

567—31.9(455B) Actuals PALs. Except as provided in subrule 31.9(1), the provisions for actuals PALs as specified in 40 CFR 51.165(f) as amended through March 30, 2011, are adopted by reference.

31.9(1) The following portions of actuals PALs in 40 CFR 51.165(f) are modified to read as follows:

a. 40 CFR 51.165(f)(2): Definitions. The definitions in paragraphs (f)(2)(i) through (xi) of this section shall be applicable to actuals PALS for purposes of paragraphs (f)(1) through (15) of this section. Any terms not defined in paragraphs (f)(2)(i) through (xi) shall have the meaning prescribed by rule 567—31.3(455B) or the meaning prescribed by the Act.

b. 40 CFR 51.165(f)(8)(ii)(B): The reviewing authority shall have discretion to reopen the PAL permit for the following:

c. 40 CFR 51.165(f)(10)(ii): Application deadline. A major stationary source owner or operator shall submit a timely application to the reviewing authority to request renewal of a PAL. In order to be considered timely, the application shall be submitted at least 6 months prior to, but not earlier than 18 months prior to, the date of permit expiration. This deadline for application submittal is to ensure that the permit will not expire before the permit is renewed. If the owner or operator of a major stationary source submits a complete application to renew the PAL within this time period, then the PAL shall continue to be effective until the revised permit with the renewed PAL is issued.

d. 40 CFR 51.165(f)(15)(i): Each PAL shall comply with the requirements contained in paragraphs (f)(1) through (15) of this section.

e. 40 CFR 51.165(f)(15)(ii): Any PAL issued prior to [effective date of these rules] may be superseded with a PAL that complies with the requirements of paragraphs (f)(1) through (15) of this section.

31.9(2) Reserved.

567—31.10(455B) Validity of rules. If any provision of rules 567—31.3(455B) through 567—31.9(455B), or the application of such provision to any person or circumstance, is held invalid, the remainder of these rules, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

567—31.11(455B) to **31.19(455B) Reserved.**

NONATTAINMENT AREAS DESIGNATED BEFORE MAY 18, 1998

567—31.20(455B) Special requirements for nonattainment areas designated before May 18, 1998 (originally adopted in 567—22.5(455B)).

31.20(1) *Definitions.*

a. *"Major stationary source"* means any of the following:

(1) Any stationary source of air contaminants which emits, or has the potential to emit, 100 tons per year or more of any regulated air contaminant;

(2) Any physical change that would occur at a stationary source not qualifying under subparagraph (1) as a major stationary source, if the change would constitute a major stationary source by itself;

(3) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe" and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen

oxides shall not apply with respect to any source for which the Administrator has made a finding, under Section 182(f)(1) or (2) of the Clean Air Act, that requirements under Section 182(f) of the Clean Air Act do not apply;

(4) For ozone transport regions established pursuant to Section 184 of the Clean Air Act, sources with potential to emit 50 tpy or more of volatile organic compounds;

(5) For carbon monoxide nonattainment areas that both are classified as "serious" and in which there are stationary sources which contribute significantly to carbon monoxide levels, sources with the potential to emit 50 tpy or more of carbon monoxide; or

(6) For particulate matter (PM_{10}), nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM_{10}.

A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

b. "Major modification" means any physical change in or change in the method of operation of a major stationary source, that would result in a significant net emission increase of any regulated air contaminant.

(1) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

(2) A physical change, or change in the method of operation, shall not include:

Routine maintenance, repair, and replacement;

Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act;

Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act;

Any change in ownership at a stationary source;

Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

Use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before December 21, 1976, unless such change would be prohibited by any enforceable permit condition; or

An increase in the hours of operation or in the production rate, unless such change is prohibited under any enforceable permit condition.

c. "Potential to emit" means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

The provisions of this paragraph do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

Coal cleaning plants (with thermal dryers);

Kraft pulp mills;

Portland cement plants;

Primary zinc smelters;

Iron and steel mills;

Primary aluminum ore reduction plants;

Primary copper smelters;

Municipal incinerators capable of charging more than 250 tons of refuse per day;

Hydrofluoric, sulfuric, or nitric acid plants;

Petroleum refineries;

Lime plants;

Phosphate rock processing plants;
Coke oven batteries;
Sulfur recovery plants;
Carbon black plants (furnace process);
Primary lead smelters;
Fuel conversion plants;
Sintering plants;
Secondary metal production plants;
Chemical process plants;
Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
Taconite ore processing plants;
Glass fiber processing plants;
Charcoal production plants;
Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act, 42 U.S.C. §§7401 et seq.

d. "Lowest achievable emission rate" means, for any source, that rate of emissions based on the following, whichever is more stringent:

(1) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) The most stringent emission limitation which is achieved in practice by such class or category of source.

This term, applied to a modification, means the lowest achievable emission rate for the new or modified emission units within the stationary source.

This term may include a design, equipment, material, work practice or operational standard or combination thereof.

In no event shall the application of this term permit a proposed new or modified stationary source to emit any regulated air contaminant in excess of the amount allowable under applicable new source standards of performance.

e. "Secondary emissions" means emissions which occur or could occur as a result of the construction or operation of a major stationary source or major modification, but do not necessarily come from the major stationary source or major modification itself. For purposes of this rule, secondary emissions must be specific and well-defined, must be quantifiable, and must affect the same general nonattainment area as the stationary source or modification which causes the secondary emission. Secondary emissions may include, but are not limited to:

Emissions from barges or trains coming to or from the new or modified stationary source; and

Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

f. (1) *"Net emissions increase"* means the amount by which the sum of the following exceeds zero:

Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if the director has not relied on it in issuing a permit for the source under this rule which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emissions is creditable only to the extent that:

The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

It is an enforceable permit condition at and after the time that actual construction on the particular change begins;

The director has not relied on it in issuing any other permit;

Such emission decreases have not been used for showing reasonable further progress; and

It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(6) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

g. *"Emissions unit or installation"* means an identifiable piece of process equipment.

h. *"Reconstruction"* will be presumed to have taken place where the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of new source performance standards (see 567—subrule 23.1(2)). A reconstructed stationary source will be treated as a new stationary source for purposes of this rule. In determining lowest achievable emission rate for a reconstructed stationary source, the definitions in the new source performance standards shall be taken into account in assessing whether a new source performance standard is applicable to such stationary source.

i. *"Fixed capital cost"* means the capital needed to provide all the depreciable components.

j. *"Fugitive emissions"* means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

k. *"Significant"* means in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

PM_{10}: 15 tpy

l. *"Allowable emissions"* means the emissions rate calculated using the maximum rated capacity of the source (unless the source is subject to an enforceable permit condition which restricts the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) Applicable standards as set forth in 567—Chapter 23;

(2) Any applicable state implementation plan emissions limitation, including those with a future compliance date; or

(3) The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

m. *"Enforceable permit condition"* for the purpose of this rule means any of the following limitations and conditions: requirements developed pursuant to new source performance standards, prevention of significant deterioration standards, emission standards for hazardous air pollutants,

requirements within the state implementation plan, and any permit requirements established pursuant to this rule, or under conditional, construction or Title V operating permit rules.

n. (1) *"Actual emissions"* means the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with subparagraphs (2) to (4) below.

(2) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period.

(3) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(4) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

o. *"Construction"* means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

p. *"Commence"* as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

q. *"Necessary preconstruction approvals or permits"* means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the state implementation plan.

r. *"Begin actual construction"* means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

s. *"Building, structure, or facility"* means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "major group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0 respectively).

31.20(2) *Applicability.* Areas designated as attainment, nonattainment, or unclassified are as listed in 40 CFR §81.316 as amended through March 19, 1998.

a. The requirements contained in rule 567—31.20(455B) shall apply to any new major stationary source or major modification that, as of the date the permit is issued, is major for any pollutant for which the area in which the source would construct is designated as nonattainment.

b. The requirements contained in rule 567—31.20(455B) shall apply to each nonattainment pollutant that the source will emit or has the potential to emit in major amounts. In the case of a modification, the requirements shall apply to the significant net emissions increase of each nonattainment pollutant for which the source is major.

c. Particulate matter. If a major source or major modification is proposed to be constructed in an area designated nonattainment for particulate matter, then emission offsets must be achieved prior to startup.

If a major source or major modification is proposed to be constructed in an area designated attainment or unclassified for particulate matter, but the modeled (EPA-approved guideline model) worst case ground level particulate concentrations due to the major source or major modification in a designated particulate matter nonattainment area is equal to or greater than five micrograms per cubic meter (24-hour concentration), or one microgram per cubic meter (annual arithmetic mean), then emission offsets must be achieved prior to startup.

d. Sulfur dioxide. If a major source or major modification is proposed to be constructed in an area designated nonattainment for sulfur dioxide, then emission offsets must be achieved prior to startup.

If a major source or major modification is proposed to be constructed in an area designated attainment or unclassified for sulfur dioxide, but the modeled (EPA-approved guideline model) worst case ground level sulfur dioxide concentrations due to the major source or major modification in a designated sulfur dioxide nonattainment area is equal to or greater than 25 micrograms per cubic meter (three-hour concentration), five microgram per cubic meter (24-hour concentration), or one microgram per cubic meter (annual arithmetic mean), then emission offsets must be achieved prior to startup.

e. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

31.20(3) *Emission offsets.*

a. Emission offsets shall be obtained from the same source or other sources in the same nonattainment area, except that the required emissions reductions may be obtained from a source in another nonattainment area if:

(1) The other area, which must be nonattainment for the same pollutant, has an equal or higher nonattainment classification than the nonattainment area in which the source is located, and

(2) Emissions from such other nonattainment areas contribute to a violation of a national ambient air quality standard in the nonattainment area in which the proposed new or modified source would construct.

b. Emission offsets for any regulated air contaminant in the designated nonattainment area shall provide for reasonable further progress toward attainment of the applicable national ambient air quality standards and provide a positive net air quality benefit in the nonattainment area.

c. The increased emissions of any applicable nonattainment air pollutant allowed from the proposed new or modified source shall be offset by an equal or greater reduction, as applicable, in the total tonnage and impact of actual emissions, as stated in subrule 31.20(4), of such air pollutant from the same or other sources. For purposes of subrule 31.20(3), actual emissions shall be determined in accordance with subparagraphs 31.20(1)*"n"*(1) and (2).

d. All emissions reductions claimed as offset credit shall be federally enforceable prior to, or upon, the issuance of the permit required under this rule and shall be in effect by the time operation of the permitted new source or modification begins.

e. Proposals for emission offsets shall be submitted with the application for a permit for the major source or major modification. All approved emission offsets shall be made a part of the permit and shall be deemed a condition of expected performance of the major source or major modification.

31.20(4) *Acceptable emission offsets.*

a. Equivalence. The effect of the reduction of emissions must be measured or predicted to occur in the same area as the emissions of the major source or major modification. It can be assumed that, if the emission offsets are obtained from an existing source on the same premises or in the immediate vicinity of the major source or major modification and if the air contaminant disperses from substantially the same stack height, the emissions will be equivalent and may be offset. Otherwise, an adequate dispersion model must be used to predict the effect. If the reduction accomplished at the source is as specified in subrule 31.20(3) and if the effect of the reduction is measured or predicted to occur in the same area as the emissions of the major source or major modification, the effect of the reduction at the measured or predicted point does not have to exactly offset the effect of the major source or major modification.

b. Reserved.

c. Control of uncontrolled existing sources. If control equipment is proposed for a presently uncontrolled existing source for which controls are not required by rules, then credit may be allowed for any reduction below the source's potential to emit. The reduction shall be proposed at the time of permit application. Any such reductions which occurred prior to January 1, 1978, shall not be accepted for offsets.

d. Greater control of existing sources. If more effective control equipment for a source already in compliance with the SIP allowable level is proposed to offset the emissions of the major source or major modification in or affecting a nonattainment area, then the difference in the emissions between the actual level on January 1, 1978, and the new level can be credited for offsets. (This does not allow credit to be granted for any reductions in actual emissions required by the SIP subsequent to January 1, 1978.)

For example, if a cyclone that is being used to meet a SIP emission standard is emitting X_1 lbs/hr and if it is to be replaced by a bag filter emitting X_2 lbs/hr, an emission offset equal to $(X_1 - X_2)$ lbs/hr may be allowed toward the total required reduction.

e. Fugitive dust offsets. Credits may be allowed for permanent control of fugitive dust. EPA's "Technical Guidance for Control of Industrial Process Fugitive Particulate Emissions" (EPA-450/3-77-010, March 1977) shall be used as a guide to estimate reduction from fugitive dust controls on traditional sources. Traditional source means a source category for which a particulate emission standard has been established in 567—subrule 23.1(2), 567—paragraph 23.3(2)*"a"* or *"b"* or 567—23.4(455B). The emission factors shall be modified to reflect realistic reductions. This would correspond to a consideration of particles in the less than 3 micron size range and the effectiveness of the fugitive dust control method.

f. Fuel switching credits. Credit may be allowed for fuel switching provided there is a demonstration by the applicant that supplies of the cleaner fuel will be available to the applicant for a minimum of five years. The demonstration must include, as a minimum, a written contract with the fuel supplier that the fuel will not be interrupted. The permit for the existing source shall be amended to provide for maintaining those offsets resulting from the fuel switching before offset credit will be granted.

g. Reduction credits. Credit for an emissions reduction can be claimed to the extent that the Administrator and the department have not: (1) relied on it in issuing any permit under regulations approved pursuant to 40 CFR Parts 51 (amended through April 9, 1998), 55 (amended through August 4, 1997), 63 (amended through December 28, 1998), 70 (amended through November 26, 1997), or 71 (amended through October 22, 1997); (2) relied on it in demonstrating attainment or reasonable further progress; or (3) the reduction is not otherwise required under the Clean Air Act. Incidental emissions reductions which are not otherwise required under the Act shall be creditable as emissions reductions for such purposes if such emissions reductions meet the requirements of subrule 31.20(3).

h. Derating of equipment. If the emissions from a major source or major modification are proposed to be offset by reducing the operating capacity of another existing source, then credit may be allowed for this provided proper documentation (such as stack test results) showing the effect on emissions due to derating is submitted. The permit for the existing source must be amended to limit the operating capacity before offsets will be allowed.

i. Shutdown or curtailment.

(1) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are surplus, permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the plan, and if such date is on or after the date of the most recent emissions inventory or attainment demonstration. However, in no event may credit be given for shutdowns which occurred prior to January 1, 1978. For purposes of this paragraph, the director may consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current existing emissions the emissions from such previously shutdown

or curtailed sources. The work force shall be notified of the proposed curtailment or shutdown by the source owner or operator.

(2) The reductions described in subparagraph 31.20(4)*"i"*(1) may be credited in the absence of any approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions in 31.20(4)*"i"*(1) are observed.

j. *External emission offsets.* If the emissions from the major source or major modification are proposed to be offset by reduction of emissions from a source not owned or operated by the owner or operator of the major source or major modification, then credit may be allowed for such reductions provided the external source's permit is amended to require the reduced emissions or a consent order is entered into by the department and the existing source. Consent orders for external offsets must be incorporated into the SIP and be approved by EPA before offset credit may be granted.

31.20(5) *Banking of offsets in nonattainment areas.* If the offsets in a given situation are more than required by 31.20(3), the amount of offsets that is greater than required may be banked for the exclusive use or control of the person achieving the reduction, subject to the limitations of this subrule. If the person achieving the reduction is not an individual, an authorized representative of the person must release control of the banked emissions in writing before another person, other than the commission, can utilize the banked emissions. The banking of offsets creates no property right in those offsets. The commission may proportionally reduce or cancel banked offsets if it is determined that reduction or cancellation is necessary to demonstrate reasonable further progress or to attain the ambient air quality standards. Prior to reduction or cancellation, the commission shall notify the person who banked the offsets.

31.20(6) *Control technology review.*

a. Lowest achievable emission rate. A new or modified major source in a nonattainment area shall comply with the lowest achievable emission rate.

b. For phased construction projects, the determination of the lowest achievable emissions rate shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to the commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of the LAER for the source.

c. State implementation plan, new source performance standards, and emission standards for hazardous air pollutants. A major stationary source or major modification shall meet each applicable emissions limitation under the state implementation plan and each applicable emissions standard of performance under 40 CFR Parts 60 (amended through November 24, 1998), 61 (amended through October 14, 1997), and 63 (amended through December 28, 1998).

31.20(7) *Compliance of existing sources.* If a new major source or major modification is subject to rule 567—31.20(455B), then all major sources owned or operated by the applicant (or by any entity controlling, controlled by, or under common control by the applicant) in Iowa shall be either in compliance with applicable emission standards or under a compliance schedule approved by the commission.

31.20(8) *Alternate site analysis.* The permit application shall contain a submittal of an alternative site analysis. Such submittal shall include analysis of alternative sites, sizes, production processes and environmental control techniques for the proposed source. The analysis must demonstrate that benefits of the proposed source significantly outweigh the environmental and social costs that would result from its location, construction or modification. Such analysis shall be completed prior to permit issuance.

31.20(9) *Additional conditions for permit approval.*

a. For the air pollution control requirements applicable to subrule 31.20(6), the permit shall require the source to monitor, keep records, and provide reports necessary to determine compliance with and deviations from applicable requirements.

b. The state shall not issue the permit if the Administrator has determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed stationary source or modification is to be constructed.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

31.20(10) *Public availability of information.* No permit shall be issued until notice and opportunity for public comment are made available in accordance with the procedure described in 40 CFR 51.161 (as amended through November 7, 1986).

ITEM 14. Amend rule 567—33.1(455B), introductory paragraph, as follows:

567—33.1(455B) Purpose. This chapter implements the major New Source Review (NSR) program contained in Part C of Title I of the federal Clean Air Act as amended on November 15, 1990, and as promulgated under 40 CFR 51.166 and 52.21 as amended through July 20, 2011. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part C of the Clean Air Act as amended on November 15, 1990. In areas that do not meet the national ambient air quality standards (NAAQS), the nonattainment major program applies. The requirements for the nonattainment major NSR program are set forth in 567—22.5(455B), ~~and~~ 567—22.6(455B), 567—31.20(455), and 567—31.3(455B). In areas that meet the NAAQS, the PSD program applies. Collectively, the nonattainment major and PSD programs are referred to as the major NSR program.

ARC 1020C

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

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 68B.32A(1), the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

This proposed amendment is intended to implement Iowa Code section 68A.503, which prohibits campaign contributions from corporations.

Any interested person may make written comments on the proposed amendment no later than October 21, 2013, addressed to Megan Tooker, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319; e-mail megan.tooker@iowa.gov.

A public hearing will be held on October 17, 2013, from 1:30 to 2:30 p.m. at 510 E. 12th Street, Suite 1A, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

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

This amendment is intended to implement Iowa Code section 68A.503.

The following amendment is proposed.

Amend subrule 4.44(1) as follows:

4.44(1) The prohibition on corporate political activity does not apply to any of the following:

a. An LLC, LLP, or any other organization that does not file articles of incorporation and is not owned in whole or in part by a corporation.

b. Monetary or in-kind campaign contributions to a ballot issue committee.

c. Independent expenditure communications.

d. A campaign committee using a corporate entity computer to generate and file a campaign disclosure statement or report.

ARC 1019C

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

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 68B.32A(1), the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 9, "Complaint, Investigation, and Resolution Procedures," Iowa Administrative Code.

This proposed amendment is intended to implement Iowa Code section 68B.32B, which sets out the procedures for filing a complaint with the Board.

Any interested person may make written comments on the proposed amendment no later than October 21, 2013, addressed to Megan Tooker, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319; e-mail megan.tooker@iowa.gov.

A public hearing will be held on October 17, 2013, from 2:30 to 3:30 p.m. at 510 E. 12th Street, Suite 1A, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

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

This amendment is intended to implement Iowa Code section 68B.32B.

The following amendment is proposed.

Amend subrule 9.1(1) as follows:

9.1(1) *Form.* A complaint shall be on forms provided by the board and shall be certified under penalty of perjury. The complaint shall contain all information required by Iowa Code section 68B.32B(1). The complainant may attach up to 20 pages of supporting documents to the complaint.

ARC 1027C

HUMAN SERVICES DEPARTMENT[441]

Notice of Termination

Pursuant to the authority of Iowa Code section 249A.4 and 2013 Iowa Acts, Senate File 446, section 12, the Department of Human Services terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on July 24, 2013, as **ARC 0888C**, to amend Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Iowa Administrative Code.

The Notice proposed to amend Chapter 77 by adding new rules to transition the provision of service provided by individual providers of personal care under the consumer-directed attendant care (CDAC) option to agency-provided personal care services and retain the consumer choice option for those individuals able and desiring to self-direct services.

The Department is terminating the rule making commenced in **ARC 0888C**.

ARC 1026C

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 chapters 10A, 137C, and 137D and Iowa Code section 137F.2, the Department of Inspections and Appeals hereby gives Notice of Intended Action to rescind Chapter 30, "Food and Consumer Safety," Iowa Administrative Code, and to adopt a new Chapter 30 with the same title.

The Department is proposing this rule making to coincide with the introduction of a new licensing and inspection data system in an effort to reduce the cost of updating the chapter. Adopting the new rules in the current system or updating the current rules in the new system and adding the new rules later would result in an additional cost of several thousands of dollars; whereas, there will be no additional cost now. A companion revision to Chapter 31, "Food Establishment and Food Processing Plant Inspections," is also published herein under Notice of Intended Action as **ARC 1025C**.

The proposed rules include the following changes:

- Removing references to egg handlers, the responsibility for which was moved from the Department's jurisdiction to the jurisdiction of the Iowa Department of Agriculture and Land Stewardship in 2012;
- Updating definitions;
- Formalizing the Department's policy for the refund of license fees;
- Updating inspection frequency to be consistent with current practice;
- Clarifying the public's access to and examination of records;
- Updating and consolidating the rules related to licensure actions and hearings; and
- Removing all inspection standards from the chapter (these will now be included in 481—Chapter 31).

Prior to the publication of this Notice of Intended Action, the Department circulated the rules and held informational sessions with municipal corporations under agreement with the Department, affected state agencies, and industry, professional, and consumer groups pursuant to Iowa Code section 137F.2. Comments were reviewed and changes incorporated into this Notice of Intended Action as appropriate.

Any interested person may make written suggestions or comments on these proposed rules on or before October 8, 2013. Such written materials should be directed to Steven Mandernach, Department of Inspections and Appeals, Third Floor, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319; fax (515)281-3291; or e-mail steven.mandernach@dia.iowa.gov.

A public hearing will be held on October 9, 2013, at 10 a.m. at the office of the Department of Inspections and Appeals, Room 319, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. A teleconference line will also be available for the public hearing by dialing (605)475-4000 and entering the following code when prompted: 671724#. 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 and advise the Department of specific needs.

These rules are subject to waiver under the Department's general waiver provisions contained in 481—Chapter 6, "Uniform Waiver and Variance Rules."

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

These rules are intended to implement Iowa Code chapters 10A, 137C, 137D, and 137F.

The following amendment is proposed.

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

Rescind 481—Chapter 30 and adopt the following **new** chapter in lieu thereof:

CHAPTER 30
FOOD AND CONSUMER SAFETY

481—30.1(10A,137C,137D,137F) Food and consumer safety bureau. The food and consumer safety bureau inspects food establishments and food processing plants including food storage facilities (warehouses), home food establishments, food and beverage vending machines, and hotels and motels. The food and consumer safety bureau is also responsible for targeted small business certification, social and charitable gambling, and amusement devices. Separate chapters have been established for the administration of targeted small business certification (481—Chapter 25), social and charitable gambling (481—Chapters 100 to 103, 106, and 107), and amusement devices (481—Chapters 104 and 105).

481—30.2(10A,137C,137D,137F) Definitions. If both the 2009 Food and Drug Administration Food Code with Supplement and rule 481—30.2(10A,137C,137D,137F) define a term, the definition in rule 481—30.2(10A,137C,137D,137F) shall apply.

"Baked goods" means breads, cakes, doughnuts, pastries, buns, rolls, cookies, biscuits and pies (except meat pies).

"Bed and breakfast home" means a private residence which provides lodging and meals for guests, in which the host or hostess resides, and in which no more than four guest families are lodged at the same time. The facility may advertise as a bed and breakfast home but not as a hotel, motel or restaurant. The facility is exempt from licensing and inspection as a hotel or as a food establishment. A bed and breakfast home may serve food only to overnight guests, unless a food establishment license is secured.

"Bed and breakfast inn" means a hotel which has nine or fewer guest rooms.

"Commissary" means a food establishment used for preparing, fabricating, packaging and storage of food or food products for distribution and sale through the food establishment's own outlets.

"Contractor" means a municipal corporation, county or other political subdivision that contracts with the department to license and inspect under Iowa Code chapter 137C, 137D or 137F. A list of contractors is maintained on the department's Web site.

"Criminal offense" means a public offense, as defined in Iowa Code section 701.2, that is prohibited by statute and is punishable by fine or imprisonment.

"Critical violation" means a foodborne illness risk factor and public health intervention and the violations defined as such by the Food Code adopted in rule 481—31.1(137F) and pursuant to Iowa Code section 137F.2.

"Department" means the department of inspections and appeals.

"Farmers market" means a marketplace which operates seasonally, principally as a common market for Iowa-produced farm products on a retail basis for consumption elsewhere.

"Farmers market potentially hazardous food license" means a license for a temporary food establishment that sells potentially hazardous foods at farmers markets. A separate annual farmers market potentially hazardous food license is required for each county in which the licensee sells potentially hazardous foods at farmers markets. The license is only applicable at farmers markets and is not required in order to sell wholesome, fresh shell eggs to consumer customers.

"Food establishment" means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a salvage or distressed food operation, site operated under the Nutrition Services Incentive Program as defined in rule 17—1.5(231), school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school and the Iowa juvenile home. Assisted living programs and adult day services are included in the definition of food establishment to the extent required by 481—subrules 69.28(6) and 70.28(6). "Food establishment" does not include the following:

1. A food processing plant.

2. An establishment that offers only prepackaged foods that are not potentially hazardous.
3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
4. Premises which are a home food establishment pursuant to Iowa Code chapter 137D.
5. Premises which operate as a farmers market.
6. Premises of a residence in which food that is not potentially hazardous is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. This exception does not apply to resale goods. This exception applies only to sales made from the residence in person and does not include mail order or Internet sales.
7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.
8. A private home that receives catered or home-delivered food.
9. Child day care facilities and other food establishments located in hospitals or health care facilities that serve only patients and staff and are subject to inspection by other state agencies or divisions of the department.
10. Supply vehicles, vending machine locations or boarding houses for permanent guests.
11. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to Iowa Code section 189A.3.
12. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:

- Premises covered by a current Class "A" beer permit, including a Class "A" native beer permit as provided in Iowa Code chapter 123;
- Premises covered by a current Class "A" wine permit, including a Class "A" native wine permit as provided in Iowa Code chapter 123; and
- Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.

13. Premises covered or regulated by Iowa Code section 192.107 with a milk or milk products permit issued by the department of agriculture and land stewardship.
14. Premises or operations which are regulated by or subject to Iowa Code section 196.3 and which have an egg handler's license.
15. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; or labeled or from which honey is distributed.
16. Premises regularly used by a nonprofit organization which engages in the serving of food on the premises as long as the nonprofit organization does not exceed the following restrictions:

- The nonprofit organization serves food no more than one day per calendar week and not on two or more consecutive days;
- Twice per year, the nonprofit organization may serve food to the public for up to three consecutive days; and
- The nonprofit organization may use the premises of another nonprofit organization not more than twice per year for one day to serve food.

"Food processing plant" means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. "Food processing plant" does not include any of the following:
1. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:

- Premises covered by a current Class "A" beer permit, including a Class "A" native beer permit as provided in Iowa Code chapter 123;
- Premises covered by a current Class "A" wine permit, including a Class "A" native wine permit as provided in Iowa Code chapter 123; and
- Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.

2. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; or labeled or from which honey is distributed.

"Food service establishment" means a food establishment where food is prepared or served for individual portion service intended for consumption on the premises or is subject to Iowa sales tax as provided in Iowa Code section 423.3.

"Home food establishment" means a business on the premises of a residence that is operating as a home-based bakery where potentially hazardous bakery goods are prepared for consumption elsewhere. Annual gross sales of these products cannot exceed $20,000. "Home food establishment" does not include a residence where food is prepared to be used or sold by churches, fraternal societies, or charitable, civic or nonprofit organizations. Residences which prepare or distribute honey, shell eggs or nonhazardous baked goods are not required to be licensed as home food establishments.

"Hotel" means any building equipped, used or advertised to the public as a place where sleeping accommodations are rented to temporary or transient guests.

"License holder" means an individual, corporation, partnership, governmental unit, association or any other entity to whom a license was issued under Iowa Code chapter 137C, 137D or 137F.

"Mobile food unit" means a food establishment that is self-contained, with the exception of grills and smokers, and readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.

"Pushcart" means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures or precooked foods that require limited assembly, such as frankfurters.

"Retail food establishment" means a food establishment that sells to consumer customers food or food products intended for preparation or consumption off the premises.

"Revoke" means to void or annul by recalling or withdrawing a license issued under Iowa Code chapter 137C, 137D or 137F. The entire application process, including the payment of applicable license fees, must be repeated to regain a valid license following a revocation.

"Suspend" means to render a license issued under Iowa Code chapter 137C, 137D, or 137F invalid for a period of time, with the intent of resuming the validity of a license at the end of that period.

"Temporary food establishment" means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration. An "event or celebration" is a significant occurrence or happening sponsored by a civic, business, educational, government, community, or veterans' organization and may include athletic contests. For example, an event does not include a single store's grand opening or sale.

"Transient guest" means an overnight lodging guest who does not intend to stay for any permanent length of time. Any guest who rents a room for more than 31 consecutive days is not classified as a transient guest.

"Vending machine" means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation. Vending machines that dispense only prepackaged, nonpotentially hazardous foods, panned candies, gumballs or nuts are exempt from licensing but may be inspected by the department upon receipt of a written complaint. "Panned candies" are those with a fine, hard coating on the outside and a soft candy filling on the inside. Panned candies are easily dispensed by a gumball-type machine.

This rule is intended to implement Iowa Code sections 10A.104, 137C.8, and 137D.2 and chapter 137F.

481—30.3(137C,137D,137F) Licensing and postings. A license to operate any food establishment or food processing plant defined in 481—30.2(10A,137C,137D,137F) must be granted by the department of inspections and appeals. Application for a license is made on a form furnished by the department which contains the names of the business, owner, and manager; locations of buildings; and other data relative to the license requested. Applications are available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or from contractors. An application for licensure shall be submitted 30 days in advance of the opening of the

food establishment or food processing plant. Temporary food establishment license applications shall be submitted a minimum of 3 business days prior to opening.

30.3(1) *Transferability.* A license is not transferable to a new owner or location. Any change in business ownership or business location requires a new license. Vending machines, mobile food units and pushcarts may be moved without obtaining a new license. A farmers market potentially hazardous food license may be used in the same county at different individual locations without obtaining a new license. However, if the different individual locations are operated simultaneously, a separate license is required for each location. Nutrition sites for the elderly licensed under Iowa Code chapter 137F may change locations in the same city without obtaining a new license.

30.3(2) *Refunds.* License fees are refundable only if the license is surrendered to the department prior to the effective date of the license and only as follows:

a. License fees of $67.50 or less are an application processing fee and are not refundable.

b. If an on-site visit has not occurred, license fees of more than $67.50 will be refunded less the $67.50.

c. If an on-site visit has occurred, the entire license fee is nonrefundable.

30.3(3) *License expiration.* A license is renewable and expires after one year, with the exception of a temporary food establishment license, which is event- and location-specific and is valid for a period not to exceed 14 consecutive days.

30.3(4) *Posting of inspection reports, licenses, and registration tags.* A valid license and the most recent inspection report, along with any current complaint or reinspection reports, shall be posted no higher than eye level where the public can see them. The report shall not be posted in such a manner that the public cannot reasonably read the report. For example, the posting of a report behind a service area where the report can be seen but not easily read is not allowed. Vending machines shall bear a tag to affirm the license. For the purpose of this subrule, only founded complaint reports shall be considered complaints. Founded complaints shall be posted until either the mail-in recheck form has been submitted to the regulatory authority or a recheck inspection has been conducted to verify that the violations have been corrected.

30.3(5) *Documentation of gross sales.* The regulatory authority shall require from a license holder documentation of the annual gross sales of food and drink sold by a licensed food establishment or a licensed food processing plant unless the establishment is paying the highest license fee required by 481—30.4(137C,137D,137F). The documentation submitted by the license holder will be kept confidential and will be used to verify that the license holder is paying the appropriate license fee based on annual gross sales of food and drink. For food processing plants that are food storage facilities and food establishments whose sales are included in a single rate with lodging or other services, the value of the food handled should be used. Documentation shall include at least one of the following:

a. A copy of the firm's business tax return;

b. Quarterly sales tax data;

c. A letter from an independent tax preparer;

d. Other appropriate records.

30.3(6) *License eligibility for renewal limited to 60 days after expiration.* A delinquent license shall only be renewed if application for renewal is made within 60 days of expiration of the license. If a delinquent license is not renewed within 60 days, an establishment must apply for a new license and meet all the requirements for licensure. Establishments that have not renewed the license within 60 days of the expiration of the license shall be closed by the department or a contractor. The establishment shall not be reopened until a new license application has been submitted and approved.

This rule is intended to implement Iowa Code sections 10A.104, 137C.8, and 137D.2 and chapter 137F.

481—30.4(137C,137D,137F) License fees. The license fee is the same for an initial license and a renewal license. License applications are available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or from a contractor. License fees are set by the Iowa Code sections listed below and are charged as follows:

30.4(1) *Retail food establishments.* License fees for retail food establishments are based on annual gross sales of food or food products to consumer customers and intended for preparation or consumption off the premises (Iowa Code section 137F.6) as follows:

a. For annual gross sales of less than $10,000—$40.50.

b. For annual gross sales of $10,000 to $250,000—$101.25.

c. For annual gross sales of $250,000 to $500,000—$155.25.

d. For annual gross sales of $500,000 to $750,000—$202.50.

e. For annual gross sales of $750,000 or more—$303.75.

30.4(2) *Food service establishments.* License fees for food service establishments are based on annual gross sales of food and drink for individual portion service intended for consumption on the premises (Iowa Code section 137F.6) or subject to Iowa sales tax as provided in Iowa Code section 423.3 as follows:

a. For annual gross sales of less than $50,000—$67.50.

b. For annual gross sales of $50,000 to $100,000—$114.50.

c. For annual gross sales of $100,000 to $250,000—$236.25.

d. For annual gross sales of $250,000 to $500,000—$275.00.

e. For annual gross sales of $500,000 or more—$303.75.

30.4(3) *Vending machines.* License fees for food and beverage vending machines are $20 for the first machine and $5 for each additional machine (Iowa Code section 137F.6).

30.4(4) *Home food establishments.* The license fee for home food establishments is $33.75 (Iowa Code section 137D.2(1)).

30.4(5) *Hotels.* License fees for hotels are based on the number of rooms provided to transient guests (Iowa Code section 137C.9) as follows:

a. For 1 to 15 guest rooms—$27.00.

b. For 16 to 30 guest rooms—$40.50.

c. For 31 to 75 guest rooms—$54.00.

d. For 76 to 149 guest rooms—$57.50.

e. For 150 or more guest rooms—$101.25.

30.4(6) *Mobile food units or pushcarts.* The license fee for a mobile food unit or a pushcart is $27 (Iowa Code section 137F.6).

30.4(7) *Temporary food service establishments.* The fee for a temporary food service establishment license issued for up to 14 consecutive days in conjunction with a single event or celebration is $33.50 (Iowa Code section 137F.6).

30.4(8) *Food processing plants including food storage facilities (warehouses).* For food processing plants, the annual license fee is based on the annual gross sales of food and food products handled at that plant or food storage facility (warehouse) (Iowa Code section 137F.6) as follows:

a. Annual gross sales of less than $50,000—$67.50.

b. Annual gross sales of $50,000 to $250,000—$135.00.

c. Annual gross sales of $250,000 to $500,000—$202.50.

d. Annual gross sales of $500,000 or more—$337.50.

30.4(9) *Farmers market.* A person selling potentially hazardous food at a farmers market must pay an annual license fee of $100 for each county of operation. Persons who operate simultaneously at more than one location within a county are required to have a separate license for each location.

30.4(10) *Discount.* If an establishment renews its license as a retail food establishment or food service establishment and has had a person in charge for the entire previous 12-month period who holds an active certified food protection manager certificate from a program approved by the Conference on Food Protection and the establishment has not been issued a critical violation during the previous 12-month period, the establishment's license fee for the current renewal period shall be reduced by $50 but no more than the establishment's total license fee(s).

30.4(11) *Voluntary inspection fee.* The department shall charge a voluntary inspection fee of $100 when a premises that is not a food establishment requests a voluntary inspection.

This rule is intended to implement Iowa Code sections 137C.9, 137D.2(1), and 137F.6.

481—30.5(137F) Penalty and delinquent fees.

30.5(1) *Late penalty.* Food establishment licenses and food processing plant licenses that are renewed by the licensee after the license expiration date shall be subject to a penalty of 10 percent of the license fee per month. A license shall be renewed only if the license holder has provided documentation pursuant to subrule 30.3(5).

30.5(2) *Penalty for opening or operating without a license.* A person who opens or operates a food establishment or food processing plant without a license is subject to a penalty of up to twice the amount of the annual license fee.

30.5(3) *Civil penalty for violations.* A person who violates Iowa Code chapter 137F or these rules shall be subject to a civil penalty of $100 for each violation. Prior to assessment of the penalty, the license holder shall have an opportunity for a hearing using the process outlined in rule 481—30.11(10A,137C,137D,137F).

This rule is intended to implement Iowa Code sections 137F.4, 137F.9 and 137F.17.

481—30.6(137C,137D,137F) Returned checks. If a check intended to pay for any license provided for under Iowa Code chapter 137C, 137D, or 137F is not honored for payment by the bank on which it is drafted, the department will attempt to redeem the check. The department will notify the applicant of the need to provide sufficient payment. An additional fee of $25 shall be assessed for each dishonored check. If the department does not receive cash to replace the check, the establishment will be operating without a valid license. Furthermore, any late penalties assessed pursuant to rule 481—30.5(137F) will accrue and must be paid.

This rule is intended to implement Iowa Code sections 137C.9, 137D.2(1), and 137F.6.

481—30.7(137F) Double licenses.

30.7(1) Any establishment which holds a food service establishment license and has gross sales over $20,000 annually in packaged food items intended for consumption off the premises shall also be required to obtain a retail food establishment license. The license holder shall keep a record of these food sales and make it available to the department upon request.

30.7(2) A retail food establishment and a food service establishment which occupy the same premises must be licensed separately, and the applicable fees must be paid for each. The license fee for each is based on only the annual gross sales of food and drink covered under the scope of that particular type of license.

30.7(3) A food establishment that is licensed both with a food service establishment license and a retail food establishment license shall pay 75 percent of the license fees required in subrules 30.4(1) and 30.4(2).

30.7(4) Licensed retail food establishments serving only coffee, soft drinks, popcorn, prepackaged sandwiches or other food items manufactured and packaged by a licensed establishment need only obtain a retail food establishment license.

30.7(5) A temporary food establishment license is not required when the temporary food establishment is owned and operated on the premises of a licensed food establishment.

30.7(6) The dominant form of business in annual gross sales shall determine the type of license for establishments which engage in operations covered under the definitions of both a food establishment and a food processing plant. Sale of products at wholesale to outlets not owned by a commissary owner requires a food processing plant license. Food establishments that process low-acid food in hermetically sealed containers or process acidified foods are required to have a food processing plant license. Regardless of the license, food processing facilities shall be inspected pursuant to food processing inspection standards and food establishments shall be inspected pursuant to the Food Code.

30.7(7) A licensed mobile food unit that operates as a licensed mobile food unit at a farmers market is not required to obtain a separate farmers market potentially hazardous food license.

This rule is intended to implement Iowa Code sections 10A.104 and 137F.6.

481—30.8(137C,137D,137F) Inspection frequency.

30.8(1) *Food establishments.* Food establishments shall be inspected based upon risk assessment and shall have routine inspections at least once every 24 months and no more than once every 3 months.

30.8(2) *Food processing plants.* Food processing plants that process foods shall be inspected based upon risk assessment and shall have routine inspections at least once every 24 months and no more than once every 6 months.

30.8(3) *Food processing plants that store foods.* Food processing plants that store foods shall be inspected based upon risk assessment and shall be inspected at least once every 36 months.

30.8(4) *Hotels.* Hotels shall be inspected at least once biennially.

30.8(5) *Home food establishments and vending machines.* Home food establishments and vending machines shall be inspected at least once every 24 months.

30.8(6) *Farmers market potentially hazardous food.* Farmers market potentially hazardous food licensees shall be inspected at least once annually.

This rule is intended to implement Iowa Code sections 137C.11, 137D.2, and 137F.10.

481—30.9(22) Examination of records.

30.9(1) *Public information.* Generally, information collected by the food and consumer safety bureau and contractors is considered public information. Records are stored in computer files and are not matched with any other data system. Information is available for public review and will be provided when requested from the office of the director. Inspection reports are available for public viewing at http://www.food.dia.iowa.gov.

30.9(2) *Confidential records.* The following are examples of confidential records:

a. Trade secrets and proprietary information including items such as formulations, processes, policies and procedures, and customer lists;

b. Health information related to foodborne illness complaints and outbreaks; and

c. Other state or federal agencies' records.

For records of other federal or state agencies, the department shall refer the requester of such information to the appropriate agency.

This rule is intended to implement Iowa Code chapters 137C, 137D, 137F and 22.

481—30.10(17A,137C,137D,137F) Denial, suspension, or revocation of a license to operate. Notice of denial, suspension or revocation of a license will be provided by the department and shall be effective 30 days after mailing or personal service of the notice.

30.10(1) *Immediate suspension of license.* To the extent not inconsistent with Iowa Code chapters 17A, 137C, 137D, and 137F and rules adopted pursuant to those chapters, chapter 8 of the Food Code shall be adopted for food establishments and home food establishments. The department or contractor may immediately suspend a license in cases of an imminent health hazard. The procedures of Iowa Code section 17A.18A and Food Code chapter 8 shall be followed in cases of an imminent health hazard. The appeal process in rule 481—30.11(10A,137C,137D,137F) is available following an immediate suspension. The department may immediately suspend the license of a food processing plant or hotel if an imminent health hazard finding is made and the procedures of Iowa Code section 17A.18A are followed.

30.10(2) *Criminal offense—conviction of license holder.*

a. The department may revoke the license of a license holder who:

(1) Conducts an activity constituting a criminal offense in the licensed food establishment; and

(2) Is convicted of a felony as a result.

b. The department may suspend or revoke the license of a license holder who:

(1) Conducts an activity constituting a criminal offense in the licensed food establishment; and

(2) Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.

c. A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

d. The department's decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of rule 481—30.11(10A,137C,137D,137F).

This rule is intended to implement Iowa Code chapters 17A, 137C, 137D and 137F.

481—30.11(10A,137C,137D,137F) Formal hearing. All decisions of the food and consumer safety bureau may be contested by an adversely affected party. A request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by 481—Chapter 10, "Contested Case Hearings."

For contractors, license holders shall have the opportunity for a hearing before the local board of health. If the hearing is conducted before the local board of health, the license holder may appeal to the department and shall follow the process for review in rule 481—10.25(10A,17A).

This rule is intended to implement Iowa Code section 10A.104 and Iowa Code chapters 137C, 137D, and 137F.

481—30.12(137F) Primary servicing laboratory. The primary servicing laboratory for the food and consumer safety bureau is the State Hygienic Laboratory at the University of Iowa created under Iowa Code section 263.7. If the laboratory is unable to perform laboratory services, the laboratory will assist in finding another laboratory with a preference toward laboratories that are in the FERN (Food Emergency Response Network) and have achieved ISO 17025 accreditation.

This rule is intended to implement Iowa Code sections 10A.104 and 22.11 and Iowa Code chapters 137C, 137D, and 137F.

ARC 1025C

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 chapters 137C and 137D and sections 10A.104 and 137F.2, the Department of Inspections and Appeals hereby gives Notice of Intended Action to rescind Chapter 31, "Food Establishment and Food Processing Plant Inspections," Iowa Administrative Code, and to adopt a new Chapter 31 with the same title.

The Department is proposing this rule making to coincide with the introduction of a new licensing and inspection data system in an effort to reduce the cost of updating the chapter. Adopting the new rules in the current system or updating the current rules in the new system and adding the new rules later would result in an additional cost of several thousands of dollars; whereas, there will be no additional cost now. In addition, the Department seeks to maintain current Food Code and food processing plant standards to assist industry in having consistent standards with nearby states. For example, Kansas and Nebraska have both moved to the 2009 Food Code and most current processing standards. A companion revision to Chapter 30, "Food and Consumer Safety," is also being published herein under Notice of Intended Action as **ARC 1026C**.

The proposed amendment includes the following:

• Adopting the 2009 FDA Food Code with Supplement. A summary of the changes between the current Food Code (2005 with Supplement) and the proposed Food Code (2009 with Supplement) is available at http://www.fda.gov/Food/

GuidanceRegulation/RetailFoodProtection/FoodCode/ucm272584.htm and http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/ucm188119.htm.

- Adopting the certified food protection manager requirement from the Food Code, along with transition provisions.
- Adopting provisions related to reduced oxygen packaging that reduce regulatory requirements and have been recommended for inclusion in the 2013 Food Code.
- Clarifying provisions related to reduced oxygen packaging of meats in custom exempt meat and poultry processing plants.
- Updating food processing inspection standards to coincide with current federal law and regulations and current practice.
- Removing enforcement provisions from Chapter 31 and moving them to Chapter 30.
- Reordering Food Code amendments to coincide with Food Code numbering.

The proposed amendment adopts the 2009 Food Code with Supplement requirement that establishments have a certified food protection manager. The cost of this requirement is approximately $140 per food establishment. The Department estimates that between 25 and 40 percent of establishments currently have a certified food protection manager. Approximately 10 percent of establishments and all temporary food establishments will be exempt from the requirement. Certified food protection manager programs are available from a variety of sources, including Iowa State University Extension, the Iowa Restaurant Association, local health departments, and online. Research, including research in Iowa, indicates an increase of compliance in areas that can cause foodborne illness in establishments with certified food protection managers. The requirement has a graduated implementation, with new establishments after January 1, 2014, being required to employ an individual who is a certified food protection manager. Other establishments must meet the requirement within six months of receiving a foodborne illness risk factor or public health intervention violation (those violations that can result in illness) or by January 1, 2018, whichever comes first.

The proposed amendment incorporates all possible standards needed for food processing. In the past, the Department has updated food processing standards as a new industry comes into the state. Because this has resulted in not having standards in place for a period of time, the Department is moving toward a complete adoption. If the current standards are not adopted, the Department cannot provide certificates of free sale, which are used to export food to other countries. Food processing standards continue to mirror federal requirements, as nearly every food processor in Iowa is subject to concurrent regulation by the Department and the Food and Drug Administration.

Prior to publication of this Notice of Intended Action, the Department circulated the rules and held informational sessions with municipal corporations under agreement with the Department, affected state agencies, and industry, professional, and consumer groups. Comments were reviewed and changes incorporated into the new chapter as appropriate.

Any interested person may make written suggestions or comments on the proposed rules on or before October 8, 2013. Such written materials should be directed to Steven Mandernach, Department of Inspections and Appeals, Third Floor, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319; fax (515)281-3291; or e-mail steven.mandernach@dia.iowa.gov.

A public hearing will be held on October 9, 2013, at 10 a.m. at the office of the Department of Inspections and Appeals, Room 319, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. A teleconference line will also be available for the public hearing by dialing (605)475-4000 and entering the following code when prompted: 671724#. 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 and advise of specific needs.

The rules are subject to waiver under the Department's general waiver provisions contained in 481—Chapter 6, "Uniform Waiver and Variance Rules."

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

These rules are intended to implement Iowa Code chapters 10A, 137C, 137D, and 137F.

The following amendment is proposed.

Rescind 481—Chapter 31 and adopt the following **new** chapter in lieu thereof:

CHAPTER 31
FOOD ESTABLISHMENT AND FOOD
PROCESSING PLANT INSPECTIONS

481—31.1(137F) Inspection standards for food establishments. The department adopts, with the following exceptions, the 2009 Food Code with Supplement of the Food and Drug Administration as the state's "food code," which is the inspection standard for food establishments other than food processing plants.

31.1(1) *Certified food protection manager required.* For purposes of section 2-102.12 of the 2009 Food Code with Supplement, establishments that sell only prepackaged foods are not required to employ an individual who has completed a certified food protection manager course. Temporary food establishments are not required to employ an individual who has completed a certified food protection manager course. For all other establishments, the following time frames apply for employment of an individual who has completed a certified food protection manager course:

a. For establishments newly licensed after January 1, 2014, the requirement of section 2-102.12 must be met within six months of licensure.

b. Establishments in existence as of January 1, 2014, that do not receive a foodborne illness risk factor or public health intervention violation on or before July 1, 2017, shall meet the requirement of section 2-102.12 by January 1, 2018.

c. Establishments in existence as of January 1, 2014, that receive a foodborne illness risk factor or public health intervention violation on or before July 1, 2017, shall meet the requirement of section 2-102.12 within six months of the violation.

d. If the individual meeting the requirement of section 2-102.12 leaves employment with an establishment required to meet section 2-102.12, the establishment shall meet the requirement of section 2-102.12 within six months.

31.1(2) *Honey prepared in a residence.* Section 3-201.11 is amended to allow honey which is stored; prepared, including by placement in a container; or labeled at or distributed from the premises of a residence to be sold in a food establishment.

31.1(3) *Morel mushrooms.* Section 3-201.16, paragraph (A), is amended by adding the following:

"A food establishment or farmers market potentially hazardous food licensee may serve or sell morel mushrooms if procured from an individual who has completed a morel mushroom identification expert course. Every morel mushroom shall be identified and found to be safe by a certified morel mushroom identification expert whose competence has been verified and approved by the department through the expert's successful completion of a morel mushroom identification expert course provided by either an accredited college or university or a mycological society. The certified morel mushroom identification expert shall personally inspect each mushroom and determine it to be a morel mushroom. A morel mushroom identification expert course shall be at least three hours in length. To maintain status as a morel mushroom identification expert, the individual shall have successfully completed a morel mushroom identification expert course described above within the past three years. A person who wishes to offer a morel mushroom identification expert course must submit the course curriculum to the department for review and approval. Food establishments or farmers market potentially hazardous food licensees offering morel mushrooms shall maintain the following information for a period of 90 days from the date the morel mushrooms were obtained:

"1. The name, address, and telephone number of the morel mushroom identification expert;

"2. A copy of the morel mushroom identification expert's certificate of successful completion of the course, containing the date of completion; and

"3. The quantity of morel mushrooms purchased and the date(s) purchased.

"Furthermore, a consumer advisory shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means that wild mushrooms should be thoroughly cooked and may cause allergic reactions or other effects."

31.1(4) *Field-dressed wild game prohibition.* Subparagraph 3-201.17(A)(4) is amended to state that field-dressed wild game shall not be permitted in food establishments unless:

a. The food establishment is also licensed and inspected by the Iowa department of agriculture and land stewardship, meat and poultry inspection bureau, pursuant to Iowa Code section 189A.3;

b. All field-dressed wild game is adequately separated from food, equipment, utensils, clean linens, and single-service and single-use articles; and

c. Any equipment used in the processing of field-dressed wild game is adequately cleaned and sanitized before use with other foods.

31.1(5) *Preventing contamination from hands*. Section 3-301.11, paragraph (D), is amended to incorporate the changes to this section adopted in the 2013 Food Code, which provides as follows:

"(D) Paragraph (B) of this section does not apply to a food employee that contacts exposed, ready-to-eat food with bare hands at the time the ready-to-eat food is being added as an ingredient to a food that:

"(1) Contains a raw animal food and is to be cooked in the food establishment to heat all parts of the food to the minimum temperatures specified in ¶3-401.11(A)-(B) or §3-401.12; or

"(2) Does not contain a raw animal food but is to be cooked in the food establishment to heat all parts of the food to a temperature of at least 63ºC (145ºF)."

31.1(6) *Noncontinuous cooking of raw animal foods.* Section 3-401.14, paragraph (D), is amended as follows to incorporate the changes in this section adopted in the 2013 Food Code:

3-401.14(D) Prior to sale or service, cooked using a process that heats all parts of the food to temperature for 15 seconds for full lethality based on the specific product requirements in paragraphs 3-401.11(A)-(C) of the Food Code. P

31.1(7) *Reduced oxygen packaging in custom exempt meat and poultry processing plants.* Meat and poultry processing plants that are licensed and inspected by the Iowa department of agriculture and land stewardship (IDALS) meat and poultry inspection bureau pursuant to Iowa Code section 189A.3 and that are also licensed as a food establishment are exempt from section 3-502.11, paragraphs (A), (B), (D) and (F), and section 3-502.12 if all of the following criteria are met:

a. Each food product formulation has been approved by the Iowa department of agriculture and land stewardship, meat and poultry inspection bureau;

b. A copy of the approved formulation (T40/45) is maintained on file at the establishment and made available to the regulatory authority upon request;

c. Cooked products that do not include a curing agent or an anti-microbial agent that will control Clostridium botulinum and Listeria monocytogenes that are in a reduced oxygen package are stored and sold frozen and are labeled "Keep Frozen"; and

d. The food products are properly labeled.

31.1(8) *Reduced oxygen packaging.* Section 3-502.12 is amended to incorporate the changes in this section adopted in the 2013 Food Code, which provides as follows:

3-502.12 Reduced Oxygen Packaging Without a Variance, Criteria.

(A) Except for a FOOD ESTABLISHMENT that obtains a VARIANCE as specified under § 3-502.11 or when FOOD stored 48 hours or less in REDUCED OXYGEN PACKAGING and each package is labeled with the time and date of PACKAGING, a FOOD ESTABLISHMENT that PACKAGES POTENTIALLY HAZARDOUS FOOD (TIME/TEMPERATURE CONTROL FOR FOOD SAFETY) using a REDUCED OXYGEN PACKAGING method shall control the growth and toxin formation of Clostridium botulinum and the growth of Listeria monocytogenes. P

(B) Except when FOOD is held 48 hours or less in a reduced oxygen atmosphere and each package is labeled with the time and date of packaging or when raw MEAT or POULTRY is packaged using a REDUCED OXYGEN PACKAGING method, provided the FOOD is labeled with a 30 day or less "sell by" date from the date of PACKAGING, a FOOD ESTABLISHMENT that PACKAGES POTENTIALLY HAZARDOUS FOOD (TIME/TEMPERATURE CONTROL FOR FOOD SAFETY)

using a REDUCED OXYGEN PACKAGING method shall have a HACCP PLAN that contains the information specified under ¶ 8-201.14(D) and that: Pf

(1) Identifies the FOOD to be PACKAGED; Pf

(2) Except as specified under ¶¶ (C) - (E) of this section, requires that the PACKAGED FOOD shall be maintained at 5°C (41°F) or less and meet at least one of the following criteria: Pf

(a) Has an AW of 0.91 or less, Pf

(b) Has a PH of 4.6 or less, Pf

(c) Is a MEAT or POULTRY product cured at a FOOD PROCESSING PLANT regulated by the USDA using substances specified in 9 CFR 424.21, Use of food ingredients and sources of radiation, and is received in an intact PACKAGE, Pf or

(d) Is a FOOD with a high level of competing organisms such as raw MEAT, raw POULTRY, or raw vegetables; Pf

(3) Describes how the PACKAGE shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to: Pf

(a) Maintain the FOOD at 5°C (41°F) or below, Pf and

(b) Discard the FOOD if, within 30 calendar days of its PACKAGING, it is not served for on-PREMISES consumption, or consumed if served or sold for off-PREMISES consumption; Pf

(4) Limits the refrigerated shelf life to no more than 30 calendar days from PACKAGING to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first; P

(5) Includes operational procedures that:

(a) Prohibit contacting READY-TO-EAT FOOD with bare hands as specified under ¶ 3-301.11(B), Pf

(b) Identify a designated work area and the method by which: Pf

(i) Physical barriers or methods of separation of raw FOODS and READY-TO-EAT FOODS minimize cross contamination, Pf and

(ii) Access to the processing EQUIPMENT is limited to responsible trained personnel familiar with the potential HAZARDS of the operation, Pf and

(c) Delineate cleaning and SANITIZATION procedures for FOOD-CONTACT SURFACES; Pf and

(6) Describes the training program that ensures that the individual responsible for the REDUCED OXYGEN PACKAGING operation understands the: Pf

(a) Concepts required for a safe operation, Pf

(b) EQUIPMENT and facilities, Pf and

(c) Procedures specified under Subparagraph (B)(5) of this section and ¶ 8-201.14(D). Pf

(C) Except for FISH that is frozen before, during, and after PACKAGING, a FOOD ESTABLISHMENT may not PACKAGE FISH using a REDUCED OXYGEN PACKAGING method. P

(D) Except as specified under ¶ (C) of this section, a FOOD ESTABLISHMENT that PACKAGES FOOD using a cook-chill or sous vide process shall:

(1) Implement a HACCP PLAN that contains the information as specified under ¶ 8-201.14(D); Pf

(2) Ensure that the FOOD is:

(a) Prepared and consumed on the PREMISES, or prepared and consumed off the PREMISES but within the same business entity with no distribution or sale of the PACKAGED product to another business entity or the CONSUMER, Pf

(b) Cooked to heat all parts of the FOOD to a temperature and for a time as specified under § 3-401.11(A) & (B), P

(c) Protected from contamination before and after cooking as specified under Parts 3-3 and 3-4, P

(d) Placed in a PACKAGE with an oxygen barrier and sealed before cooking, or placed in a PACKAGE and sealed immediately after cooking and before reaching a temperature below 57°C (135°F), P

(e) Cooled to 5°C (41°F) in the sealed PACKAGE or bag as specified under § 3-501.14 and: P

(i) Cooled to 1°C (34°F) within 48 hours of reaching 5°C (41°F) and held at that temperature until consumed or discarded within 30 days after the date of PACKAGING; P or if the FOOD is removed from

1°C (34°F) and placed in 5°C (41°F) refrigeration, it shall be held for no more than 7 days at 5°C (41°F) and shall not exceed the original 30-day consume or discard date, P or

(ii) Held at 5°C (41°F) or less for no more than 7 days, at which time the FOOD must be consumed or discarded; P or

(iii) Held frozen with no shelf life restriction while frozen until consumed or used, P

(f) Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily, Pf

(g) If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation, Pf and

(h) Labeled with the product name and the date PACKAGED; Pf and

(3) Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP PLAN, and:

(a) Make such records available to the REGULATORY AUTHORITY upon request, Pf and

(b) Hold such records for at least 6 months; Pf and

(4) Implement written operational procedures as specified under subparagraph (B)(5) of this section and a training program as specified under subparagraph (B)(6) of this section. Pf

(E) A FOOD ESTABLISHMENT that PACKAGES cheese using a REDUCED OXYGEN PACKAGING method shall:

(1) Limit the cheeses PACKAGED to those that are commercially manufactured in a FOOD PROCESSING PLANT with no ingredients added in the FOOD ESTABLISHMENT and that meet the Standards of Identity as specified in 21 CFR 133.150 Hard cheeses, 21 CFR 133.169 Pasteurized process cheese or 21 CFR 133.187 Semisoft cheeses; P

(2) Have a HACCP PLAN that contains the information specified under ¶ 8-201.14(D) and as specified under ¶¶ (B)(1), (B)(3)(a), (B)(5) and (B)(6) of this section; Pf

(3) Label the PACKAGE on the principal display panel with a "use by" date that does not exceed 30 days from its packaging or the original manufacturer's "sell by" or "use by" date, whichever occurs first; Pf and

(4) Discard the REDUCED OXYGEN PACKAGED cheese if it is not sold for off-PREMISES consumption or consumed within 30 calendar days of its PACKAGING. Pf

31.1(9) *Warewashing sinks in establishments serving alcoholic beverages.* Section 4-301.12 is amended by adding the following: "When alcoholic beverages are served in a food service establishment, a sink with not fewer than three compartments shall be used in the bar area for manual washing, rinsing and sanitizing of bar utensils and glasses. When food is served in a bar, a separate three-compartment sink for washing, rinsing and sanitizing food-related dishes shall be used in the kitchen area, unless a dishwasher is used to wash utensils."

31.1(10) *Allowance for two-compartment sinks in certain circumstances.* Paragraph 4-301.12(C) is amended by adding the following: "Establishments need not have a three-compartment sink when each of the following conditions is met:

"1. Three or fewer utensils are used for food preparation;

"2. Utensils are limited to tongs, spatulas, and scoops; and

"3. The department has approved after verification that the establishment can adequately wash and sanitize these utensils."

31.1(11) *Chemical treated towelettes.* Paragraph 5-203.11(C) is deleted.

31.1(12) *Service sink.* For existing establishments, if waste water is being appropriately disposed of, section 5-203.13 for existing establishments shall go into effect upon the establishment's renovation or sale.

31.1(13) *Toilets and lavatories.* Section 5-203.12 is amended by adding the following requirement: "Separate toilet facilities for men and women shall be provided in establishments which seat 50 or more people or in establishments which serve beer or alcoholic beverages."

31.1(14) *Backflow protection.* Section 5-203.14 is amended by adding the following: "Water outlets with hose attachments, except for water heater drains and clothes washer connections, shall be protected

by a non-removable hose bibb backflow preventer or by a listed atmospheric vacuum breaker installed at least six inches above the highest point of usage and located on the discharge side of the last valve."

31.1(15) *Backflow prevention.* Paragraph 5-402.11(D) is amended by adding the following: "A culinary sink or sink used for food preparation shall not have a direct connection between the sewage system and a drain originating from that sink. Culinary sinks or sinks used in food preparation shall be separated by an air break."

31.1(16) *Inspection standards for elder group homes.* Elder group homes as defined by Iowa Code section 231B.1 shall be inspected by the department, but chapters 4 and 6 of the Food Code shall not apply. Elder group homes shall pay the lowest license fee set forth in 481—subrule 30.4(2).

31.1(17) *Nonprofit exception for temporary events.* Nonprofit organizations that are licensed as temporary food establishments may serve nonpotentially hazardous food from an unapproved source for the duration of the event.

31.1(18) *Variance approval by department and submission of HACCP plans.* Any variances or HACCP plans that require approval by the "regulatory authority" must be approved by the department. HACCP plans pursuant to paragraphs 3-502.12(B) and 8-201.13(B) shall be filed with the department prior to implementation, regardless of whether or not the plan requires approval.

31.1(19) *Trichinae control for pork products prepared at retail.* Pork products prepared at retail shall comply with the Code of Federal Regulations found in 9 CFR, Section 318.10, January 1, 2013, publication, regarding the destruction of possible live trichinae in pork and pork products. Examples of pork products that require trichinae control include raw sausages containing pork and other meat products, raw breaded pork products, bacon used to wrap around steaks and patties, and uncooked mixtures of pork and other meat products contained in meat loaves and similar types of products. The use of "certified pork" as authorized by the Iowa department of agriculture and land stewardship or the United States Department of Agriculture, Food Safety and Inspection Service, shall meet the requirements of this subrule.

This rule is intended to implement Iowa Code section 137F.2.

481—31.2(137F) Inspection standards for food processing plants. The following are the inspection standards for food processing plants including food storage facilities.

31.2(1) *Definitions.* For the purposes of this rule, the following definitions shall apply. The definitions of "food," "label," "labeling," and "dietary supplement" are as defined in 21 U.S.C. Section 321 (2012).

31.2(2) *Prohibited acts.* The prohibited acts identified in 21 U.S.C. Section 331, (a) to (f), (k), and (v) (2012) shall also be prohibited acts in Iowa.

31.2(3) *Stop sale.* Any article of food that is adulterated or misbranded when introduced into commerce may be embargoed until such a time as the adulteration of misbranding is remedied or the product is destroyed. The action is immediate, but the licensee may appeal the decision following the process outlined in rule 481—30.11(10A,137C,137D,137F).

31.2(4) *Standards for food.* If a standard that has been adopted for a food is adopted pursuant to 21 U.S.C. Section 341 (2012), the standard shall be met.

31.2(5) *Adulterated food.* See rule 481—31.3(137D,137F).

31.2(6) *Misbranded food* A food shall be misbranded if it is found in violation of 21 U.S.C. Section 343 (2012).

31.2(7) *New dietary ingredients.* New dietary ingredients shall comply with the process in 21 U.S.C. Section 350(b) (2012) or shall be deemed adulterated.

31.2(8) *Records.* Records shall be made available at minimum to the extent required under 21 U.S.C. Section 373 (2012) for all interstate and intrastate food.

31.2(9) *Adoption of Code of Federal Regulations.* The following parts of the Code of Federal Regulations (April 1, 2013) are adopted:

a. 21 CFR Part 1, Sections 1.20 to 1.24 (labeling).

b. 21 CFR Part 7, Sections 7.1 to 7.13 and 7.40 to 7.59 (guaranty and recalls).

c. 21 CFR Part 70, Sections 70.20 to 70.25 (labeling requirements for colors).

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

d. 21 CFR Part 73, Sections 73.1 to 73.615 (color additives exempt from certification).

e. 21 CFR Part 81, general specifications and general restrictions for provisional color additives for use in foods, drugs, and cosmetics.

f. 21 CFR Part 82, Sections 82.3 to 82.706 (certified provisionally listed colors and specifications).

g. 21 CFR Part 100, Section 100.155 (specific provisions for salt and iodized salt).

h. 21 CFR Part 101, except Sections 101.69 and 101.108 (food labeling).

i. 21 CFR Part 102, except Section 102.19 (common or usual name for nonstandard food).

j. 21 CFR Part 104, nutritional quality guidelines for foods.

k. 21 CFR Part 105, food for special dietary use.

l. 21 CFR Part 106, except Section 106.120 (infant formula quality control procedures).

m. 21 CFR Part 107, except Sections 107.200 to 107.280 (infant formula labeling).

n. 21 CFR Part 108, Sections 108.25 to 108.35 (exceptions for when a permit is not required, acidified and thermal processing of low-acid foods packaged in hermetically sealed containers).

o. 21 CFR Part 109, unavoidable contaminants in food for human consumption and food-packaging material.

p. 21 CFR Part 110, current good manufacturing practice in manufacturing, packing or holding human food.

q. 21 CFR Part 111, current good manufacturing practice in manufacturing, packaging, labeling, or holding operations for dietary supplements.

r. 21 CFR Part 113, thermally processed low-acid food packaged in hermetically sealed containers.

s. 21 CFR Part 114, acidified foods.

t. 21 CFR Part 115, shell eggs.

u. 21 CFR Part 120, hazard analysis and critical control point (HACCP) systems (juice).

v. 21 CFR Part 123, fish and fisheries products (seafood).

w. 21 CFR Part 129, processing and bottling of bottled drinking water.

x. 21 CFR Part 130, except Sections 130.5, 130.6 and 130.17, food standards: general.

y. 21 CFR Part 131, milk and cream.

z. 21 CFR Part 133, cheeses and related cheese products.

aa. 21 CFR Part 135, frozen desserts.

ab. 21 CFR Part 136, bakery products.

ac. 21 CFR Part 137, cereal flours and related products.

ad. 21 CFR Part 139, macaroni and noodle products.

ae. 21 CFR Part 145, canned fruits.

af. 21 CFR Part 146, canned fruit juices.

ag. 21 CFR Part 150, fruit butters, jellies, preserves, and related products.

ah. 21 CFR Part 152, fruit pies.

ai. 21 CFR Part 156, vegetable juices.

aj. 21 CFR Part 158, frozen vegetables.

ak. 21 CFR Part 160, egg and egg products.

al. 21 CFR Part 161, fish and shellfish.

am. 21 CFR Part 163, cacao products.

an. 21 CFR Part 164, tree nut and peanut products.

ao. 21 CFR Part 165, beverages.

ap. 21 CFR Part 166, margarine.

aq. 21 CFR Part 168, sweeteners and table syrups.

ar. 21 CFR Part 169, food dressings and flavorings.

as. 21 CFR Part 170, except Sections 170.6, 170.15, and 170.17, food additives.

at. 21 CFR Part 172, food additives permitted for direct addition to food for human consumption.

au. 21 CFR Part 173, secondary direct food additives permitted in food for human consumption.

av. 21 CFR Part 174, indirect food additives: general.

aw. 21 CFR Part 175, indirect food additives, adhesives and components of coatings.

ax. 21 CFR Part 176, indirect food additives: paper and paperboard components.

ay. 21 CFR Part 177, indirect food additives: polymers.

az. 21 CFR Part 178, indirect food additives: adjuvants, production aids, and sanitizers.

ba. 21 CFR Part 180, food additives permitted in food or in contact with food on an interim basis pending additional study.

bb. 21 CFR Part 181, prior-sanctioned food ingredients.

bc. 21 CFR Part 182, substances generally recognized as safe.

bd. 21 CFR Part 184, direct food substances affirmed as generally recognized as safe.

be. 21 CFR Part 186, indirect food substances affirmed as generally recognized as safe.

bf. 21 CFR Part 189, substances prohibited from use in human food.

bg. 21 CFR Part 190, dietary supplements.

31.2(10) *Egg products processing plants.* The department shall generally use the good manufacturing practices adopted in subrule 31.2(9)*"b,"* unless such practices are inconsistent with standards set by the United States Department of Agriculture, Food Safety Inspection Service, in 9 CFR Parts 590-592, January 1, 2013. If the standards are inconsistent, the standards adopted in 9 CFR Parts 590-592, January 1, 2013, apply.

31.2(11) *Specific requirements for the manufacture of packaged ice.* In addition to compliance with subrules 31.2(1) through 31.2(9), manufacturers of packaged ice must comply with the following:

a. Equipment must be cleaned on a schedule of frequency that prevents the accumulation of mold, fungus and bacteria. A formal cleaning program and schedule which include the use of sanitizers to eliminate microorganisms must be developed and used.

b. Packaged ice must be tested every 120 days for the presence of bacteria.

c. Plants that use a nonpublic water system must sample the water supply monthly for the presence of bacteria and annually for chemical and pesticide contamination as required by law.

This rule is intended to implement Iowa Code section 137F.2.

481—31.3(137D,137F) Adulterated food and disposal. No one may produce, distribute, offer for sale or sell adulterated food. "Adulterated" is defined in the federal Food, Drug and Cosmetic Act, Section 402. Adulterated food shall be disposed of in a reasonable manner as determined by the department. The destruction of adulterated food shall be watched by a person approved by the department.

This rule is intended to implement Iowa Code section 137F.2.

481—31.4(137D,137F) False label or defacement. No person shall use any label required by Iowa Code chapter 137C or 137F which is deceptive as to the true nature of the article or place of production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by this chapter.

This rule is intended to implement Iowa Code sections 137D.2 and 137F.2.

481—31.5(137F) Temporary food establishments and farmers market potentially hazardous food licensees. While the retail food code adopted in rule 481—31.1(137F) applies to temporary food establishments, the following subrules provide a simplified version of requirements for temporary food establishments. If the two rules are inconsistent, the standards in this rule apply.

31.5(1) *Personnel.* For the purposes of this rule, employees include volunteers.

a. Employees shall keep their hands and exposed portions of their arms clean.

b. Employees shall have clean garments and aprons and effective hair restraints. Smoking, eating or drinking in food booths is not allowed. All nonworking, unauthorized persons are to be kept out of the food booth.

c. All employees, including volunteers, shall be under the direction of the person in charge. The person in charge shall ensure that the workers are effectively cleaning their hands, that potentially hazardous food is adequately cooked, held or cooled, and that all multiuse equipment or utensils are adequately washed, rinsed and sanitized.

d. Employees and volunteers shall not work at a temporary food establishment or farmers market potentially hazardous food establishment if the employees and volunteers have open cuts, sores or communicable diseases. The person in charge shall take appropriate action to ensure that employees and volunteers who have a disease or medical condition transmissible by food are excluded from the food operation.

e. Every employee and volunteer must sign a logbook with the employee's or volunteer's name, address, and telephone number and the date and hours worked. The logbook must be maintained for 30 days by the person in charge and be made available to the department upon request.

31.5(2) *Food handling and service.*

a. Dry storage. All food, equipment, utensils and single-service items shall be stored off the ground and above the floor on pallets, tables or shelving.

b. Cold storage. Refrigeration units shall be provided to keep potentially hazardous foods at 41°F or below. The inspector may approve an effectively insulated, hard-sided container with sufficient coolant for storage of less hazardous food or the use of such a container at events of short duration if the container maintains the temperature at 41°F or below.

c. Hot storage. Hot food storage units shall be used to keep potentially hazardous food at 135°F or above. Electrical equipment is required for hot holding, unless the use of propane stoves and grills capable of holding the temperature at 135°F or above is approved by the department. Sterno cans are allowed for hot holding if adequate temperatures can be maintained. Steam tables or other hot holding devices are not allowed to heat foods and are to be used only for hot holding after foods have been adequately cooked.

d. Cooking temperatures. As specified in the following chart, the minimum cooking temperatures for food products are:

165°F	• Poultry and game animals that are not commercially raised • Products stuffed or in a stuffing that contains fish, meat, pasta, poultry or ratite • All products cooked in a microwave oven
155°F	• Rabbits, ratite and game meats that are commercially raised • Ground or comminuted (such as hamburgers) meat/fish products • Raw shell eggs not prepared for immediate consumption
145°F	• Pork and raw shell eggs prepared for immediate consumption • Fish and other meat products not requiring a 155°F or 165°F cooking temperature as listed above

e. Consumer advisory requirement. If raw or undercooked animal food such as beef, eggs, fish, lamb, poultry or shellfish is offered in ready-to-eat form, the license holder (person in charge) shall post the consumer advisory as required by the food code.

f. Thermometers. Each refrigeration unit shall have a numerically scaled thermometer to measure the air temperature of the unit accurately. An appropriate thermometer shall be provided where necessary to check the internal temperature of both hot and cold food. Thermometers must be accurate and have a range from 0°F to 220°F.

g. Food display. Foods on display must be covered. The public is not allowed to serve itself from opened containers of food or uncovered food items. Condiments such as ketchup, mustard, coffee creamer and sugar shall be served in individual packets or from squeeze containers or pump bottles. Milk shall be dispensed from the original container or from an approved dispenser. All fruits and vegetables must be washed before being used or sold. Food must be stored at least six inches off the ground. All cooking and serving areas shall be adequately protected from contamination. Barbeque areas shall be roped off or otherwise protected from the public. All food shall be protected from customer handling, coughing or sneezing by wrapping, sneeze guards or other effective means.

h. Food preparation. Unless otherwise approved by a variance from the department, no bare-hand contact of ready-to-eat food shall occur.

i. Approved food source. All food supplies shall come from a commercial manufacturer or an approved source. The use of food in hermetically sealed containers that is not prepared in an approved

food processing plant is prohibited. Transport vehicles used to supply food products are subject to inspection and shall protect food from physical, chemical and microbial contamination.

j. Leftovers. Hot-held foods that are not used by the end of the day must be discarded.

31.5(3) *Utensil storage and warewashing.*

a. Single-service utensils. The use of single-service plates, cups and tableware is required.

b. Dishwashing. If approved, an adequate means to heat the water and a minimum of three basins large enough for complete immersion of the utensils are required to wash, rinse and sanitize utensils or food-contact equipment.

c. Sanitizers. Chlorine bleach or another approved sanitizer shall be provided for warewashing sanitization and wiping cloths. An appropriate test kit shall be provided to check the concentration of the sanitizer used. The person in charge shall demonstrate knowledge in the determination of the correct concentration of sanitizer to be used.

d. Wiping cloths. Wiping cloths shall be stored in a clean, 100 ppm chlorine sanitizing solution or equivalent. Sanitizing solution shall be changed as needed to maintain the solution in a clean condition.

31.5(4) *Water.*

a. Water supply. An adequate supply of clean water shall be provided from an approved source. Water storage units and hoses shall be food grade and approved for use in storage of water. If not permanently attached, hoses used to convey drinking water shall be clearly and indelibly identified as to their use. Water supply systems shall be protected against backflow or contamination of the water supply. Backflow prevention devices, if required, shall be maintained and adequate for their intended purpose.

b. Wastewater disposal. Wastewater shall be disposed of in an approved wastewater disposal system sized, constructed, maintained and operated according to law.

31.5(5) *Premises.*

a. Hand-washing container. An insulated container with at least a two-gallon capacity with a spigot, basin, soap and dispensed paper towels shall be provided for hand washing. The container shall be filled with hot water.

b. Floors, walls and ceilings. If required, walls and ceilings shall be of tight design and weather-resistant materials to protect against the elements and flying insects. If required, floors shall be constructed of tight wood, asphalt, rubber or plastic matting or other cleanable material to control dust or mud.

c. Lighting. Adequate lighting shall be provided. Lights above exposed food preparation areas shall be shielded.

d. Food preparation surfaces. All food preparation or food contact surfaces shall be of a safe design, smooth, easily cleanable and durable.

e. Garbage containers. An adequate number of cleanable containers with tight-fitting covers shall be provided both inside and outside the establishment.

f. Toilet rooms. An adequate number of approved toilet and hand-washing facilities shall be provided at each event.

g. Clothing. Personal clothing and belongings shall be stored at a designated place in the establishment, adequately separated from food preparation, food service and dishwashing areas.

This rule is intended to implement Iowa Code sections 137D.2 and 137F.2.

ARC 1015C

LABOR SERVICES DIVISION[875]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 89.14 as amended by 2013 Iowa Acts, House File 484, the Boiler and Pressure Vessel Board hereby gives Notice of Intended Action to amend Chapter 90, "Administration of the Boiler and Pressure Vessel Program," Iowa Administrative Code.

This amendment would amend the regulatory inspection schedule to conform with 2013 Iowa Acts, House File 484.

The purposes of this amendment are to make the rule more current and to implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)"b" by the close of business on October 8, 2013, a public hearing will be held on October 9, 2013, at 1:30 p.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendment. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)281-5915 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than October 9, 2013, to the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to kathleen.uehling@iwd.iowa.gov.

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

This amendment is intended to implement Iowa Code chapter 89 as amended by 2013 Iowa Acts, House File 484.

The following amendment is proposed.

Amend subrule 90.6(2) as follows:

90.6(2) *Schedule.*

a. ~~Inspections~~ All required inspections must be performed according to the schedule set forth in Iowa Code section 89.3 ~~and~~.

b. Except for inspections of unfired steam pressure vessels operating in excess of 15 pounds per square inch and low pressure steam boilers, each inspection must be performed within a 60-day period prior to the expiration date of the operating certificate. Modification of this 60-day period will be permitted only upon written application showing just cause for waiver of the 60-day period.

c. Special inspections may be conducted at any time mutually agreed to by the division and the object's owner or user.

ARC 1022C

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 321G.2 and 321G.7, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 28, "Snowmobile and All-Terrain Vehicle Registration Revenue Cost-Share Program," and Chapter 47, "Snowmobiles," Iowa Administrative Code.

The proposed rule making implements the action steps identified in a process improvement event held by the Department with the Iowa State Snowmobile Association (ISSA) October 3 through 7, 2011. The purpose of this event was to work with key stakeholders to revamp the snowmobile cost-share program, as cost-share recipients had long asked for an improved process, clearer selection criteria, and an earlier deadline for submitting applications. After working together for one week, a new and improved program was developed.

The proposed rule making changes the snowmobile cost-share application submittal date from July 1 to May 1 each year (see proposed subrule 47.33(2)). By moving the cost-share cycle forward, applicants can enter into approved cooperative agreements sooner, allowing for better timing of preseason groomer repairs, trail development planning, and land acquisition such as securing land leases. The proposed rule making also provides more detailed project selection criteria for the purchase, repair and operation of grooming equipment, trail development, and land acquisition (see proposed rule 571—47.36(321G)). The proposed rule making also sets out that the records kept by entities receiving funds under this program are subject to audit by the Department and the State Auditor's Office (see proposed rule 571—47.40(321G)). The proposed rule making also specifies the requirements for seeking funds for land acquisition such as easements and leases (see proposed rule 571—47.43(321G)). In addition, the proposed rule making provides more clarity on the reimbursement of expenses to ISSA (see proposed subrule 47.42(7)). While existing rules allow ISSA to seek reimbursement of certain expenses pursuant to an agreement with the Department, the proposed rule making clarifies the exact types of items eligible for reimbursement. Moreover, the proposed rule making provides additional oversight regarding payment to ISSA by mandating that the proposed agreement between ISSA and the Department be subject to selection criteria, review and selection committee recommendation, and approval by the Director of the Department.

The proposed rule making also moves the snowmobile cost-share program currently in Chapter 28 into the chapter containing other snowmobile rules, Chapter 47. Containing all program-specific rules in the same place is convenient to stakeholders.

The proposed rule making has positive impacts on the state and local economies, supporting existing jobs and growth. By moving the cost-share application deadline from July 1 to May 1, applicants can enter into approved cooperative agreements sooner, allowing for better timing of preseason groomer repairs, trail development planning, and land acquisition such as securing land leases. This ensures that preseason groomer repairs are completed well before the snow season; thus, groomers will be grooming trails rather than making repairs at the first snowfall. A groomed snowmobile trail is not only safer, but attracts riders from across the state and from surrounding states. States with early and consistently groomed trails are more likely to attract riders than states without these services. Snowmobilers have a proven spending record with local businesses such as gas stations, restaurants, hotels, and local snowmobile dealers. Preseason repairs provide a boost to local equipment and parts suppliers and other related businesses.

A snowmobile economic impact study conducted by Iowa State University indicated that in 2009 and 2010 Iowa's 28,265 registered snowmobilers spent an estimated $76.3 million per year on snowmobile equipment and activities. Of that total expenditure, $50.3 million was spent in Iowa, with the remaining $26 million spent on trips out of state. Estimated expenditures by out-of-state snowmobilers riding in Iowa added an additional $556,600 of spending, for a total of $50.85 million. The in-state expenditures generated an estimated $30.4 million in additional transactions within the Iowa economy, resulting in an estimated $81.3 million in total transactions or sales, $27.9 million in personal income, and 1,101 jobs. The study concluded that if the state of Iowa could capture the $26 million that Iowa snowmobilers spent out of state, there would be the potential of providing an additional $41.9 million in total transactions, $14.5 million in additional household income, and 576 more jobs. See "The Economic Importance of Snowmobiling in Iowa," prepared for ISSA, Daniel Otto, Dept. of Economics, ISU, author.

Capturing the out-of-state trip expenditures is directly related to trail development, maintenance and grooming activities in Iowa. The State of Iowa can facilitate efforts to keep stakeholders riding in Iowa by providing earlier cost-share approvals, leading to earlier preseason groomer repairs, trail development planning and landowner lease agreements. The existing rules limit the aforementioned activities due to the cost-share application deadline's proximity to the snow season. The complete jobs impact statement is available from the Department upon request.

Any interested persons may make written suggestions or comments on the proposed amendments on or before October 8, 2013. Such written materials should be directed to David Downing, Iowa Department of Natural Resources, 502 E. 9th Street, Des Moines, Iowa 50319; fax (515)281-6794; telephone (515)281-3449; or e-mail David.Downing@dnr.iowa.gov.

Also, there will be a public hearing held on October 8, 2013, at 2 p.m. in the Third Floor Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. Persons attending the public hearing may present their views orally or in writing. At the hearing, persons will be asked to provide their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

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

This rule making received preclearance from the Governor's Office on March 21, 2013, and was approved by the Natural Resource Commission on May 9, 2013.

These amendments are intended to implement Iowa Code sections 321G.2 and 321G.7.

The following amendments are proposed.

ITEM 1. Amend 571—Chapter 28 as follows:

CHAPTER 28
~~SNOWMOBILE AND~~ ALL-TERRAIN VEHICLE REGISTRATION REVENUE COST-SHARE PROGRAM

571—28.1(~~321G~~ 321I) Definitions.

"All-terrain vehicle (ATV)" or *"off-highway vehicle (OHV)"* means a motorized flotation-tire vehicle with not less than three low-pressure tires, but not more than six low-pressure tires, or a two-wheeled off-road motorcycle, that is limited in engine displacement to less than 800 cubic centimeters and in total dry weight to less than 750 pounds and that has a seat or saddle designed to be straddled by the operator and handlebars for steering control.

"Commission" means the natural resource commission.

"Department" means the department of natural resources.

"Director" means the director of the department of natural resources.

"High-quality natural area" means an area that includes high-quality native plant communities or highly restorable native plant communities or an area that provides critical wildlife habitat. An on-site evaluation by a qualified person(s) for each proposed site is necessary in making this determination.

"Local cost-share portion" means those funds available for use by incorporated organizations or other public agencies through cost sharing, grants, subgrants or contracts.

"Previously disturbed" means an area where the plant community has been severely disturbed and has not recovered or the natural (native) plant biota is nearly gone. Such an area has been so heavily disturbed that the plant community structure has been severely altered and few or no higher plants of the original community remain. Examples are newly cleared land, cropland, improved pastureland, severely overgrazed second growth forest, rock-gravel quarries, mines, and sand pits.

~~*"Snowmobile"* means a motorized vehicle weighing less than 1,000 pounds which uses sled-type runners or skis, endless belt-type tread, or any combination of runners, skis, or tread, and is designed for travel on snow or ice.~~

"Sponsor" means the incorporated organization or other public agency receiving funding through the ~~snowmobile or~~ ATV grant ~~programs~~ program to acquire, develop, maintain or otherwise improve ~~snowmobile or~~ all-terrain vehicle areas and trails.

"State share" means those funds that may be used by the state for administration or for other miscellaneous expenses related to the ~~respective~~ program such as law enforcement.

571—28.2(~~321G~~ 321I) Purpose and intent. This program provides funds from ~~snowmobile and~~ the all-terrain vehicle ~~registrations~~ registration to political subdivisions and incorporated private organizations for the acquisition of land; development and maintenance of ~~snowmobile trails and~~ all-terrain vehicle areas and trails; and facilities for such use on lands which may be in other than state ownership. This chapter is intended to clarify procedures used in implementing agreements under Iowa Code section ~~321G.7~~ 321I.8 between the department and sponsors~~,~~ and the authority of the director of the department. All areas, trails and facilities established or maintained using revenues under this program shall be open to use by the general public.

571—28.3(~~321G~~ 321I) Distribution of funds. The local cost-share portion of state ~~snowmobile and~~ all-terrain vehicle registration funds as established in Iowa Code section ~~321G.7~~ 321I.8 and this rule shall be distributed in accordance with this chapter and upon execution of agreements under Iowa Code section ~~321G.7~~ 321I.8. The local cost-share portion of ~~each~~ the registration fund shall be at least 50 percent of appropriate registration revenues. The remaining revenues shall be known as the state share. State share funds shall not exceed 50 percent of the total registration revenue generated for ~~either~~ the program per fiscal year.

571—28.4(~~321G~~ 321I) Application procedures.

28.4(1) *Forms.* Applications for cost-share moneys shall be made on forms available from the department. The application must be completed and signed by the chairperson or chief executive officer of the applying sponsor. The application must be accompanied by a copy of the minutes of the sponsoring organization meeting at which the request was approved.

28.4(2) *Deadlines for application submission.*

~~*a.* Applications for snowmobile fund moneys must be received by the department no later than 4:30 p.m. on July 1 or the closest business day of each year.~~

~~*b.*~~ *a.* Applications for all-terrain vehicle fund moneys must be received by the department no later than 4:30 p.m. on April 1 or October 1 or the closest business day of each year.

~~*c.*~~ *b.* Applications received after the dates given in 28.4(2)*"a"* ~~and *"b"* above~~ will be returned to the submitting sponsor and shall not be considered for cost-share moneys during the current review and selection process, unless the application deadline has been extended by the director.

571—28.5(~~321G~~ 321I) Review and selection committees.

28.5(1) ~~The committee responsible for reviewing, ranking and selecting projects to receive funding from the local cost-share portion of snowmobile registration revenues shall be comprised of two representatives appointed by the president of the Iowa State Snowmobile Association and three department representatives appointed by the director.~~ The committee responsible for reviewing, ranking

and selecting projects to receive funding from the local cost-share portion of the all-terrain vehicle registration ~~revenues~~ revenue shall be comprised of two representatives appointed by the president of the Iowa Off-Highway Vehicle Association and three department representatives appointed by the director.

28.5(2) The review and selection ~~committees~~ committee shall meet at the department central office in Des Moines within 30 days following the application deadline for ~~each~~ the program. Applications eligible for funding will be reviewed and ranked by the committee. The committee's recommendations will be submitted to the director for approval.

571—28.6(~~321G~~ 321I) Director's review of approved projects. The director shall review, amend, reject or approve committee selections and may reject any application recommended by the committee for funding. Appeals of the director's decision may be made to the commission. A project is considered approved and the grant period shall begin and end as specified in the grant approval letter from the program administrator. Applicants shall be notified of their grant status in writing within 30 days after the review and selection committee meeting.

571—28.7(~~321G~~ 321I) Project selection criteria. In reviewing, ranking and recommending projects to receive available funding, the following criteria shall be used:

~~**28.7(1)** *Snowmobile program.*~~

~~*a.* Projects with long-distance trails, connector trails or trails linking several existing trails.~~

~~*b.* Projects proposing maintenance and management of existing trails.~~

~~*c.* Projects located near a major population center or in a high-demand area.~~

~~*d.* Projects having documented local support.~~

~~*e.* Projects located in areas having sustained and adequate snow cover each year.~~

~~**28.7(2)** *All-terrain vehicle program.*~~

~~*a.*~~ 1. Projects proposing maintenance and management of existing approved all-terrain vehicle trails and use areas.

~~*b.*~~ 2. Development within existing approved all-terrain vehicle trails or use areas.

~~*c.*~~ 3. Projects having documented local support and involvement.

~~*d.*~~ 4. Acquisition and development projects located in areas of high demand that have preference given to projects with the most long-term, stable management plan and that have the least adverse environmental and social impacts.

571—28.8(~~321G~~ 321I) Eligibility of projects. Items listed in this chapter or approved by the director which can reasonably be utilized in the construction or maintenance of riding areas or trails for ~~snowmobile or~~ ATV riding shall be eligible for funding.

571—28.9(~~321G~~ 321I) Use of funded items. Manufactured products or machinery purchased by sponsors with state assistance under ~~these programs~~ this program shall be used only for the purpose of establishing or maintaining riding areas, trails, or facilities and as emergency rescue equipment where applicable.

571—28.10(~~321G~~ 321I) Disposal of equipment, facilities or property.

28.10(1) Without prior written approval of the department, sponsors shall not dispose of any manufactured products, machinery, facilities or property if the department paid all or a portion of the actual cost. Sponsors shall, in the case of equipment or facilities, reimburse the department a percentage of the disposal price received, that percentage being the percent of the original purchase price paid by the ~~snowmobile or~~ all-terrain vehicle fund.

28.10(2) Real property and equipment shall be disposed of as stipulated in the grant agreement under which they were acquired. Reimbursements from the sale of real property and equipment shall be credited to the ~~appropriate snowmobile or~~ all-terrain vehicle registration account ~~from which the funding originated~~.

571—28.11(~~321G~~ 321I) Record keeping. Sponsors receiving funds under ~~these programs~~ this program shall keep adequate records relating to the administration of the grant, particularly relating to all incurred costs. These records shall be available for audit by appropriate personnel of the department, the state auditor's office, and the ~~Iowa State Snowmobile Association or~~ Iowa Off-Highway Vehicle Association ~~as appropriate~~.

571—28.12(~~321G~~ 321I) Sponsors bonded. Prior to receiving prepayment from ~~these~~ this grant ~~programs~~ program, all nonpublic sponsors must produce proof that their chairperson and treasurer are covered under a fidelity bond, personal or surety, to the sponsor in a sum of no less than the total prepayment amount for each office.

571—28.13(~~321G~~ 321I) Items eligible for funding specific to the all-terrain vehicle program.

28.13(1) Land acquisition. Purchasing of easements or fee title land acquisition as approved by the review and selection committee and director. Title to property acquired using the local cost-share portion of registration revenues shall be in the name of the sponsor, unless otherwise approved by the commission. The grant may be for prepayment or reimbursement of land acquisition expenses including appraisals, surveys and abstracts in addition to the property cost. The grant may pay the sale price or appraised value, whichever is less. Appraisals are required and must be approved by the department. Payments may be made directly to the landowner by the department. The grant agreement may contain provisions in addition to those contained in this chapter for disposal of property if it ceases to be managed and used for the purpose for which it was acquired. Land acquisitions (or leases) using ATV registration revenues shall utilize the following specific criteria:

a. ATV parks shall be limited to previously disturbed areas. High-quality natural areas and historical and cultural areas shall be avoided. If a proposed ATV park contains fragments of any of the aforementioned areas, they shall be managed and protected as off-limit sites.

b. In making the determination of whether high-quality natural areas and historical or cultural areas exist, an expert in the said field shall complete a thorough assessment utilizing all available resources including local expertise.

c. Prior to ATV land acquisition, a public informational meeting shall be held to address the proposed ATV park. The meeting shall be posted in accordance with Iowa Code section 362.3 and meeting minutes shall be made available to the commission.

d. Neighboring property owners shall be notified of the proposed ATV park. Public comment received by the department or local political subdivision will be evaluated and presented to the commission.

e. A local project sponsor shall be willing and able to maintain the ATV park and shall implement and abide by an approved operational plan.

f. A local sponsoring political subdivision shall support the park and may provide local input.

g. The topography and associated soil erosion potentials shall be cost-effectively manageable as determined by the ATV review and selection committee.

h. The commission shall make the final determination whether to acquire a tract of land as an ATV park.

28.13(2) Development and maintenance of existing publicly owned property that has been recognized and designated as an ATV area by a local political subdivision or the commission.

28.13(3) Hourly wages may be reimbursed as approved by the director. Approved labor expenses may include equipment maintenance or repair and trail maintenance activities. Labor costs shall be documented on logs provided by the department and shall be accompanied by proof that the cost was paid by the sponsor. If labor and repair are contracted, reimbursement shall be at the amount specified in the contract approved by the director. The sponsor shall obtain any federal, state or local permits required for the project.

28.13(4) Actual material cost of trail maintenance tools, gravel, fence openings, gates, bridges, culverts, and fencing supplies. Diesel fuel, propane, gasoline, oil, parts replacement and repair bills for equipment used for land or property management.

28.13(5) Purchase of approved equipment to be used for maintenance of riding areas or trails. Cost of leasing equipment used to maintain or manage ATV riding areas or trails.

28.13(6) Program and facility liability insurance. Insurance shall be in place for project sponsors receiving grant funds. If insurance is purchased by the sponsor, proof of liability insurance shall be provided to the department. The state may purchase a statewide insurance policy covering all project sponsors receiving funds from the ATV grant program, in which case a copy of the policy shall be made available to covered sponsors upon request. This insurance coverage may include liability insurance for the landowner(s) or other insurable interests. ATV registration funds shall not be used to purchase insurance for special events. The total payment from the all-terrain vehicle fund shall be 100 percent of the approved actual cost. All insurance paid under this subrule must be furnished by companies licensed to do business in Iowa.

28.13(7) Cost of educational, enforcement or medical services for ATV areas funded through the ATV program.

28.13(8) Trail signs. Signs shall be provided to the sponsor by the department. Only those signs approved by the department for use on funded areas or trails shall be used by the sponsor. Signs appropriate to the ATV program shall be ordered on forms provided by the department. The sign order deadline shall be the same as the application date specified in subrule 28.4(2).

28.13(9) Developmental expenditures. Access roads, parking lots, picnicking, camping and playground facilities; sanitary, shelter, concession and control facilities; and utilities.

28.13(10) Pursuant to an agreement between the department and the Iowa Off-Highway Vehicle Association, miscellaneous personal expenses and salary for an association representative may be reimbursed at a rate approved by the director. Expenses and salary expenses shall be documented on logs provided by the department and submitted at the end of the term specified in the agreement.

28.13(11) Direct payment to vendors. The department may establish operational procedures to facilitate direct payment to vendors for:

a. Major expenditures or specialty items including land acquisitions, development expenses, program liability insurance fees and trail signs.

b. Unexpected repairs including materials or other expenses costing more than $250 that may be necessary to operate and maintain the ATV use area or trail in a safe manner.

~~**571—28.14(321G) Items eligible for funding specific to the snowmobile program.**~~

~~**28.14(1)** Grooming equipment.~~

~~*a.* The project sponsor shall have a minimum of 100 miles of groomed snowmobile trail before the department awards funding for a groomer purchase or lease.~~

~~*b.* The state may acquire committee-approved groomers and drags through the use of the standard state purchasing procedure. If the purchase and lease of groomers and drags are approved by the grant review and selection committee and the department, sponsors may acquire or lease snow grooming equipment with snowmobile program funds.~~

~~*c.* After approval by the department and upon trade-in to the department of a used groomer by a sponsor for replacement purposes, the trade-in value shall be applied to the new groomer purchase. The sponsor is responsible for obtaining liability insurance, licensing the machine as needed and providing personnel for daily operation and maintenance.~~

~~*d.* Upon sale or trade-in of a used groomer with no replacement, the snowmobile fund shall refund to the sponsor the percentage of the trade-in value which matches the percent originally invested in the groomer. Groomers shall not be traded between sponsors without written prior approval from the department.~~

~~**28.14(2)** Groomer maintenance, repair and operation wages may be reimbursed at a rate approved by the review and selection committee and the department. If repair work is done by professional shops, payment shall be in the amount billed for the repair. Costs for towing disabled grooming equipment shall be reimbursed as billed by the company doing the work.~~

~~**28.14(3)** Trail signs. Signs shall be provided to the sponsor by the department. Only those signs approved by the department for use on funded areas or trails shall be used by the sponsor. Signs~~

~~appropriate to the snowmobile program shall be ordered on forms provided by the department. The sign order deadline shall be the same as the application date specified in subrule 28.4(2).~~

~~**28.14(4)** Actual material cost of gates, fence openings, bridges, culverts and permanent bridges. Permanent bridges are eligible only if placed on public land or on private property under a lease or easement for ten or more years.~~

~~**28.14(5)** Program and facility liability insurance shall be in place for project sponsors receiving grant funds. If insurance is purchased by the sponsor, proof of liability insurance shall be provided to the department. The state may purchase a statewide insurance policy covering all project sponsors receiving funds from the snowmobile grant program in which case a copy of the policy shall be made available to covered sponsors upon request. This insurance coverage may include liability insurance for the landowner(s) or other insurable interests. Snowmobile registration funds shall not be used to purchase insurance for special events. The total payment from the snowmobile fund shall be 100 percent of the approved actual cost. All insurance paid under this subrule must be furnished by companies licensed to do business in Iowa.~~

~~**28.14(6)** Direct payment to vendors. The department may establish operational procedures to facilitate direct payment to vendors for:~~

~~*a.* Major expenditures or specialty items including but not limited to land acquisitions, development expenses, program liability insurance fees and trail signs.~~

~~*b.* Unexpected repairs including materials or other expenses costing more than $500 that may be necessary to operate the snowmobile trails in a safe manner.~~

~~**28.14(7)** Pursuant to an agreement between the department and the snowmobile association, miscellaneous personal expenses for association officers when incurred in conjunction with program activities may be reimbursed.~~

~~**571—28.15**~~ **571—28.14(~~321G~~ 321I) Competitive bids.** Any equipment or development expense costing more than $500 and funded by grant funds must be purchased through a competitive bid or quotation process. Documentation of such process must be submitted before funds are released by the state. Items purchased by any other means are not reimbursable by the state.

~~**571—28.16**~~ **571—28.15(~~321G~~ 321I) Prepayment for certain anticipated costs.** Only those expenditures contained in signed agreements may be prepaid. Program or facility liability insurance may be prepaid up to 100 percent. Approved facility and development costs and operations and maintenance costs may be prepaid up to 90 percent.

~~**571—28.17**~~ **571—28.16(~~321G~~ 321I) Expense documentation, balance payment or reimbursement.**

~~**28.17(1)**~~ **28.16(1)** Documentation of expenditures eligible for prepayment or reimbursement shall be submitted on forms provided by the department and shall be accompanied by applicable receipts showing evidence that the expense is chargeable to the program. The sponsoring organization shall sign a certification stating that all expenses for which reimbursement is requested are related to the program and have been paid by the sponsor prior to requesting reimbursement. If necessary, the department may request copies of canceled checks to verify expenditures.

~~**28.17(2)**~~ **28.16(2)** The sponsor is responsible for maintaining auditable records of all expenditures of funds received whether by prepayment or on a reimbursement basis. This documentation shall include daily logs of ~~groomer or other~~ maintenance equipment, operation and repair. Work done under contract to the sponsor requires a copy of the contract and copies of canceled checks showing payment.

~~**28.17(3)** Documentation of expenditures under the snowmobile portion of the revenue-sharing program must be received by the department prior to May 1 of each year.~~

~~**28.17(4)**~~ **28.16(3)** Documentation of expenditures under the all-terrain vehicle ~~portion of the~~ revenue cost-sharing program must be received within 60 days of the project end date as specified in the grant approval letter unless the project sponsor has requested an extension and the extension has been approved in writing by the department. Failure by the sponsor to complete projects in a timely manner may be cause for termination of the agreement and cancellation of the grant.

~~**28.17(5)**~~ **28.16(4)** Approved expenditures by the sponsor in excess of the prepayment amount received, up to the maximum approved amount, will be reimbursed by the department if appropriately documented. In instances where the sponsor has expended less than the amount prepaid, the sponsor shall reimburse the balance to the department to be credited back to the annual local share or the appropriate fund.

~~**571—28.18**~~ **571—28.17(~~321G~~ 321I) Use of funds.** If a grantee desires to use the approved funds for a purpose not within the approved project scope as stated in the grant approval letter, the grantee shall request an amendment to the project. If the department approves a project amendment, the department shall notify the project sponsor in writing. Whenever any real or personal property acquired, developed or maintained with ~~snowmobile and~~ ATV registration funds passes from the control of the grantee or is used for purposes other than the approved project purpose, such an act will be considered an unlawful use of the funds. Whenever the director determines that a grantee is in violation of this rule, that grantee shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the department.

These rules are intended to implement Iowa Code ~~section 321G.7~~ sections 321I.2 and 321I.8.

ITEM 2. Adopt the following **new** Division I implementation sentence after rule 571—47.9(321G):

The rules in this division are intended to implement Iowa Code section 321G.2.

ITEM 3. Adopt the following **new** Division II implementation sentence after rule 571—47.29(321G):

The rules in this division are intended to implement Iowa Code section 321G.7.

ITEM 4. Adopt the following **new** Division III in 571—Chapter 47:

DIVISION III
SNOWMOBILE REGISTRATION REVENUE COST-SHARE PROGRAM

571—47.30(321G) Definitions.

"Commission" means the natural resource commission.

"Director" means the director of the department of natural resources.

"Local cost-share portion" means those funds available for use by incorporated organizations or other public agencies through cost sharing, grants, subgrants or contracts.

"Primary trail" means the trail a sponsor signs every year and grooms on a regular rotation.

"Secondary trails" means the trails a sponsor signs every year but does not groom consistently. Secondary trails include trails that are signed and maintained by mowing.

"Sponsor" means the incorporated organization or public agency receiving funding through the snowmobile cost-share program to acquire, develop, maintain, or otherwise improve snowmobile areas and trails.

"State share" means those funds that may be used by the state for administration or for other miscellaneous expenses related to the respective program such as law enforcement.

571—47.31(321G) Purpose and intent. This program provides funds from snowmobile registrations to political subdivisions and incorporated private organizations for the acquisition of land and for the development and maintenance of snowmobile trails and facilities. This chapter is intended to clarify procedures used in implementing agreements under Iowa Code section 321G.7 between the department and sponsors and the authority of the director of the department. All areas, trails, and facilities established or maintained using revenues under this program shall be open to use by the general public.

571—47.32(321G) Distribution of funds. The local cost-share portion of the state snowmobile fund established in Iowa Code section 321G.7 and this rule shall be distributed in accordance with this chapter and upon execution of agreements under Iowa Code section 321G.7. The local cost-share portion of the registration fund shall be at least 50 percent of registration revenue. The remaining revenues shall be

known as the state share. State share funds shall not exceed 50 percent of the total revenue generated for the program per fiscal year.

571—47.33(321G) Application procedures.

47.33(1) *Forms.* Applications for cost-share moneys shall be made on forms available from the department. The application must be completed and signed by the elected officer of the applying sponsor.

47.33(2) *Deadlines for application submission.*

a. Applications for snowmobile fund moneys must be received by the department no later than 4:30 p.m. on May 1 or the following business day if May 1 occurs on a Saturday or Sunday.

b. Applications received after the dates given in 47.33(2)*"a"* will be returned to the submitting sponsor and shall not be considered for cost-share moneys during the current review and selection process, unless the application deadline is waived or extended by the director.

571—47.34(321G) Review and selection committees.

47.34(1) The committee responsible for reviewing and selecting projects to receive funding from the local cost-share portion of snowmobile registration revenues shall be comprised of two representatives appointed by the president of the Iowa State Snowmobile Association and three department representatives appointed by the director.

47.34(2) The review and selection committee shall meet at the department central office in Des Moines. Applications eligible for funding will be reviewed and funding recommendations will be submitted to the director for approval.

571—47.35(321G) Director's review of approved projects. The director shall review, amend, reject or approve committee selections and may reject any application recommended by the committee for funding. Appeals of the director's decision may be made to the commission. A project is considered approved and the grant period shall begin and end as specified in the cooperative agreement from the program administrator. Applicants shall be notified of their grant status within 30 days after the review and selection committee meeting.

571—47.36(321G) Selection criteria. For application reviews and for the groomer review and selection process, the following evaluation criteria shall be considered:

1. Primary and secondary trail miles and connectivity to other trail systems.
2. Maintenance and management of existing trails.
3. Projects located in high trail demand areas.
4. Projects located in areas having sustained and adequate snow cover each year.
5. The applicant's historical record on grant expenditures, grooming records, trail marking, and compliance with cooperative agreements.
6. Sponsor level of in-kind contributions and program volunteer efforts.
7. Trail development plan.
8. Level of available program funds.

571—47.37(321G) Eligibility of projects. Items listed in this chapter or approved by the director that can reasonably be utilized in the construction or maintenance of snowmobile riding areas or trails shall be eligible for funding.

571—47.38(321G) Use of funded items. Manufactured products or machinery purchased by sponsors with state assistance under this program shall be used only for the purpose of establishing or maintaining riding areas, trails, or facilities, and as emergency rescue equipment where applicable.

571—47.39(321G) Disposal of equipment, facilities or property.

47.39(1) Without prior written approval of the department, sponsors shall not dispose of any manufactured products, machinery, facilities, or property if the department paid all or a portion of the actual cost. Sponsors shall, in the case of equipment or facilities, reimburse the department a percentage

of the disposal price received, that percentage being the percent of the original purchase price paid by the snowmobile fund.

47.39(2) Real property and equipment shall be disposed of as stipulated in the cooperative agreement under which they were acquired. Reimbursements from the sale of real property and equipment shall be credited to the snowmobile registration account.

571—47.40(321G) Record keeping. Sponsors receiving funds under this program shall keep adequate records relating to the administration of the grant, particularly relating to all incurred costs. These records shall be available for audit by appropriate personnel of the department and the state auditor's office.

571—47.41(321G) Sponsors bonded. Prior to receiving prepayment from this grant program, all nonpublic sponsors must produce proof that their elected officers are covered under a fidelity bond, personal or surety, to the sponsor in a sum of no less than the total prepayment amount for each office.

571—47.42(321G) Items eligible for funding.

47.42(1) Grooming equipment.

a. The project sponsor shall have a minimum of 100 miles of groomed snowmobile trail before the department awards funding for a groomer purchase or lease.

b. If the purchase and lease of groomers and drags are approved by the grant review and selection committee and the department, the department or sponsors may acquire or lease snow grooming equipment with snowmobile program funds.

c. After written approval by the department and upon trade-in to the department of a used groomer by a sponsor for replacement purposes, the trade-in value may be applied to the new groomer purchase.

d. The sponsor is responsible for groomer and drag operation and maintenance as required in the equipment agreement.

e. Upon sale or trade-in of a used groomer with no replacement, the snowmobile fund shall refund to the sponsor the percentage of the trade-in value that matches the percent originally invested in the groomer.

f. Groomers shall not be moved between sponsors without prior written approval from the department.

47.42(2) Groomer maintenance, repair, and operation.

47.42(3) Trail signs. Only those signs approved by the department for use on funded areas or trails shall be used by the sponsor.

47.42(4) Gates, fence openings, bridges, culverts, and permanent bridges. Permanent bridges are eligible only if placed on public land or on private property under a lease or easement for ten or more years.

47.42(5) Program and facility liability insurance shall be in place for project sponsors receiving grant funds. If insurance is purchased by the sponsor, proof of liability insurance shall be provided to the department.

a. The state may purchase a statewide insurance policy covering all project sponsors receiving funds from the snowmobile grant program, in which case a copy of the policy shall be made available to covered sponsors upon request. This insurance coverage may include liability insurance for the landowner(s) or other insurable interests.

b. Snowmobile registration funds shall not be used to purchase insurance for special events.

c. All insurance paid under this subrule must be furnished by companies licensed to do business in Iowa.

47.42(6) Direct payment to vendors. The department may establish operational procedures to facilitate direct payment to vendors for:

a. Major expenditures or specialty items including but not limited to land acquisitions, groomer purchases, development expenses, program liability insurance fees, and trail signs.

b. Unexpected repairs including materials or other expenses that may be necessary to operate the snowmobile trails in a safe manner.

47.42(7) Pursuant to an agreement between the department and the Iowa State Snowmobile Association, association program expenses and personal expenses for association officers may be reimbursed. Proposed agreements shall be subject to the review and selection requirements of this chapter and must be approved by the director. Items eligible for funding are:

a. In-state travel expenses related to the acquisition, development, and signing of snowmobile trails, grant review meetings, groomer selection, education classes, and attending department meetings or sponsored events. Expenses may include mileage, meeting rooms, and lodging at the approved state rate.

b. Transportation expenses related to moving groomers, drags, or educational equipment.

c. Promotional and educational expenses directly related to the snowmobile program.

47.42(8) Land acquisition in compliance with rule 571—47.43(321G).

571—47.43(321G) Land acquisition projects eligible for funding.

47.43(1) *Project narrative.* Any application that includes a proposal to acquire real property must include a narrative that demonstrates a demand for the proposed area in relation to population, other riding areas, potential expansion, partnership possibilities and local support.

47.43(2) *Site visit.* The department shall complete a preliminary site visit of any proposal for which the applicant proposes to acquire real property.

47.43(3) *Evaluation.* In evaluating the proposed real property acquisition, lease or development, the department shall consider the following based on its site visit, the project narrative and any other information submitted.

a. Park or trail capacity. The proposed acquisition, lease or development shall provide adequate user capacity for snowmobile recreation. Consideration shall be given to local populations and distance or adjacency to other snowmobile trails, trail systems or parks.

b. Appraisal and sale. When the applicant proposes to acquire real property, the applicant must:

(1) Provide an appraisal of the property to the department for its review and approval. The appraisal must be certified by an appraiser, licensed in the state of Iowa, and conform to the Uniform Appraisal Standards for Federal Land Acquisitions, Fifth Edition, which is also referred to as the Yellow Book.

(2) Pay not more than the appraised value, as determined in subparagraph 47.43(3)*"b"*(1), for the real property.

(3) Include a requirement in any proposal or option to buy the real property that such purchase agreement shall be valid for at least one year from the award of the grant.

c. Operations. The project shall be maintained by a political subdivision in the state, capable of maintaining the area on a voluntary basis. The political subdivision shall be responsible to oversee the park operations, trail and trail system, either through its own employees or through agreements with volunteers or contractors. The successful applicants shall abide by the operational plan set forth as part of the grant agreement by the department, updated annually by the parties, and subject to input from other interested parties.

d. Adjoining properties and the public. The successful applicant shall be responsible for ensuring that all adjoining property owners of the proposed land acquisition are notified of the proposed snowmobile riding area or trail system and must accept and consider comments from such property owners. The successful applicant shall also be required to hold a public meeting to notify the public about the proposed snowmobile riding area, trail system or trail. Such meeting shall conform to the requirements of Iowa Code section 362.3. The issues raised in any written or oral comments received shall be addressed by the successful applicant. The successful applicant shall submit a recitation of the comments as well as its response to them to the department for its review and approval prior to any real property acquisition for a snowmobile riding area, trail system or trail.

e. Cultural, historical and natural resources. The successful applicant shall be responsible to determine if cultural or historical resources, high-quality natural areas, species of special concern, or any state or federally listed threatened and endangered species are present or likely to be present in the real property proposed to be acquired. In the event the successful applicant determines the presence of the aforementioned resources, the successful applicant must develop a mitigation plan, endorsed by

an expert in the relative field(s), to mitigate or avoid negative impact to such resources, which shall be subject to review and approval of the department. Any final mitigation plan required by this rule and approved by the department shall be adopted as part of the operational plan set forth as part of the grant agreement.

f. Soil resources. The successful applicant shall consider the grade of all snowmobile riding areas within the snowmobile area, trail system or trails proposed as part of the real property acquisition. The successful applicant shall acquire soil survey reports for such snowmobile riding area that indicate the general soil classification of that area. The report shall be submitted to the department for its review and approval. The department shall only approve snowmobile riding areas with a moderate risk or less for soil erosion due to path or trail development. Successful applicants are encouraged to consult the Natural Resources Conservation Service of the United States Department of Agriculture regarding trail or park development.

47.43(4) *Determination.* The director shall make the final determination as to whether the proposed land acquisition is eligible for funding. If any of the requirements of this rule cannot be met, the department will reject all or a portion of the grant application. Title to property acquired under this program shall be in the name of the sponsor, unless otherwise approved by the director, and may contain a reversion clause that requires the property to become property under the jurisdiction of the commission in the event the property is not used as agreed upon in the grant agreement for a period of at least 20 years from the expiration of the grant.

571—47.44(321G) Competitive bids. Any equipment or development expense costing more than $500 and funded by grant funds must be purchased through a competitive bid or quotation process. Documentation of such process must be submitted before funds are released by the state. Items purchased by any other means are not reimbursable by the state.

571—47.45(321G) Prepayment for certain anticipated costs. Only those expenditures contained in signed agreements may be prepaid. Program or facility liability insurance may be prepaid up to 100 percent. Approved facility and development costs and operations and maintenance costs may be prepaid up to 90 percent.

571—47.46(321G) Expense documentation, balance payment, or reimbursement.

47.46(1) Documentation of expenditures eligible for prepayment or reimbursement shall be submitted on forms provided by the department and shall be accompanied by applicable receipts showing evidence that the expense is chargeable to the program. The sponsoring organization shall sign a certification stating that all expenses for which reimbursement is requested are related to the program and have been paid by the sponsor prior to the request for reimbursement. If necessary, the department may request copies of canceled checks to verify expenditures.

47.46(2) The sponsor is responsible for maintaining auditable records of all expenditures of funds received whether by prepayment or on a reimbursement basis. This documentation shall include daily logs of groomer or other maintenance equipment, operation and repair. Work done under contract to the sponsor requires a copy of the contract and copies of canceled checks showing payment.

47.46(3) Documentation of expenditures under the snowmobile revenue cost-sharing program must be received by the department on or before May 1 of each year.

47.46(4) Approved expenditures by the sponsor in excess of the prepayment amount received, up to the maximum approved amount, will be reimbursed by the department if appropriately documented. In instances where the sponsor has expended less than the amount prepaid, the sponsor shall reimburse the balance to the department to be credited back to the snowmobile fund.

571—47.47(321G) Use of funds. If a grantee desires to use the approved funds for a purpose not within the approved project scope as stated in the cooperative agreement, the grantee shall request an amendment to the agreement. If the department approves a project amendment, the department shall notify the project sponsor in writing or by electronic means. Whenever any real or personal property

acquired, developed or maintained with snowmobile registration funds passes from the control of the grantee or is used for purposes other than the approved project purpose, such an act will be considered an unlawful use of the funds, subject to repayment and other penalties as provided by law. Whenever the director determines that a grantee is in violation of this rule, that grantee shall be ineligible for further assistance until the matter has been resolved to the satisfaction of the department.

The rules in this division are intended to implement Iowa Code sections 321G.2 and 321G.7.

ARC 1012C

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic hereby gives Notice of Intended Action to amend Chapter 44, "Continuing Education for Chiropractic Physicians," Iowa Administrative Code.

The proposed amendment clarifies the number of continuing education hours a licensee must obtain by type of presentation.

Any interested person may make written comments on the proposed amendment no later than October 8, 2013, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; e-mail pwilson@idph.state.ia.us.

A public hearing will be held on October 8, 2013, from 8:30 to 9 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

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

This amendment is intended to implement Iowa Code sections 151.11 and 272C.2.

The following amendment is proposed.

Amend subparagraph **44.3(2)"a"(1)** as follows:

(1) At least 36 hours of continuing education credit obtained from a program that directly relates to clinical case management of chiropractic patients. ~~Beginning with the July 1, 2008, to June 30, 2010, renewal cycle, at least 24 of these hours shall be earned by completing a program in which an instructor conducts the class employing either a traditional in-person classroom-type presentation or live interactive Web conferencing.~~ Beginning with the July 1, 2012, to June 30, 2014, renewal cycle, on-line instruction may qualify for "live" continuing education credit if provided by a Council on Chiropractic Education (CCE)-accredited chiropractic college in the United States, the Iowa Chiropractic Society, the American Chiropractic Association, or the International Chiropractors Association or if certified by the Providers of Approved Continuing Education (PACE) through the Federation of Chiropractic Licensing Boards (FCLB). The remaining 12 hours may be obtained by independent study, including any on-line instruction. Beginning with the July 1, 2014, to June 30, 2016, renewal cycle, at least 20 of these hours shall be earned by completing a program in which an instructor conducts the class employing a traditional in-person, classroom-type presentation and the licensee is in attendance in the same room as that instructor. The remaining 16 hours of continuing education credit relating to clinical case management of chiropractic patients may be obtained by independent study, including any on-line instruction, that complies with conditions specified in rule 645—44.1(151).

ARC 1028C

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68 and 2013 Iowa Acts, Senate File 295, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 80, "Property Tax Credits and Exemptions," Iowa Administrative Code.

The subject matter of proposed new rule 701—80.49(441) is commercial and industrial property tax replacement. This rule implements 2013 Iowa Acts, Senate File 295, section 20, (new Iowa Code section 441.21A) which requires the Department of Revenue to administer counties' commercial and industrial property tax replacement claims.

The new rule will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions. However, for a fiscal year beginning on or after July 1, 2017, if an amount appropriated for a fiscal year is insufficient to pay all replacement claims, counties will receive a pro rata percentage of the replacement claims.

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

The Department has determined that this proposed rule may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than October 21, 2013, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed rule on or before October 8, 2013. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by October 8, 2013.

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

This rule is intended to implement 2013 Iowa Acts, Senate File 295, section 20.

The following amendment is proposed.

Adopt the following **new** rule 701—80.49(441):

701—80.49(441) Commercial and industrial property tax replacement—county replacement claims. For each fiscal year beginning on or after July 1, 2014, the department of revenue shall pay to the county treasurer an amount equal to the amount of the commercial and industrial property tax replacement claims in the county. For fiscal years beginning on or after July 1, 2017, if an amount appropriated for a fiscal year is insufficient to pay all replacement claims, the director of revenue shall prorate the payment of replacement claims to the county treasurers and shall notify the county auditors of the pro rata percentage on or before September 30.

REVENUE DEPARTMENT[701](cont'd)

80.49(1) For each taxing district, the commercial and industrial property tax replacement claim amount is determined by multiplying the amounts calculated in 80.49(1)*"a"* and *"b"* and dividing the resultant amount by $1,000.

a. The difference between the assessed valuation of all commercial property and industrial property for the assessment year used to calculate taxes which are due and payable in the applicable fiscal year and the actual value of all commercial property and industrial property that is subject to assessment and taxation for the same assessment year; and

b. The tax levy rate per $1,000 of assessed value of each taxing district for that fiscal year.

80.49(2) Reporting requirements.

a. On or before July 1 of each fiscal year beginning on or after July 1, 2014, the assessor shall report to the county auditor the total actual value of all commercial and industrial property in the county that is subject to assessment and taxation for the assessment year used to calculate the taxes due and payable in that fiscal year.

b. On or before September 1 of each fiscal year beginning on or after July 1, 2014, the county auditor shall, based upon the information in the report required to be provided in paragraph *"a"* of this subrule, prepare and submit a statement to the department of revenue which lists, for each taxing district in the county, the information required in 80.49(1).

c. The department shall pay the replacement amount to the county treasurer in two installments in September and March of each year.

d. The county treasurer shall apportion the replacement claim payments among the eligible taxing districts in the county.

ARC 1018C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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 307.10, 307.12 and 321.252, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 119, "Tourist-Oriented Directional Signing," Iowa Administrative Code.

The proposed changes will ease restrictions on small businesses interested in qualifying for the Tourist-Oriented Directional Signing program. The changes:

• Relax restrictions so that businesses within towns with a population between 2500 and 5000 can qualify for the program. Currently, the program is offered to rural areas and towns with a population of 2500 or less.

• Relax restrictions so that businesses within ten miles of the intersection on the primary highway where the signs are to be placed can qualify in all subcategories. Currently, the limit is set at five miles for two of the four subcategories.

• Relax restrictions so that a business can have both a tourist-oriented directional sign and a private directional sign within a mile of each other along a primary route. This is currently prohibited.

• Relax restrictions so that vehicle service and repair facilities are required to maintain hours of operation of at least eight hours per day and five days per week in order to qualify for the program. Current hours are set at eight hours per day and six days per week.

Other changes were made to eliminate redundancies, improve consistency in word usage, and correct nondiscrimination language and an agency name.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to Tracy George, Iowa Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; e-mail tracy.george@dot.iowa.gov.

5. Be received by the Office of Policy and Legislative Services no later than October 8, 2013.

A meeting to hear requested oral presentations is scheduled for Thursday, October 10, 2013, at 1 p.m. at the Administration Building, First Floor South Conference Room, Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the Office of Policy and Legislative Services at the address listed in this Notice by October 21, 2013.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

These amendments are intended to implement Iowa Code section 321.252.

The following amendments are proposed.

ITEM 1. Amend subrule 119.2(2) as follows:

119.2(2) *Spacing and location.*

a. No change.

b. Tourist-oriented directional signing shall be installed in advance of the intersection where the motorist leaves the primary highway system to travel to the activity or site. However, tourist-oriented directional signs may be placed ~~within the maximum travel distance~~ on a higher classified highway to direct motorists onto a lower classified highway, or on a greater traveled highway to direct motorists onto a lesser traveled highway.

c. and *d.* No change.

e. Tourist-oriented directional signing shall not be placed within the urban area as established by the U.S. Census Bureau of an incorporated municipality with a population of 5000 or more.

ITEM 2. Amend rule 761—119.3(321) as follows:

761—119.3(321) General eligibility requirements for an activity or site. This rule describes the general requirements which an individual activity or site must meet to qualify for tourist-oriented directional signing.

~~**119.3(1)** *Significant interest to the traveling public.* An activity or site must be of significant interest to the traveling public. This means that a major portion of the activity's or site's products or services is tourist- or motorist-oriented.~~

~~**119.3(2)**~~ **119.3(1)** *Hours.* The activity or site shall be open to the general public during regular and reasonable hours and not by appointment, reservation or membership only.

a. and *b.* No change.

~~**119.3(3)**~~ **119.3(2)** *Building or area.* The activity shall be conducted in an appropriate area or in a building appropriately designed or well-suited for the purpose.

a. and *b.* No change.

~~**119.3(4)**~~ **119.3(3)** *Location of activity or site.* The activity or site shall be located:

a. ~~In an unincorporated area or inside the corporate limits of a city with a population of 2500 or less~~ Within ten miles of the intersection on the primary highway where the tourist-oriented directional sign will be placed.

~~*b.* Outside the corporate limits of a city with a population between 2500 and 5000. However, tourist-oriented directional signing for the activity or site may be located within the corporate limits.~~

~~*c.*~~ *b.* Outside the urban area, as established by the U.S. Census Bureau, of ~~a city~~ an incorporated municipality with a population of 5000 or more. ~~However, tourist-oriented directional signing for the activity or site may be located within the urban area or corporate limits.~~

~~**119.3(5)**~~ **119.3(4)** *Signing restrictions.* An activity or site does not qualify for a tourist-oriented directional sign if:

~~*a.* The activity or site is identified by an off right-of-way directional sign, as authorized in 761—Chapter 120, that is within one mile, is on the same route, and is facing the same direction as the proposed tourist-oriented directional sign.~~

~~*b.*~~ *a.* The activity or site or an on-premises sign advertising the activity or site is readily recognizable from the primary highway far enough ahead of the entrance to allow the motorist time to safely make the turn into the entrance.

~~*c.*~~ *b.* An advertising device which serves the activity or site is erected or maintained in violation of Iowa Code chapter 306B; Iowa Code chapter 306C, division II; or other statutes or administrative rules regulating outdoor advertising.

~~**119.3(6)**~~ **119.3(5)** *Nondiscrimination.* The activity or site shall comply with all applicable laws concerning public accommodations without regard to age, race, ~~religion,~~ creed, color, ~~age,~~ sex, sexual orientation, gender identity, ~~or~~ national origin, religion or disability.

ITEM 3. Amend rule 761—119.4(321) as follows:

761—119.4(321) Specific eligibility requirements for the type of activity or site. This rule describes the types of activities or sites that may qualify for tourist-oriented directional signing. Within each type, this rule also describes the specific requirements that an individual activity or site must meet to qualify for tourist-oriented directional signing. These requirements are in addition to those found in rule 761—119.3(321).

119.4(1) *Motorist service.*

a. No change.

b. An activity or a site providing a motorist service must:

(1) Be open a minimum of eight hours a day, six days a week, except for vehicle services or repair facilities, which shall be open a minimum of eight hours a day, five days a week.

(2) No change.

~~(3) Be located within five miles of the primary highway.~~

119.4(2) *Tourist attraction.*

a. and *b.* No change.

c. A tourist attraction must:

(1) and (2) No change.

~~(3) Be located within five miles of the primary highway or within ten miles if open a minimum of eight hours a day, seven days a week.~~

119.4(3) *Agricultural business activity.*

a. No change.

b. "Significant interest" means the agricultural business activity does one of the following:

(1) No change.

(2) Offers products which are of interest to the ~~general~~ traveling public and can be purchased from the site.

(3) No change.

c. An agricultural business activity must:

(1) and (2) No change.

~~(3) Be located within ten miles of the primary highway.~~

119.4(4) *Other commercial activity.*

a. No change.

b. A nonagricultural commercial activity must:

(1) and (2) No change.

~~(3) Be located within five miles of the primary highway.~~

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 4. Amend subrule 119.5(3) as follows:

119.5(3) The tourist signing committee consists of representatives from the ~~department of economic development~~ economic development authority, the department of transportation, the department of agriculture and land stewardship, the department of natural resources, the department of cultural affairs, the Travel Federation of Iowa, and the Outdoor Advertising Association of Iowa. The committee's responsibility is to approve or deny applications.

ARC 1017C

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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 306C.11, 307.10 and 307.12, the Iowa Department of Transportation hereby gives Notice of Intended Action to amend Chapter 120, "Private Directional Signing," Iowa Administrative Code.

The proposed rule changes:

- Delete a restriction that prohibits a business or tourist attraction from placing a private directional sign within the daylight area of an intersection, exclusive of any public right-of-way.
- Add a restriction on the placement of any private directional sign which obstructs or impairs the vision of the motorist near an intersection or a railroad crossing pursuant to Iowa Code section 657.2.
- Clarify that if a trademark or logo is to be approved for use by the Department, it will serve as the identification of the business or attraction in lieu of a word message identifying the business or attraction.
- Provide exceptions for signs measuring 32 square feet or less in size; the Tourist Signing Committee will not need to review these applications, and there is no application fee.
- Correct nondiscrimination language and the implementation sentence.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Iowa Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; e-mail tracy.george@dot.iowa.gov.
5. Be received by the Office of Policy and Legislative Services no later than October 8, 2013.

A meeting to hear requested oral presentations is scheduled for Thursday, October 10, 2013, at 2 p.m. at the Administration Building, First Floor South Conference Room, Department of Transportation, 800 Lincoln Way, Ames, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be submitted to the Office of Policy and Legislative Services at the address listed in this Notice by October 21, 2013.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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

These amendments are intended to implement Iowa Code sections 306C.11 and 657.2.

The following amendments are proposed.

TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 1. Rescind the definition of "Daylight area" in rule **761—120.1(306C)**.

ITEM 2. Amend rule 761—120.2(306C) as follows:

761—120.2(306C,657) General requirements.

120.2(1) No change.

120.2(2) A private directional sign shall not:

a. to *e.* No change.

f. Obstruct or impair the view of any portion of the public roadway at an intersection or a railroad crossing and cause an unsafe condition as determined by the department.

ITEM 3. Amend subrule 120.5(3) as follows:

120.5(3) The following spacing requirements apply to private directional signs:

a. to *e.* No change.

~~*f.* A private directional sign shall not be located within the daylight area.~~

~~*g.*~~ *f.* Except as otherwise specified, on-premises signs, permitted billboards, and official signs and notices are not taken into consideration when determining compliance with spacing requirements.

ITEM 4. Amend subrule 120.6(4) as follows:

120.6(4) The sign message shall not contain additional words or phrases descriptive of the activity or site, pictorial or photographic representations of the activity or site or its environs, or advertisements of brand-name goods. However, the department may authorize the display of a nationally or regionally recognized trademark or logo in lieu of a word message to identify the activity or site.

ITEM 5. Amend subrule 120.7(3) as follows:

120.7(3) The activity or site must be open to the general public and not by appointment, reservation or membership only and must comply with all applicable laws concerning public accommodations without regard to age, race, ~~religion,~~ creed, color, ~~age,~~ sex, sexual orientation, gender identity, ~~or~~ national origin, religion or disability.

ITEM 6. Amend subrule 120.8(3) as follows:

120.8(3) The tourist signing committee will approve or deny applications, except that signs located along non-interstate routes and not exceeding 32 square feet in size may be approved or denied by the department. The composition of the committee is set out in 761—subrule 119.5(3).

ITEM 7. Amend rule 761—120.9(306C) as follows:

761—120.9(306C) Fees. Fees are applicable to all signs measuring over 32 square feet in size. The initial fee, payable at the time of application, is $100 per permit. The annual renewal fee, payable on or before June 30 of each year, is $15 per permit.

ITEM 8. Amend **761—Chapter 120**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 306C.10 to 306C.19 and 657.2.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions JoAnn Johnson, Superintendent of Banking James M. Schipper, and Auditor of State Mary Mosiman have established today the following rates of interest for public obligations and special assessments. The usury rate for September is 4.50%.

TREASURER OF STATE(cont'd)

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Financial Institutions as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective September 11, 2013, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum .05%
180-364 days	Minimum .05%
One year to 397 days	Minimum .05%
More than 397 days	Minimum .05%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 1030C

PHARMACY BOARD[657]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 147.76 and 2013 Iowa Acts, Senate File 353, the Board of Pharmacy hereby amends Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendment rescinds current rule 657—8.33(147,155A) and adopts new rule 657—8.33(155A). The rule establishes training and continuing education requirements for pharmacists engaged in the administration of vaccines, identifies the vaccines that a qualified pharmacist may administer to patients within specified age categories, and requires compliance with and utilization of the United States Centers for Disease Control and Prevention's (CDC) protocol for the administration of vaccines.

The rule also requires the pharmacist, prior to administering a vaccine on the approved adult vaccination schedule of the CDC Advisory Committee on Immunization Practices, a vaccine recommended by the CDC for international travel, or a vaccine to be administered pursuant to a prescription or medication order for an individual patient, to consult with the statewide immunization registration or health information network. The rule requires the pharmacist to report the administration of a vaccine described in this paragraph to the statewide immunization registry or health information network and to the patient's primary health care provider, if known, within 30 days of the administration.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the July 24, 2013, Iowa Administrative Bulletin as **ARC 0883C**. The Board received numerous written comments regarding the proposed rule. The adopted rule differs from that published under Notice.

Many of the commenters expressed concerns that pharmacists would be required to check the statewide immunization registration prior to administration pursuant to protocol of an influenza vaccine. Others were concerned that pharmacists would be required to report the administration pursuant to protocol of every influenza vaccine to the statewide immunization registry and to the patient's primary health care provider. Neither of these perceived requirements, as they relate to influenza vaccines administered via protocol, is included in the noticed or adopted rule. Subrule 8.33(7) has been amended to clearly state the exemption from these requirements for influenza vaccines and other emergency vaccines administered pursuant to protocol.

Other suggestions included eliminating the duplicative phrases "or immunization" and "and immunization" throughout the rule, authorizing the signing of a protocol between one or more authorized pharmacists and one or more licensed prescribers practicing in Iowa, eliminating the requirement that the prescribers be practicing within the local provider service area, and eliminating paragraph 8.33(5)"c" since the vaccinations identified in the paragraph would be included in paragraph 8.33(5)"a." These suggested changes have been made to the proposed rule by eliminating paragraph 8.33(5)"c" as duplicative and amending paragraph 8.33(3)"a" to require that a protocol be signed by a prescriber practicing in Iowa. Since the definitions of "immunization" and "vaccine" are identical, the duplicative phrases identifying both terms have been amended throughout the rule to address only "vaccine" or "vaccines."

Based on a suggestion from a commenter, the definition of "vaccine" has been amended to read as follows: "*'Vaccine'* means a specially prepared antigen administered to a person for the purpose of providing immunity." In addition, subparagraph 8.33(2)"a"(2), numbered paragraph "8," has been amended to add the identification of contraindications to the vaccine as a subject to be addressed by the education requirements for an authorized pharmacist.

The requirements for a protocol have been amended in subrule 8.33(3) to require that a protocol be unique to a pharmacy and identify the pharmacists authorized to administer vaccines pursuant to the protocol and that serious complications be reported to the prescriber who signed the protocol and to the Vaccine Advisory Event Reporting System (VAERS). Reporting to VAERS has also been added to subrule 8.33(6) for vaccines administered via prescription.

Commenters expressed support for the requirements for pharmacist continuing education relating to the administration of vaccines and generally supported the amendment and the expanded opportunity for pharmacists to contribute to increased immunization rates and patient health and safety in Iowa.

The Board finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the emergency adoption of this rule confers a benefit on the public. Pharmacists are currently in the process of establishing protocols for the administration of the annual influenza vaccines. Delaying the effective date of this rule to a normal effective date under the rule-making process will delay availability of influenza vaccine administration by pharmacists, increasing the risk of infection to patients in Iowa. Pharmacists in Iowa routinely administer the majority of influenza vaccines prior to and during the annual flu season.

The amendment was approved during the August 28, 2013, meeting of the Board of Pharmacy.

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

This amendment is intended to implement Iowa Code sections 155A.3 and 155A.4 and 2013 Iowa Acts, Senate File 353.

This amendment became effective on September 1, 2013.

The following amendment is adopted.

Rescind rule 657—8.33(147,155A) and adopt the following **new** rule in lieu thereof:

657—8.33(155A) Vaccine administration by pharmacists. An authorized pharmacist may administer vaccines pursuant to protocols established by the CDC in compliance with the requirements of this rule.

8.33(1) *Definitions.* For the purposes of this rule, the following definitions shall apply:

"ACIP" means the CDC Advisory Committee on Immunization Practices.

"ACPE" means the Accreditation Council for Pharmacy Education.

"Authorized pharmacist" means an Iowa-licensed pharmacist who has met the requirements identified in subrule 8.33(2).

"CDC" means the United States Centers for Disease Control and Prevention.

"Immunization" shall have the same meaning as, and shall be interchangeable with, the term "vaccine."

"Protocol" means a standing order for a vaccine to be administered by an authorized pharmacist.

"Vaccine" means a specially prepared antigen administered to a person for the purpose of providing immunity.

8.33(2) *Authorized pharmacist training and continuing education.* An authorized pharmacist shall document successful completion of the requirements in paragraph 8.33(2)*"a"* and shall maintain competency by completing and maintaining documentation of the continuing education requirements in paragraph 8.33(2)*"b."*

a. Initial qualification. An authorized pharmacist shall have successfully completed an organized course of study in a college or school of pharmacy or an ACPE-accredited continuing education program on vaccine administration that:

(1) Requires documentation by the pharmacist of current certification in the American Heart Association or the Red Cross Basic Cardiac Life Support Protocol for health care providers.

(2) Is an evidence-based course that includes study material and hands-on training and techniques for administering vaccines, requires testing with a passing score, complies with current CDC guidelines, and provides instruction and experiential training in the following content areas:

1. Standards for immunization practices;
2. Basic immunology and vaccine protection;
3. Vaccine-preventable diseases;
4. Recommended immunization schedules;
5. Vaccine storage and management;
6. Informed consent;
7. Physiology and techniques for vaccine administration;
8. Pre- and post-vaccine assessment, counseling, and identification of contraindications to the vaccine;
9. Immunization record management; and

10. Management of adverse events, including identification, appropriate response, documentation, and reporting.

b. Continuing education. During any pharmacist license renewal period, an authorized pharmacist who engages in the administration of vaccines shall complete and document at least one hour of continuing education related to vaccines.

8.33(3) *Protocol requirements.* A pharmacist may administer vaccines pursuant to CDC protocols. A protocol shall be unique to a pharmacy and shall identify all pharmacists authorized to administer vaccines pursuant to the protocol. Links to CDC protocols shall be provided on the board's Web site at www.iowa.gov/ibpe. A protocol:

a. Shall be signed by a licensed Iowa prescriber practicing in Iowa.

b. Shall expire no later than one year from the effective date of the signed protocol.

c. Shall be effective for patients who wish to receive a vaccine administered by an authorized pharmacist, who meet the CDC recommended criteria, and who have no contraindications as published by the CDC.

d. Shall require the authorized pharmacist to notify the prescriber who signed the protocol within 24 hours of a serious complication and shall submit a Vaccine Advisory Event Reporting System (VAERS) report.

8.33(4) *Influenza and other emergency vaccines.* An authorized pharmacist shall only administer via protocol, to patients six years of age and older, influenza vaccines and other emergency vaccines in response to a public health emergency.

8.33(5) *Other adult vaccines.* An authorized pharmacist shall only administer via protocol, to patients 18 years of age and older, the following vaccines:

a. A vaccine on the ACIP-approved adult vaccination schedule.

b. A vaccine recommended by the CDC for international travel.

8.33(6) *Vaccines administered via prescription.* An authorized pharmacist may administer any vaccine pursuant to a prescription or medication order for an individual patient. In case of serious complications, the authorized pharmacist shall notify the prescriber who authorized the prescription within 24 hours and shall submit a VAERS report.

8.33(7) *Verification and reporting.* The requirements of this subrule do not apply to influenza and other emergency vaccines administered via protocol pursuant to subrule 8.33(4). An authorized pharmacist shall:

a. Prior to administering a vaccine identified in subrule 8.33(5) or subrule 8.33(6), consult the statewide immunization registry or health information network.

b. Within 30 days following administration of a vaccine identified in subrule 8.33(5) or subrule 8.33(6), report the vaccine administration to the statewide immunization registry or health information network and to the patient's primary health care provider, if known.

[Filed Emergency After Notice 8/30/13, effective 9/1/13]
[Published 9/18/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/18/13.

ARC 1024C
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Pursuant to the authority of Iowa Code section 163.1, the Department of Agriculture and Land Stewardship hereby amends Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

These amendments change the term for designated laboratories from "approved" to "official" laboratory. The amendments specify that contact with a contaminated premises causes an animal to become CWD exposed. The amendments remove negative stain electron microscopy and bioassay from the list of official cervid tests for CWD. The amendments update identification requirements. The amendments also clarify that CWD testing must occur and the results be found non-detected prior to the removal of a quarantine. The amendments clarify that the Department will investigate CWD suspect herds. The amendments also clarify that DNR approval is necessary for the disposal of CWD affected or exposed animals. The amendments clarify that the herd plan must contain testing requirements and that movement restrictions cannot be lifted prior to approval of the herd plan. The amendments provide that a complete physical herd inventory will be completed by the Department every three years.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0771C** on May 29, 2013.

Two comments were received from the public. The Farm Deer Council requested more options with identification requirements and for additional personnel to be able to conduct herd inventories. Another comment requested formation of a rule-making stakeholder group and establishment of an indemnification program.

Three changes from the Notice have been made. The ELISA test for CWD, which was recently approved by USDA, was added in rule 21—64.107(163) as an official CWD test. Identification requirements in subrule 64.106(3) were updated by allowing association tags but not referring to them as official cervid identification. Rule 21—64.114(163) was revised to allow state authorized veterinarians to conduct herd inventories.

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

These amendments are intended to implement Iowa Code section 163.1.

These amendments will become effective October 23, 2013.

The following amendments are adopted.

ITEM 1. Amend the following definitions in rule **21—64.104(163)**:

"Accredited veterinarian" means a veterinarian approved by the deputy administrator of veterinary services, Animal and Plant Health Inspection Service (APHIS), United States Department of Agriculture (USDA), and the state veterinarian in accordance with Part 161 of Title 9, Chapter 1, of the Code of Federal Regulations, revised as of ~~July 21, 2006~~ January 9, 2013, to perform functions required by cooperative state/federal animal disease control and eradication programs.

"~~Approved~~ Official laboratory" means ~~an~~ a USDA-approved American Association of Veterinary Laboratory Diagnosticians (AAVLD) accredited laboratory or the National Veterinary Services Laboratory, Ames, Iowa.

"Cervid CWD surveillance identification program" or *"CCWDSI program"* means a CWD surveillance program that requires identification and laboratory diagnosis on all deaths of Cervidae 12 months of age and older including, but not limited to, deaths by slaughter, hunting, illness, and injury. A copy of ~~approved~~ official laboratory reports shall be maintained by the owner for purposes of completion of the annual inventory examination for recertification. Such diagnosis shall include examination of brain and any other tissue as directed by the state veterinarian. If there are deaths for which tissues were not submitted for laboratory diagnosis due to postmortem changes or unavailability, the department shall determine compliance.

"CWD exposed" or *"exposed"* means a designation applied to Cervidae that are either part of an affected herd or for which epidemiological investigation indicates contact with CWD affected animals,

~~or~~ contact with animals from a CWD affected herd or contact with a contaminated premises in the past five years.

"Official cervid identification" means one of the following:

1. A USDA-approved identification ear tag that conforms to the alphanumeric national uniform ear tagging system as defined in 9 CFR Part 71.1, Chapter 1, revised as of ~~July 21, 2006~~ January 9, 2013.
2. A plastic or other material tag that includes the official herd number issued by the USDA, and includes individual animal identification which is no more than five digits and is unique for each animal.
3. A legible tattoo which includes the official herd number issued by the USDA, and includes individual animal identification which is no more than five digits and is unique for each animal.
4. ~~A plastic or other material tag which provides unique animal identification and is issued and approved by the North American Elk Breeders Association.~~
5. ~~A plastic or other material tag which provides unique animal identification and is issued and approved by the North American Deer Farmers Association.~~

ITEM 2. Amend subrules 64.106(1) and 64.106(3) as follows:

64.106(1) *Slaughter establishments.* All slaughtered Cervidae 12 months of age and older must have brain tissue submitted at slaughter and examined for CWD by an ~~approved~~ official laboratory. This brain tissue sample will be obtained by a state or federal meat inspector or accredited veterinarian on the premises at the time of slaughter.

64.106(3) *Identification.* All cervid animals must receive the identification before 12 months of age and be identified with either:

a. ~~two~~ Two forms of official cervid identification~~.~~, or ~~Cervid animals identified with a tattoo must have a second visual form of official identification.~~

b. One form of official cervid identification along with either a state-approved tag or a tag from the North American Elk Breeders Association or North American Deer Farmers Association.

ITEM 3. Amend rule 21—64.107(163) as follows:

21—64.107(163) Official cervid tests. The following are recognized as official cervid tests for CWD:

1. Histopathology.
2. Immunohistochemistry.
3. Western blot.
4. ~~Negative stain electron microscopy~~ Enzyme-linked immunosorbent assay (ELISA).
5. ~~Bioassay.~~
6. 5. Any other tests performed by an official laboratory to confirm a diagnosis of CWD.

ITEM 4. Amend rule 21—64.108(163) as follows:

21—64.108(163) Investigation of CWD affected animals identified through surveillance. Traceback must be performed for all animals diagnosed at an ~~approved~~ official laboratory as affected with CWD. All herds of origin and all adjacent herds having contact with affected animals as determined by the CCWDSI program must be investigated epidemiologically. All herds of origin, adjacent herds, and herds having contact with affected animals or exposed animals must be quarantined. The department will investigate CWD suspect herds.

ITEM 5. Amend rule 21—64.109(163) as follows:

21—64.109(163) Duration of quarantine. Quarantines placed in accordance with these rules must maintain compliance with rules 21—64.104(163) through 21—64.119(163). Quarantines maintaining compliance shall be removed ~~as follows:~~

~~1. For herds of origin, quarantines shall be removed~~ after five years ~~of compliance with rules 21—64.104(163) through 21—64.119(163)~~ from the date of the last CWD detected test or after all animals have died or been depopulated and have been tested without the detection of CWD.

~~2. For herds having contact with affected or exposed animals, quarantines shall be removed after five years of compliance with rules 21—64.104(163) through 21—64.119(163).~~

~~3. For adjacent herds, quarantines shall be removed as directed by the state veterinarian in consultation with the epidemiologist.~~

ITEM 6. Amend rule 21—64.110(163) as follows:

21—64.110(163) Herd plan. The herd owner, the owner's veterinarian, if requested, and the epidemiologist shall develop a plan for eradicating CWD in each affected herd. The plan must be designed to reduce and then eliminate CWD from the herd, to prevent spread of the disease to other herds, and to prevent reintroduction of CWD after the herd becomes a certified CWD cervid herd. Animals that die, are depopulated, or are otherwise killed must be tested for CWD. The herd plan must be developed and signed within 60 days after the determination that the herd is affected. The plan must address herd management and adhere to rules 21—64.104(163) through 21—64.119(163). The plan must be formalized as a memorandum of agreement between the owner and program officials, must be approved by the state veterinarian, and must include plans to obtain certified CWD cervid herd status. No movement restrictions may be removed prior to formalization of the agreement.

ITEM 7. Amend rule 21—64.111(163) as follows:

21—64.111(163) Identification and disposal requirements. Affected and exposed animals must remain on the premises where they are found until they are identified and disposed of in accordance with direction from the state veterinarian. The department and the Iowa department of natural resources shall approve disposal issues of affected and exposed animals including manner and site.

ITEM 8. Amend rule 21—64.113(163), introductory paragraph, as follows:

21—64.113(163) Methods for obtaining certified CWD cervid herd status. Certified CWD cervid herd status must include all Cervidae under common ownership. The animals that are part of a certified herd cannot be commingled with other cervids that are not certified, and a minimum geographic separation of 30 feet between herds of different status must be maintained in accordance with the USDA Uniform Methods and Rules as defined in APHIS Manual 91-45-011, revised as of January 22, 1999. The escape, disappearance or death of any cervid shall be promptly reported along with identification numbers and estimated time of escape, disappearance or death. Tissue samples shall be available. A herd may qualify for status as a certified CWD cervid herd by one of the following means:

ITEM 9. Amend rule 21—64.114(163) as follows:

21—64.114(163) Recertification of CWD cervid herds. A herd is certified for 12 months. Annual inventories conducted by ~~state veterinarians~~ the department, a state-authorized veterinarian, or authorized federal personnel are required every 9 to 15 months from the anniversary date. A complete physical herd inventory will be completed by the department, a state-authorized veterinarian, or authorized federal personnel every three years. For continuous certification, adherence to the provisions in these rules and all other state laws and rules pertaining to raising cervids is required. A herd's certification status is immediately terminated and a herd investigation shall be initiated if CWD affected or exposed animals are determined to originate from that herd.

[Filed 8/28/13, effective 10/23/13]
[Published 9/18/13]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/18/13.

ARC 1023C

AUDITOR OF STATE[81]

Adopted and Filed

Pursuant to the authority of 2012 Iowa Acts, chapter 1107, section 2, the Auditor of State amends Chapter 21, "Filing Fees," Iowa Administrative Code.

Rule 81—21.2(11) establishes a periodic examination fee necessary to perform periodic examinations of cities with a population less than 2,000 which do not have budgeted annual expenditures of more than $1 million for two consecutive years.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 24, 2013, as **ARC 0849C**. A public hearing was held on August 13, 2013, with written comment accepted until August 16, 2013. No one attended the public hearing, and no written comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Auditor of State on August 28, 2013.

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

This amendment is intended to implement 2012 Iowa Acts, chapter 1107, section 2.

This amendment shall become effective October 23, 2013.

The following amendment is adopted.

Adopt the following **new** rule 81—21.2(11):

81—21.2(11) Periodic examination fee. A periodic examination fee, as provided for under 2012 Iowa Acts, chapter 1107, section 2, shall be paid annually by cities that do not otherwise have an audit or fiscal year examination conducted pursuant to Iowa Code section 11.6, subsection 1 or subsection 3, during a fiscal year.

21.2(1) The fee shall be remitted according to a fee schedule using four strata based on the budgeted expenditures of the original certified budget of the governmental subdivision for the fiscal year.

21.2(2) The designated strata and applicable fees are as follows:

Budgeted Expenditures in Thousands of Dollars	Fee Amount
Under 50	$ 100
At least 50 but less than 300	$ 475
At least 300 but less than 600	$ 900
600 or more	$1,200

21.2(3) The fee shall be remitted to the office of auditor of state on or before March 31 each year.

This rule is intended to implement 2012 Iowa Acts, chapter 1107, section 2.

[Filed 8/28/13, effective 10/23/13]
[Published 9/18/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/18/13.

ARC 1013C

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission (Commission) hereby amends Chapter 22, "Controlling Pollution," and Chapter 28, "Ambient Air Quality Standards," Iowa Administrative Code.

The purpose of the amendments is for the Commission and the Department of Natural Resources (Department) to revise the administrative rules as necessary to allow for implementation of new and revised air quality standards, also known as National Ambient Air Quality Standards or NAAQS. In consultation with stakeholders, the Commission and the Department have made changes necessary to maintain air quality and protect the public health, while minimizing the regulatory impact to the extent possible.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 12, 2013, as **ARC 0785C**, and a public hearing was held on July 15, 2013. The Department received no comments at the public hearing. The Department received one written comment prior to the July 15, 2013, deadline for public comments. The Department's Public Participation Responsiveness Summary is available from the Department upon request.

The Commission did not make any changes to the adopted amendments in response to the written comment. However, after the close of the public comment period, the Department received an informal inquiry from a member of the public concerning the intent of the term "constructed" as it relates to the construction permit exemptions amended herein. In response to the inquiry, the Commission made minor changes to the adopted amendments in Items 1, 2, and 3 to clarify the intent of the rule changes. The changes from the Notice of Intended Action are described in the preamble description for Items 1, 2, and 3 below.

Summary of Rule Changes

As part of the Department's implementation of the new federally mandated NAAQS for fine particulate matter (particulate matter with a diameter of 2.5 microns or less, "$PM_{2.5}$"), lead, and sulfur dioxide (SO_2), the Commission has revised a subset of the air construction permit exemptions and Title V "insignificant activities" specified in Chapter 22 to set appropriate emissions thresholds and operating conditions to sufficiently protect public health. The Commission has also revised the spray booth "permit by rule" specified in Chapter 22 to sufficiently protect public health by adding content limits for lead-containing spray materials. Additionally, the Commission has revised Chapter 28 to adopt by reference the new NAAQS for SO_2 and to remove the use of PM_{10} (particulate matter with a diameter of 10 microns or less) as a surrogate for the annual standard of the $PM_{2.5}$ NAAQS.

During the period from 2006 through 2010, the U.S. Environmental Protection Agency (EPA) revised the NAAQS for $PM_{2.5}$, lead, and SO_2. In each instance, EPA strengthened the NAAQS for these pollutants based on reviews of the latest public health information and scientific data. The Commission already adopted the new lead NAAQS in a previous rule making (see **ARC 8215B**, IAB 10/7/09). Also in previous rule makings, the Commission adopted changes to the Prevention of Significant Deterioration (PSD) program and to stack test methods necessary to implement the new $PM_{2.5}$ NAAQS (see **ARC 0260C**, IAB 8/8/12, and **ARC 0330C**, IAB 9/9/12, respectively).

The amendments in this rule making set appropriate thresholds for new or altered (modified) equipment emitting lower levels of $PM_{2.5}$ or lead to be exempt from construction permitting. Additionally, these amendments update emissions thresholds for $PM_{2.5}$ and lead for Title V insignificant activities (facilities are not required to pay Title V fees for insignificant activities). The amendments impact any owner or operator of a facility with new or altered (modified) equipment emitting $PM_{2.5}$ or lead if that owner or operator wishes to use the exemptions or insignificant activities provisions.

$PM_{2.5}$ NAAQS

EPA first created an air quality standard in 1997 for $PM_{2.5}$ in order to protect the public from the adverse impacts of $PM_{2.5}$ on human health. EPA strengthened the 24-hour averaged $PM_{2.5}$ standard in 2006 based on reviews of the latest public health information and scientific data, reducing the acceptable level of $PM_{2.5}$ that humans can be exposed to from 65 micrograms per cubic meter of air ($\mu g/m^3$) to 35 $\mu g/m^3$ of air.

In an effort to better address a wide range of concerns and issues about $PM_{2.5}$, the Department formed a workgroup in 2010 for stakeholders to provide input and explore approaches for implementing the $PM_{2.5}$ NAAQS in Iowa. The Department has traditionally requested stakeholder input when implementing a new standard. This approach was formalized in 2010 with the enactment of Iowa Code section 455B.134(14).

The workgroup consisted of approximately 120 members, with representative stakeholder participation from industry and business, trade groups and associations, environmental groups, and local and state agencies. Many of the amendments included in this rule making related to $PM_{2.5}$ are based on recommendations of the workgroup.

The Department's final report to the Governor and General Assembly, "Implementing the PM2.5 Ambient Air Quality Standard in the State of Iowa," is available at http://www.iowadnr.gov/portals/idnr/uploads/air/insidednr/stakeholder/pm25/pm25_implementation_report.pdf?amp;tabid=1567.

Lead NAAQS

On October 15, 2008, EPA finalized new NAAQS for lead. The level of the standard was revised from 1.5 $\mu g/m^3$ of air to 0.15 $\mu g/m^3$ of air. The Department has determined that some of the exemptions from construction permitting specified in administrative rules are not sufficiently protective of the lead NAAQS. To provide regulatory flexibility, the Department seeks, to the extent possible, to retain the availability of the construction permit exemptions. The amendments to the exemptions from construction permitting provide the opportunity for owners and operators of lower-emitting lead sources to be exempt from the requirement to apply for construction permits.

SO_2 NAAQS

On June 3, 2010, EPA finalized revisions to the primary SO_2 NAAQS to strengthen the standard to adequately protect public health. Specifically, EPA established a new 1-hour SO_2 NAAQS at a level of 75 parts per billion (ppb). EPA also revoked both the existing 24-hour and annual primary SO_2 NAAQS.

As required by Iowa Code section 455B.134(14), the Department solicited input from stakeholders at its quarterly air quality client contact meetings and issued a report to the Governor and the General Assembly. The Department discussed the new SO_2 NAAQS and possible rule changes with stakeholders at its air quality client contact meetings in February, May, and September 2012. The Department's final report to the Governor and General Assembly, "Review of Emission Limitations and Standards for the Revised NO2 and SO2 National Ambient Air Quality Standards," is available from the Department upon request.

To provide regulatory flexibility, the Department seeks, to the extent possible, to retain the availability of the construction permit exemptions for low-emitting sources of SO_2.

In this rule making, the Commission adopts the following amendments:

Item 1 amends subrule 22.1(2) to modify several of the specific exemptions from the requirement to obtain an air construction permit. The amendment adds emission thresholds for $PM_{2.5}$ to existing exemptions and adds operating limits to other exemptions that will limit $PM_{2.5}$ emissions from those activities to sufficiently protect public health. The amendment also revises emission thresholds and operating limits for lead to sufficiently protect public health. The amendment allows owners and operators of activities with low emissions to continue to be exempt from the requirement to obtain an air construction permit.

The amendment revises the construction permit exemptions (set out in lettered paragraphs in subrule 22.1(2)) as they apply to new, reconstructed, or altered equipment, operations, or facilities as follows:

- Fuel-burning equipment for indirect heating or cooling (paragraph "b"): Removes coal as an allowed fuel, adds operating limits for used oil and for vegetative matter ("biomass," such as seeds and pellets). (The PM2.5 Stakeholder Workgroup recommended removing coal from this exemption.)
- Incinerators and pyrolysis cleaning furnaces (paragraph "e"): Removes incinerators from the exemption, changes the description of "pyrolysis units" to "paint clean-off ovens," and limits the exemption to combustible materials that do not contain lead.
- One pound per hour exemption (paragraph "i"): Discontinues use of this exemption for new, reconstructed, or altered equipment. (The PM2.5 Stakeholder Workgroup made this recommendation.)
- Small unit exemption (paragraph "w"): Adds allowable emission rates for $PM_{2.5}$ and lowers the allowable emission rates for lead. (The PM2.5 Stakeholder Workgroup provided this recommendation.)
- Production welding (paragraph "ff"): Revises quantity limits on electrodes to limit emissions of $PM_{2.5}$ and lead. (The PM2.5 Stakeholder Workgroup developed the new formula.)
- Soldering (paragraph "gg"): Adds operating limits for lead-containing solder.

- Research and development (paragraph "kk"): Revises the allowable actual emission levels for $PM_{2.5}$ and lead to correspond to the levels adopted for the small unit exemption (paragraph "w"). (The PM2.5 Stakeholder Workgroup recommended the emission limits for $PM_{2.5}$.)

The changes to subrule 22.1(2) in Item 1 apply only to facilities or emission units constructed, installed, reconstructed, or altered after the effective date of the adopted amendment, October 23, 2013. The changes do not apply retroactively to existing equipment.

If the changes proposed in Item 1 were not adopted, smaller facilities (minor sources) would not be sufficiently restricted from using the construction permit exemptions and would potentially consume air resources. Consumption of air resources could potentially limit larger industrial facilities from making desired changes.

After the close of the public comment period, the Department received an informal inquiry from a member of the public concerning the intent of the term "constructed" as it relates to the amendment in Item 1. The member of the public asked whether the owner or operator needs to have started construction on the facility, operation, or equipment on or before October 23, 2013, for the equipment or facility to be considered "constructed." Alternatively, does the owner or operator need to have completed the construction or actually started up the facility or equipment for the facility or equipment to be considered "constructed?" In response to the inquiry, the Department made minor changes to the adopted amendment to clarify that the owner or operator needs to have initiated construction, installation, reconstruction, or alteration, as defined in 567—20.2(455B), for the facility or equipment to meet the pre-October 23, 2013, exemption requirements under the amendment.

Item 2 amends rule 567—22.8(455B), which specifies the requirements for the permit by rule for spray booths. The amendment adds maximum lead content limits for lead-containing sprayed materials. The changes apply to new facilities or new uses of lead spray materials for operations for owner- or operator-initiated construction, installation, reconstruction, or alteration after October 23, 2013.

In response to the public inquiry related to the amendment in Item 1 described above, the Department made corresponding changes to the amendment in Item 2.

Item 3 amends subrule 22.103(2) to modify the requirements for insignificant activities for the Title V operating permit. The changes to insignificant activities correspond to the changes for the construction permit exemptions described in Item 1. Although owners and operators are required to include insignificant activities in the Title V application, activities that meet the conditions in subrule 22.103(2) do not need to be included in the Title V facility's annual emissions inventory and are not assessed any Title V fees. The changes affect Title V permit applications, modifications and renewals after October 23, 2013.

In response to the public inquiry related to the amendment in Item 1 described above, the Department made corresponding changes to the amendment in Item 3.

Item 4 amends rule 567—28.1(455B) to adopt by reference the revised NAAQS for SO_2 and to remove the use of PM_{10} as a surrogate for the annual $PM_{2.5}$ NAAQS. The Department adopted the revised NAAQS for lead in a previous rule making.

Jobs Impact Statement

After analysis and review of this rule making, the Department has determined that jobs could be impacted. However, the amendments implement federally mandated regulations. This rule making does not impose on Iowa businesses any regulations not required by federal law.

The Department has minimized the impact of the federal regulations to the greatest extent possible by establishing exemption levels for $PM_{2.5}$ and lead. Further, equipment emitting $PM_{2.5}$ or lead for which the owner or operator initiates construction, installation, reconstruction, or alteration on or before October 23, 2013, will be unaffected by these amendments. Only equipment constructed, installed, reconstructed, or altered after October 23, 2013, will be affected.

In consultations with stakeholders in the PM2.5 Stakeholder Workgroup, air quality client contact meetings and many other forums, the Department identified equipment and activities emitting low levels of $PM_{2.5}$ or lead that could be exempt from the requirement to obtain an air construction permit. Additionally, the Department identified insignificant activities emitting low levels of $PM_{2.5}$ or lead that could be excluded from annual Title V fee calculations.

To qualify for an exemption or insignificant activity status, owners and operators of low-emitting equipment may need to perform calculations or keep additional records, which may require additional expenditures or resources. However, the Department expects that any potential cost impact or jobs impact will be less than the impacts associated with preparing a construction permit application or Title V permit application or with paying annual Title V fees.

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

These amendments shall become effective on October 23, 2013.

The following amendments are adopted.

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

22.1(2) *Exemptions.* The requirement to obtain a permit in ~~567—~~subrule 22.1(1) is not required for the equipment, control equipment, and processes listed in this subrule. The permitting exemptions in this subrule do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. Equipment, control equipment, or processes subject to rule 567—22.4(455B) and 567—Chapter 33, prevention of significant deterioration requirements, or rule 567—22.5(455B), special requirements for nonattainment areas, may not use the exemptions from construction permitting listed in this subrule. Equipment, control equipment, or processes subject to 567—subrule 23.1(2), new source performance standards (40 CFR Part 60 NSPS); 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR Part 61 NESHAP); 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 63 NESHAP); or 567—subrule 23.1(5), emission guidelines, may still use the exemptions from construction permitting listed in this subrule provided that a permit is not needed to create federally enforceable limits that restrict potential to emit. If equipment is permitted under the provisions of rule 567—22.8(455B), then no other exemptions shall apply to that equipment.

Records shall be kept at the facility for exemptions that have been claimed under the following paragraphs: 22.1(2)*"a"* (for equipment > 1 million Btu per hour input), 22.1(2)*"b,"* 22.1(2)*"e,"* 22.1(2)*"r"* or 22.1(2)*"s."* The records shall contain the following information: the specific exemption claimed and a description of the associated equipment. These records shall be made available to the department upon request.

The following paragraphs are applicable to paragraphs 22.1(2)*"g"* and *"i."* A facility claiming to be exempt under the provisions of paragraph 22.1(2)*"g"* or *"i"* shall provide to the department the information listed below. If the exemption is claimed for a source not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project. If the exemption is claimed for a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the information listed below shall be provided to the department within 60 days of March 20, 1996. After that date, if the exemption is claimed by a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the source shall not operate until the information listed below is provided to the department:

- A detailed emissions estimate of the actual and potential emissions, specifically noting increases or decreases, for the project for all regulated pollutants (as defined in rule 567—22.100(455B)), accompanied by documentation of the basis for the emissions estimate;
- A detailed description of each change being made;
- The name and location of the facility;
- The height of the emission point or stack and the height of the highest building within 50 feet;
- The date for beginning actual construction and the date that operation will begin after the changes are made;
- A statement that the provisions of rules 567—22.4(455B) and 567—22.5(455B) and 567—Chapter 33 do not apply; and
- A statement that the accumulated emissions increases associated with each change under paragraph 22.1(2)*"i,"* when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction on the particular change

commences), have not exceeded significant levels, as defined in 40 CFR 52.21(b)(23) as amended through ~~March 12, 1996,~~ October 20, 2010, and adopted in rule 567—22.4(455B), and will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. This statement shall be accompanied by documentation for the basis of these statements.

The written statement shall contain certification by a responsible official as defined in rule 567—22.100(455B) of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

a. No change.

b. Fuel-burning equipment for indirect heating or cooling with a capacity of less than 1 million Btu per hour input per combustion unit when burning ~~coal,~~ untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil, provided that the equipment and the fuel meet the conditions specified in this paragraph. Used oils meeting the specification from 40 CFR 279.11 as amended through May 3, 1993, are acceptable fuels for this exemption. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3,600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that fuel usage is less than the exemption thresholds. Owners or operators initiating construction, installation, reconstruction, or alteration of equipment (as defined in rule 567—20.2(455B)) on or before October 23, 2013, burning coal, used oils, untreated wood, untreated seeds or pellets, or other untreated vegetative materials that qualified for this exemption may continue to claim this exemption after October 23, 2013, without being restricted to the maximum heat input or throughput specified in this paragraph.

c. and *d.* No change.

e. Incinerators and pyrolysis cleaning furnaces with a rated refuse burning capacity of less than 25 pounds per hour for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013. Pyrolysis cleaning furnace exemption is limited to those units that use only natural gas or propane. Salt bath units are not included in this exemption. Incinerators or pyrolysis cleaning furnaces for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall not qualify for this exemption. After October 23, 2013, only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify for this exemption.

f. to *h.* No change.

i. ~~Construction,~~ Initiation of construction, installation, reconstruction, ~~or modification~~ or alteration (modification) to equipment (as defined in rule 567—20.2(455B)) on or before October 23, 2013, which will not result in a net emissions increase (as defined in paragraph 22.5(1)*"f"*) of more than 1.0 lb/hr of any regulated air pollutant (as defined in rule 567—22.100(455B)). Emission reduction achieved through the installation of control equipment, for which a construction permit has not been obtained, does not establish a limit to potential emissions.

Hazardous air pollutants (as defined in rule 567—22.100(455B)) are not included in this exemption except for those listed in Table 1. Further, the net emissions rate INCREASE must not equal or exceed the values listed in Table 1.

Table 1

Pollutant	Ton/year
Lead	0.6
Asbestos	0.007
Beryllium	0.0004
Vinyl Chloride	1
Fluorides	3

This exemption is ONLY applicable to vertical discharges with the exhaust stack height 10 or more feet above the highest building within 50 feet. If a construction permit has been previously issued for the equipment or control equipment, the conditions of the construction permit remain in effect. In order to use this exemption, the facility must comply with the information submission to the department as described above.

The department reserves the right to require proof that the expected emissions from the source which is being exempted from the air quality construction permit requirement, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. If the department finds, at any time after a change has been made pursuant to this exemption, evidence of violations of any of the department's rules, the department may require the source to submit to the department sufficient information to determine whether enforcement action should be taken. This information may include, but is not limited to, any information that would have been submitted in an application for a construction permit for any changes made by the source under this exemption, and air quality dispersion modeling.

Equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall not qualify for this exemption.

j. to *v.* No change.

w. Small unit exemption.

(1) "Small unit" means any emission unit and associated control (if applicable) that emits less than the following:

1. ~~40~~ 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013);
2. 5 tons per year of sulfur dioxide;
3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide;
6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 2.5 tons per year of ~~PM10~~ PM_{10}; ~~or~~
8. ~~5 tons per year of hazardous air pollutants (as defined in rule 567—22.100(455B)).~~ 0.52 tons per year of $PM_{2.5}$ (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013); or
9. 5 tons per year of hazardous air pollutants (as defined in rule 567—22.100(455B)).

For the purposes of this exemption, "emission unit" means any part or activity of a stationary source that emits or has the potential to emit any pollutant subject to regulation under the Act. This exemption applies to existing and new or modified "small units."

An emission unit that emits hazardous air pollutants (as defined in rule 567—22.100(455B)) is not eligible for this exemption if the emission unit is required to be reviewed for compliance with 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR 61, NESHAP), or 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR 63, NESHAP).

An emission unit that emits air pollutants that are not regulated air pollutants as defined in rule 567—22.100(455B) shall not be eligible to use this exemption.

(2) to (5) No change.

(6) For the purposes of this paragraph, "substantial small unit" means a small unit which emits more than the following amounts, as documented in the exemption justification document:

1. ~~30~~ 2 pounds per year of lead and lead compounds expressed as lead (30 pounds per year of lead or lead compounds for equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013);
2. 3.75 tons per year of sulfur dioxide;
3. 3.75 tons per year of nitrogen oxides;
4. 3.75 tons per year of volatile organic compounds;
5. 3.75 tons per year of carbon monoxide;
6. 3.75 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 1.875 tons per year of ~~PM10~~ PM_{10}; ~~or~~
8. ~~3.75 tons per year of any hazardous air pollutant or 3.75 tons per year of any combination of hazardous air pollutants.~~ 0.4 tons per year of $PM_{2.5}$ (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013); or
9. 3.75 tons per year of any hazardous air pollutant or 3.75 tons per year of any combination of hazardous air pollutants.

An emission unit is a "substantial small unit" only for those substances for which annual emissions exceed the above-indicated amounts.

(7) No change.

(8) "Cumulative notice threshold" means the total combined emissions from all substantial small units using the small unit exemption which emit at the facility the following amounts, as documented in the exemption justification document:

1. 0.6 tons per year of lead and lead compounds expressed as lead;
2. 40 tons per year of sulfur dioxide;
3. 40 tons per year of nitrogen oxides;
4. 40 tons per year of volatile organic compounds;
5. 100 tons per year of carbon monoxide;
6. 25 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 15 tons per year of ~~PM10~~ PM_{10}; ~~or~~
8. ~~10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.~~ 10 tons per year of $PM_{2.5}$ (does not apply to equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013); or
9. 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.

x. to *ee.* No change.

ff. Production welding.

(1) Consumable electrode.

1. Welding operations for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013, using a consumable electrode, provided that the consumable ~~electrodes~~ electrode used ~~fall~~ falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 200,000 pounds per year for GMAW and 28,000 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years.

For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of 1380x - 19,200 or 200,000 for GMAW, or

Y = the greater of 187x - 2,600 or 28,000 for SMAW or FCAW

Where ~~x~~ "x" is the minimum distance to the property line in feet~~,~~ and "Y" is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

2. Welding operations for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, using a consumable electrode, provided that the consumable electrode used falls within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 1,600 pounds per year for GMAW and 12,500 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years.

For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of 84x - 1,200 or 1,600 for GMAW, or

Y = the greater of 11x - 160 or 12,500 for SMAW or FCAW

Where "x" is the minimum distance to the property line in feet and "Y" is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

(2) No change.

gg. Electric hand soldering, wave soldering, and electric solder paste reflow ovens for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013. Electric hand soldering, wave soldering, and electric solder paste reflow ovens for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall be limited to 37,000 pounds or less per year of lead-containing solder. Records shall be maintained on site by the owner or operator for at least two calendar years to demonstrate that use of lead-containing solder is less than the exemption thresholds.

hh. to *jj.* No change.

kk. Equipment related to research and development activities at a stationary source, provided that:

(1) Actual emissions from all research and development activities at the stationary source based on a 12-month rolling total are less than the following levels:

~~40~~ 2 pounds per year of lead and lead compounds expressed as lead (40 pounds per year for research and development activities that commenced on or before October 23, 2013);

5 tons per year of sulfur dioxide;

5 tons per year of nitrogen ~~dioxides~~ oxides;

5 tons per year of volatile organic compounds;

5 tons per year of carbon monoxide;

5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp) as amended through November 29, 2004);

2.5 tons per year of ~~PM10~~ PM_{10}; ~~and~~

0.52 tons per year of $PM_{2.5}$ (does not apply to research and development activities that commenced on or before October 23, 2013); and

5 tons per year of hazardous pollutants (as defined in rule 567—22.100(455B)); and

(2) and (3) No change.

ll. to *oo.* No change.

ITEM 2. Amend rule 567—22.8(455B) as follows:

567—22.8(455B) Permit by rule.

22.8(1) *Permit by rule for spray booths.* Spray booths which comply with the requirements contained in this rule will be deemed to be in compliance with the requirements to obtain an air construction permit and an air operating permit. Spray booths which comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source limits for regulated air pollutants and hazardous air pollutants as defined in 567—22.100(455B).

a. Definition. "Sprayed material" is material sprayed from spray equipment when used in the surface coating process in the spray booth, including but not limited to paint, solvents, and mixtures of paint and solvents.

b. Facilities which facilitywide spray one gallon per day or less of sprayed material are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1)*"e"* to the department and keep records of daily sprayed material use. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep safety data sheets (SDS) or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)*"e."*

c. Facilities which facilitywide spray more than one gallon per day but never more than three gallons per day are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1)*"e"* to the department, keep records of daily sprayed material use, and vent emissions from a spray booth(s) through a stack(s) which is at least 22 feet tall, measured from ground level. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall use sprayed material with a maximum lead content of 0.35 pounds or less per gallon if the booth or associated equipment is subject to the following NESHAP: 40 CFR Part 63, Subpart HHHHHH or Subpart XXXXXX. Any spray booth or associated equipment for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, that is not subject to the NESHAP or is otherwise exempt from the NESHAP shall use sprayed material with a maximum lead content of 0.02 pounds or less per gallon. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply and shall keep safety data sheets (SDS) or equivalent records for at least two calendar years to demonstrate that the sprayed materials contain lead at less than the exemption thresholds. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1)*"e."*

d. and *e.* No change.

22.8(2) Reserved.

ITEM 3. Amend subrule 22.103(2) as follows:

22.103(2) *Insignificant activities which must be included in Title V operating permit applications.*

a. The following are insignificant activities based on potential emissions:

An emission unit which has the potential to emit less than:

5 tons per year of any regulated air pollutant, except:

2.5 tons per year of ~~PM-10~~ PM_{10},

0.52 tons per year of $PM_{2.5}$ (does not apply to emission units for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013),

~~40~~ 2 lbs per year of lead or lead compounds (40 lbs per year for emission units for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013),

2500 lbs per year of any combination of hazardous air pollutants except high-risk pollutants,

1000 lbs per year of any individual hazardous air pollutant except high-risk pollutants,

250 lbs per year of any combination of high-risk pollutants, or

100 lbs per year of any individual high-risk pollutant.

The definition of "high-risk pollutant" is found in rule 567—22.100(455B).

b. The following are insignificant activities:

(1) Fuel-burning equipment for indirect heating and reheating furnaces using natural or liquefied petroleum gas with a capacity of less than 10 million Btu per hour input per combustion unit.

(2) Fuel-burning equipment for indirect heating for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013, with a capacity of less than 1 million Btu per hour input per combustion unit when burning coal, untreated wood, or fuel oil.

Fuel-burning equipment for indirect heating for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, with a capacity of less than 1 million Btu per hour input per combustion unit when burning untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil provided that the equipment and the fuel meet the condition specified in this subparagraph (22.103(2)*"b"*(2)). Used oils meeting the specification from 40 CFR 279.11 as amended through May 3, 1993, are acceptable fuels. When combusting used oils, the equipment must have a maximum rated capacity of 50,000 Btu or less per hour of heat input or a maximum throughput of 3600 gallons or less of used oils per year. When combusting untreated wood, untreated seeds or pellets, or other untreated vegetative materials, the equipment must have a maximum rated capacity of 265,600 Btu or less per hour or a maximum throughput of 378,000 pounds or less per year of each fuel or any combination of fuels.

(3) Incinerators with a rated refuse burning capacity of less than 25 pounds per hour for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred on or before October 23, 2013. Incinerators for which initiation of construction, installation, reconstruction, or alteration (as defined in rule 567—20.2(455B)) occurred after October 23, 2013, shall not qualify as an insignificant activity. After October 23, 2013, only paint clean-off ovens with a maximum rated capacity of less than 25 pounds per hour that do not combust lead-containing materials shall qualify as an insignificant activity.

(4) to (6) No change.

ITEM 4. Amend rule 567—28.1(455B) as follows:

567—28.1(455B) Statewide standards. The state of Iowa ambient air quality standards shall be the National Primary and Secondary Ambient Air Quality Standards as published in 40 Code of Federal Regulations Part 50 (1972) and as amended at 38 Federal Register 22384 (September 14, 1973), 43 Federal Register 46258 (October 5, 1978), 44 Federal Register 8202, 8220 (February 9, 1979), 52 Federal Register 24634-24669 (July 1, 1987), 62 Federal Register 38651-38760, 38855-38896 (July 18, 1997), 71 Federal Register 61144-61233 (October 17, 2006), 73 Federal Register 16436-16514 (March 27, 2008), 73 Federal Register 66964-67062 (November 12, 2008), ~~and~~ 75 Federal Register 6474-6537 (February 9, 2010), ~~except that the annual PM_{10} standard specified in 40 CFR Section 50.6(b) shall continue to be applied for purposes of implementation of new source permitting provisions in 567 IAC Chapters 22 and 33~~ and 75 Federal Register 35520-35603 (June 22, 2010). The department shall

implement these rules in a time frame and schedule consistent with implementation schedules in federal laws~~,~~ and regulations ~~and guidance documents~~.

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

[Filed 8/26/13, effective 10/23/13]
[Published 9/18/13]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/18/13.

ARC 1014C
ENVIRONMENTAL PROTECTION COMMISSION[567]
Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission (Commission) hereby amends Chapter 23, "Emission Standards for Contaminants," Iowa Administrative Code.

The purpose of the rule making is to adopt by reference the federal air toxics standards for stationary engines commonly known as the RICE NESHAP. RICE NESHAP is the acronym for National Emission Standards for Hazardous Air Pollutants (NESHAP) for Reciprocating Internal Combustion Engines (RICE) (40 Code of Federal Regulations (CFR) Part 63, Subpart ZZZZ). The Commission adopts the RICE NESHAP by reference into state rules so that all compliance deadlines will be in accordance with federal time lines.

The U.S. Environmental Protection Agency (EPA) recently updated the RICE NESHAP. The revised RICE NESHAP generally provides regulatory clarity to and relief from the previous requirements.

Upon the effective date of these amendments, the Department rather than EPA will implement and enforce these regulations in Iowa, thereby allowing the Department to provide compliance assistance and outreach to affected facilities as soon as possible.

In 2010, the Commission adopted an earlier version of the RICE NESHAP. In Executive Order (EO) 72, Governor Branstad subsequently rescinded adoption of the RICE NESHAP. EO 72 stated that the RICE NESHAP was too costly for small utilities that maintain and operate rarely used emergency engines and that the RICE NESHAP requirements could increase electricity rates for consumers.

In response to the concerns from Governor Branstad as expressed in EO 72 and concerns from other stakeholders, EPA agreed to reconsider the RICE NESHAP. Consequently, EPA made changes to the RICE NESHAP as published in the Federal Register on January 30, 2013 (available at www.gpo.gov/fdsys/pkg/FR-2013-01-30/pdf/2013-01288.pdf). The updated RICE NESHAP provides more circumstances for emergency engines and for engines that participate in electricity management programs to operate under non-emergency conditions. The Commission has adopted the amendments to the RICE NESHAP. If the Commission did not adopt the RICE NESHAP amendments, the inconsistency with federal regulations could have caused regulatory uncertainty and confusion for affected facilities.

Item 1 amends the introductory paragraph of subrule 23.1(4) to reference paragraph 23.1(4)"cz" for adoption of the RICE NESHAP.

Item 2 amends paragraph 23.1(4)"cz" to remove the earlier adoption date for the RICE NESHAP and to adopt the January 30, 2013, version of the federal regulations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 15, 2013, as **ARC 0740C**, and a public hearing was held on June 4, 2013. The Department of Natural Resources (Department) received no comments at the public hearing. The Department received two written comments prior to the June 4, 2013, deadline for public comments. Both comments supported the Commission's adoption of the RICE NESHAP amendments. The Department's Public Participation Responsiveness Summary is available from the Department upon request. The Commission did not make any changes to the adopted amendments from those published in the Notice of Intended Action.

Jobs Impact Statement

The following is a summary of the jobs impact statement. The complete jobs impact statement is available from the Department upon request.

After analysis and review, the Department has determined that jobs could be impacted. However, the amendments are only implementing federally mandated regulations. This rule making does not impose on Iowa businesses any regulations that are not required by federal law. The Commission adopts the federal RICE NESHAP by reference so the rules are identical to federal requirements. Additionally, facilities are impacted by the federal standards regardless of whether the Commission adopts the standards into state administrative rules.

The Commission minimized the impact of the RICE NESHAP by waiting to adopt the standards until after EPA completed its reconsideration. EPA's final rule generally provides regulatory relief from and clarity to the requirements that EPA initially mandated. In particular, the new RICE NESHAP will provide more flexibility and potential cost savings to affected industries.

According to EPA's regulatory impact analysis, the new standards for engines will have capital and annual costs, but these costs are substantially less than the costs EPA estimated for previous standards. Further, more facilities will be subject only to work practice or record-keeping requirements rather than have costs associated with controlling emissions and monitoring emissions.

Facilities that cannot meet EPA's revised requirements for emergency engines must comply with the requirements for non-emergency engines. However, until May 3, 2014, "area source" facilities that operate their engines as part of a load management program may still operate their engines for up to 50 hours in a calendar year to provide electricity to the grid or as part of a financial arrangement with another entity (also known as "peak shaving"). EPA defines an "area source" as one that emits less than 10 tons per year of any one air toxic and less than 25 tons per year of any combination of air toxics. Essentially, these facilities have an extra year after the RICE NESHAP compliance date to determine how to use these engines.

Some facilities have already replaced their engines or installed emissions control equipment or are preparing to do so to ensure these engines can operate without any restrictions. Additionally, a facility may receive an extension of up to one year to install control equipment. Because the deadline for facilities to request extensions occurred prior to the effective date of Iowa's adoption of the RICE NESHAP amendments, EPA Region 7 (rather than the Department) is responsible for processing extension requests. According to information that EPA provided to the Department to date, 54 Iowa facilities have submitted requests for extensions. EPA has granted 49 extensions and expects to act on the remaining 4 requests in the near future (1 request was withdrawn).

These amendments are intended to implement Iowa Code section 455B.133 and 42 U.S.C. Section 7412 (Title I of the Clean Air Act, Section 112).

These amendments will become effective on October 23, 2013.

The following amendments are adopted.

ITEM 1. Amend subrule 23.1(4), introductory paragraph, as follows:

23.1(4) *Emission standards for hazardous air pollutants for source categories.* The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended or corrected through September 19, 2011, are adopted by reference, except those provisions which cannot be delegated to the states. The corresponding 40 CFR Part 63 subpart designation is in parentheses. An earlier date for adoption by reference may be included with the subpart designation in parentheses (except for paragraph 23.1(4)*"cz,"* which specifies a later date for adoption by reference). 40 CFR Part 63, Subpart B, incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purposes of this subrule, "hazardous air pollutant" has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a "major source" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant

or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an "area source" means any stationary source of hazardous air pollutants that is not a "major source" as defined in this subrule. Paragraph 23.1(4)*"a,"* general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR Part 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

ITEM 2. Amend paragraph **23.1(4)"cz"** as follows:

cz. Emission standards for stationary reciprocating internal combustion engines. These standards apply to new and existing major sources and to new and existing area sources with stationary reciprocating internal combustion engines (RICE). ~~These standards also apply to new and reconstructed RICE located at area sources.~~ For purposes of these standards, stationary RICE means any reciprocating internal combustion engine which uses reciprocating motion to convert heat energy into mechanical work and which is not mobile. (Part 63, Subpart ZZZZ, as amended through ~~April 20, 2006~~ January 30, 2013)

[Filed 8/26/13, effective 10/23/13]
[Published 9/18/13]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/18/13.

ARC 1011C

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board hereby amends Chapter 91, "General Requirements for All Objects," Iowa Administrative Code.

This amendment updates a reference to an American Society of Mechanical Engineers' code. The Division's rules currently adopt by reference the 2009 edition of Controls and Safety Devices for Automatically Fired Boilers. The amendment adopts by reference the 2012 edition of that document.

The purposes of this amendment are to make the rule more current and to implement legislative intent.

Notice of Intended Action was published in the July 10, 2013, Iowa Administrative Bulletin as **ARC 0817C**. No public comment was received on the proposed amendment. This amendment is identical to that published under Notice of Intended Action.

After analysis and review of this rule making, no impact on jobs will occur.

This amendment is intended to implement Iowa Code chapter 89.

This amendment shall become effective on October 31, 2013.

The following amendment is adopted.

Amend subrule 91.1(6) as follows:

91.1(6) *Control and safety device code adopted by reference.* Controls and Safety Devices for Automatically Fired Boilers (CSD-1) ~~(2009)~~ (2012) is adopted by reference, and reinstallations and installations after ~~January 1, 2010~~ October 31, 2013, shall comply with it.

[Filed 8/22/13, effective 10/31/13]
[Published 9/18/13]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/18/13.

ARC 1031C

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 2, "Pharmacist Licenses," Iowa Administrative Code.

The amendment provides that a license to practice pharmacy that has been issued by a state or U.S. territory with which Iowa has a reciprocal agreement for license transfer may be used as the basis for a license transfer to practice pharmacy in Iowa. The rule previously required that a license transfer shall only be based on a license by examination. The amendment further requires that the license upon which a transfer is based must be in good standing at the time of the application for license transfer and at the time the license transfer is finalized.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the July 24, 2013, Iowa Administrative Bulletin as **ARC 0884C**. The Board received no written comments regarding the proposed amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the August 28, 2013, meeting of the Board of Pharmacy.

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

This amendment is intended to implement Iowa Code sections 147.44, 147.49, 147.53, and 155A.7.

This amendment will become effective on October 23, 2013.

The following amendment is adopted.

Amend rule 657—2.9(147,155A) as follows:

657—2.9(147,155A) Licensure by license transfer/reciprocity. An applicant for license transfer/reciprocity must be a pharmacist licensed by examination in a state or territory of the United States with which Iowa has a reciprocal agreement, and the license by examination upon which the transfer is based must be in good standing at the time of the application and license transfer. All candidates shall take and pass the MPJE, Iowa Edition, as provided in subrule 2.1(1). Any candidate who fails to pass the examination shall be eligible for reexamination as provided in rule 657—2.6(147).

2.9(1) to **2.9(5)** No change.

[Filed 8/30/13, effective 10/23/13]
[Published 9/18/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/18/13.

ARC 1032C

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of 2011 Iowa Acts, chapter 63, section 36, as amended by 2012 Iowa Acts, chapter 1113, section 31, and as further amended by 2013 Iowa Acts, Senate File 446, section 128, the Board of Pharmacy hereby amends Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

The amendment provides that the Board may extend or renew for additional time a pilot or demonstration research project initially approved for a period not to exceed 18 months.

Since the provisions of rule 657—8.40(155A,84GA,ch63) implement legislative action providing for the establishment of projects that amount to a waiver of specific Iowa Code requirements, the Board will not consider waiver or variance of any provisions of this rule beyond approving a project request or request for extension of a project period pursuant to the rule.

Notice of Intended Action was published in the July 24, 2013, Iowa Administrative Bulletin as **ARC 0882C**. The Board received no written comments regarding the proposed amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the August 28, 2013, meeting of the Board of Pharmacy.

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

This amendment is intended to implement 2013 Iowa Acts, Senate File 446, section 128.

This amendment will become effective on October 23, 2013.

The following amendment is adopted.

Amend subrule 8.40(3) as follows:

8.40(3) *Board approval of a project.* Board approval of a project may include the grant of an exception to or a waiver of rules adopted under the Act or under any law relating to the authority of prescription verification and the ability of a pharmacist to provide enhanced patient care in the practice of pharmacy. Project approval, including exception to or waiver of board rules, shall initially be for a specified period of time not exceeding 18 months from commencement of the project. The board may approve the extension or renewal of a project following consideration of a petition that clearly identifies the project, that includes a report similar to the final project report described in paragraph 8.40(6)*"a,"* that describes and explains any proposed changes to the originally approved and implemented project, and that justifies the need for extending or renewing the term of the project.

[Filed 8/30/13, effective 10/23/13]
[Published 9/18/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/18/13.

ARC 1029C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Psychology hereby amends Chapter 240, "Licensure of Psychologists," and Chapter 241, "Continuing Education for Psychologists," Iowa Administrative Code.

These amendments rescind the provision for Board review of non-American Psychological Association (APA)/Canadian Psychological Association (CPA)-accredited or Association of State and Provincial Psychology Boards (ASPPB)-designated doctoral programs for licensure applicants who were matriculated in such programs prior to January 12, 2005; clarify the eligibility requirements for the national examination; provide for the multijurisdictional Certificate of Professional Qualification (CPQ) to be accepted as meeting the qualifications for licensure by endorsement; provide continuing education credit hours in the category of ethics, laws and regulations to Board members for attendance and participation at Board meetings; require additional criteria for approval of continuing education hours of credit per biennium that may be used for scholarly research and preparation of new courses; add the category of presentations to other professionals for continuing education credit; and increase the combined number of continuing education hours of credit per biennium that may be used for research, course preparation, and presentations to other professionals.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 10, 2013, as **ARC 0834C**. A public hearing was held on August 5, 2013, from 1 to 2 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. However, the Board determined that an effective date is necessary for the new continuing education requirements in paragraph 241.3(2)"c," to allow licensees to apply continuing education hours accrued pursuant to the current requirements for the 2014 license renewal. No other changes were made to the noticed amendments.

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

These amendments are intended to implement Iowa Code chapters 154B and 272C and Iowa Code section 147.36.

These amendments will become effective on October 23, 2013.

The following amendments are adopted.

ITEM 1. Amend paragraph **240.2(1)"d"** as follows:

d. ~~No~~ Except as otherwise stated in these rules, no application will be considered by the board until:

(1) Official copies of academic transcripts sent directly from the school to the board of psychology have been received by the board; and

(2) Satisfactory evidence of the candidate's qualifications has been supplied in writing on the prescribed forms by the candidate's supervisors~~; and~~.

~~(3) Rescinded IAB 9/24/08, effective 10/29/08.~~

~~(4) Rescinded IAB 9/4/02, effective 10/9/02.~~

ITEM 2. Rescind and reserve subrule **240.3(4)**.

ITEM 3. Amend subrule 240.4(1) as follows:

240.4(1) To be eligible to take the national examination, the applicant shall:

a. Meet all requirements of subrule 240.2(1), paragraphs *"a"* to *"c"*; ~~and~~

b. Provide official copies of academic transcripts sent directly from the school to the board of psychology~~.~~; and

c. Provide the completed supervision registration form according to the instructions on the form.

ITEM 4. Amend rule 645—240.10(147) as follows:

645—240.10(147) Licensure by endorsement. An applicant who has been a licensed psychologist at the doctoral level under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may license by endorsement any applicant from the District of Columbia or another state, territory, province, or foreign country who:

240.10(1) Submits to the board a completed application.

240.10(2) Pays the licensure fee.

240.10(3) Provides verification of a current Certificate of Professional Qualification (CPQ) issued by the Association of State and Provincial Psychology Boards (ASPPB). Applicants providing certification are deemed to have met the requirements stated in paragraphs 240.10(3)*"a"* to *"c."* The board may license by endorsement any other applicant who:

a. Provides one of the following: the official EPPP score sent directly to the board from the ~~Association of State and Provincial Psychology Boards,~~ ASPPB or verification of the EPPP score sent directly from the state of initial licensure. The recommended passing score established by the ~~Association of State and Provincial Psychology Boards~~ ASPPB shall be considered passing.

~~**240.10(4)**~~ *b.* Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

~~*a.*~~ (1) Licensee's name;

~~*b.*~~ (2) Date of initial licensure;

~~*c.*~~ (3) Current licensure status; and

~~*d.*~~ (4) Any disciplinary action taken against the license.

~~**240.10(5)**~~ *c.* Shows evidence of licensure requirements that are substantially equivalent to those required in Iowa by one of the following means:

~~*a.*~~ (1) Provides:

~~(1)~~ 1. Official copies of academic transcripts that have been sent directly from the school; and

~~(2)~~ 2. Satisfactory evidence of the applicant's qualifications in writing on the prescribed forms by the applicant's supervisors. If verification of professional experience is not available, the board may consider submission of documentation from the state in which the applicant is currently licensed or equivalent documentation of supervision; or

~~*b.*~~ (2) Has an official copy of one of the following certifications sent directly to the board from the certifying organization~~.~~:

~~(1) Current Certification of Professional Qualification that was originally issued by the Association of State and Provincial Psychology Boards on or after January 1, 2002.~~

~~(2)~~ 1. Current credentialing at the doctoral level as a health service provider in psychology by the National Register of Health Service Providers in Psychology.

~~(3)~~ 2. Board certification by the American Board of Professional Psychology that was originally granted on or after January 1, 1983.

~~**240.10(6)** Rescinded IAB 9/24/08, effective 10/29/08.~~

ITEM 5. Amend paragraph **241.3(2)"b"** as follows:

b. For all renewal periods following the second license renewal, licensees shall obtain 6 hours of continuing education pertaining to the practice of psychology in any of the following areas: ethical issues, federal mental health laws and regulations, Iowa mental health laws and regulations, or risk management. For all board members appointed to a first term beginning May 1, 2013, or later, a maximum of 2 of these hours may be obtained by providing service as a member of the board as follows:

(1) One hour of credit for attendance and participation at a minimum of three regular quarterly board meetings during the license biennium, or

(2) Two hours of credit for attendance and participation at a minimum of six regular quarterly board meetings during the license biennium.

ITEM 6. Rescind paragraph **241.3(2)"c"** and adopt the following **new** paragraph in lieu thereof:

c. Effective July 1, 2014, a licensee may obtain the remainder of continuing education hours of credit by:

(1) Completing training to comply with mandatory reporter training requirements, as specified in 645—subrule 240.12(4). Hours reported for credit shall not exceed the hours required to maintain compliance with required training.

(2) Attending programs/activities that are sponsored by the American Psychological Association or the Iowa Psychological Association.

(3) Attending workshops, conferences, or symposiums that meet the criteria in subrule 241.3(1).

(4) Completing academic coursework that meets the criteria set forth in these rules. Continuing education credit equivalents are as follows:

1 academic semester hour = 15 continuing education hours

1 academic quarter hour = 10 continuing education hours

(5) Completing home study courses for which a certificate of completion is issued.

(6) Completing electronically transmitted courses for which a certificate of completion is issued.

(7) Conducting scholarly research, the results of which are published in a recognized professional publication. In order to claim such credit, the licensee must attest to the hours actually spent conducting research, demonstrate that the research is integrally related to the practice of psychology, explain how the research advances the licensee's knowledge in the field, and provide the published work.

(8) Preparing new courses on material that is integrally related to the practice of psychology and is beyond entry level. In order to claim such credit, the licensee must: attest that the licensee has not taught the course in the past or that the licensee has not substantially altered the course content; request a specific amount of continuing education credit; describe how the course is integrally related to the practice of the profession and advances the licensee's knowledge in the field; and supply a course syllabus that supports the licensee's request for credit.

(9) Presenting to other professionals. A licensee may receive credit on a one-time basis for presenting continuing education programs that meet the criteria of subrule 241.3(1). Two hours of credit will be awarded for each hour of presentation.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 7. Amend paragraph **241.3(2)"d"** as follows:

d. A combined maximum of ~~20~~ 30 hours of credit per biennium may be used for scholarly research ~~and~~, preparation of new courses, and presentations to other professionals.

[Filed 8/28/13, effective 10/23/13]
[Published 9/18/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/18/13.