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Economic Development, ~~Innovation and Commercialization Division~~ Authority, 200 East Grand Avenue, Des Moines, Iowa 50309, on a form provided by the ~~department~~ authority. Required forms and instructions are available by contacting the authority at ~~this that~~ address or at the ~~department's~~ from the authority's Web site at ~~www.iowalifechanging.com~~ www.iowaeconomicdevelopment.com.

105.8(2) To apply for financial assistance from the fund, a business shall submit an application to the ~~department~~ authority, on a form provided by the ~~department~~ authority. The application will be reviewed by ~~department~~ authority staff, the committee and the board. The committee will make a recommendation to the board about an application. The board has final decision-making authority on requests for financial assistance from the fund. The board may approve, defer or deny an application.

105.8(3) No change.

261—105.9(82GA, HF829 15) Application selection criteria. In reviewing applications for financial assistance, the committee and board shall consider the following criteria:

105.9(1) to **105.9(7)** No change.

261—105.10(82GA, HF829 15) Contract and reporting.

105.10(1) No change.

105.10(2) *Contract required.* The ~~department~~ authority shall prepare a contract, which includes, but is not limited to, a description of the project to be completed by the business; conditions to disbursement; required reports; the repayment requirements imposed on the business in the event the business does not fulfill its obligations described in the contract and other specific repayment provisions (“clawback” provisions) to be established on a project-by-project basis.

105.10(3) *Reporting.* An applicant shall submit any information requested by the ~~department~~ authority in sufficient detail to permit the ~~department~~ authority to prepare ~~the report required pursuant to 2007 Iowa Acts, House File 829, section 10, and any other reports deemed necessary by the department any reports required by the authority,~~ the board, the general assembly or the governor's office.

These rules are intended to implement ~~2007 Iowa Acts, House File 829, section 1(3)~~ 2012 Iowa Acts, House File 2473, section 31(3).

ITEM 20. Rescind 261—Chapter 106 and adopt the following **new** chapter in lieu thereof:

CHAPTER 106
SMALL BUSINESS INNOVATION RESEARCH AND TECHNOLOGY
TRANSFER OUTREACH PROGRAM

261—106.1(15) Authority. The authority for adopting rules establishing the small business innovation research and technology transfer outreach program under this chapter is provided in 2012 Iowa Acts, House File 2473, division II.

261—106.2(15) Purpose and goals.

106.2(1) The purpose of the small business innovation research and technology transfer outreach program is to assist businesses with applications to the federal Small Business Innovation Research and Small Business Technology Transfer Programs. The program will provide financial and technical assistance to businesses for that purpose.

106.2(2) The goals of providing this assistance are to increase the number of successful phase II small business innovation research grant proposals in the state, increase the amount of such grant funds awarded in the state, stimulate subsequent investment by industry, venture capital, and other sources, and encourage businesses to commercialize promising technologies.

261—106.3(15) Definitions. As used in this chapter, unless the context otherwise requires:

“*Applicant*” means a business applying to the authority for assistance under the program.

“*Assistance*” means technical and financial assistance available under the program.

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“*Authority*” means the economic development authority created in 2011 Iowa Code Supplement 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 2011 Iowa Code Supplement section 15.105.

“*Committee*” means the technology commercialization committee established by the board pursuant to 261—Chapter 1.

“*Corporation*” means the Iowa innovation corporation created pursuant to 2011 Iowa Code Supplement section 15.107.

“*Financial assistance*” means assistance provided only from the funds, rights, and assets legally available to the authority and includes but is not limited to assistance in the form of grants, loans, forgivable loans, and royalty agreements.

“*Innovative business*” means the same as defined in 2011 Iowa Code Supplement section 15E.52 as amended by 2012 Iowa Acts, House File 2473, section 33.

“*Program*” means the small business innovation research and technology transfer outreach program established pursuant to 2011 Iowa Code Supplement section 15.411 as amended by 2012 Iowa Acts, House File 2473, section 31.

“*SBIR/STTR*” means the federal Small Business Innovation Research and Small Business Technology Transfer Programs.

261—106.4(15) Program description, application procedures, and delegation of functions.

106.4(1) General description. The program provides technical assistance and financial assistance to businesses seeking SBIR/STTR funding. All awards of financial assistance must ultimately be approved by the board, after a recommendation by the committee, and a contract must be entered into with the authority before moneys will be disbursed.

106.4(2) Program components and activities. The program has two primary components, a technical assistance component and a financial assistance component, both of which are intended to win more phase I and phase II SBIR/STTR awards and fast track grants for Iowa businesses. The corporation shall be the primary provider of technical assistance to businesses and shall also work with the authority to provide financial assistance.

a. In providing technical assistance, the corporation shall develop a pre-proposal submission component that facilitates expert peer reviews from commercial reviewers with in-depth market knowledge. The resulting reviews should provide the business with a set of recommendations and tips for troubleshooting SBIR/STTR proposals. The corporation shall ensure that such businesses develop and implement recommendations for their proposals based on industry best practices.

b. The corporation shall also develop a service component that includes an online platform to provide information to regional SBIR/STTR applicants, researchers, and entrepreneurs. In connection with this platform, the corporation shall identify, promote, and assist all highly qualified commercially relevant companies that are discovered through the platform and shall connect them to other investment programs and investors in the region.

c. In providing the technical assistance described in this subrule, the corporation shall work in conjunction with the program administrator of the office of intellectual property and technology transfer at Iowa State University. The following services shall be provided as a result of this collaboration:

(1) Detailed outlines and other tools to make the drafting of a proposal and other accompanying documentation less daunting.

(2) Reviews and critiques of iterative drafts to improve the structure and narrative of both the research and the commercialization plans.

(3) Evaluation of budgets and budget justifications to produce stronger applications and avoid “leaving money on the table.”

(4) Assistance with the electronic registrations and the application submission process.

d. In working with the authority to provide financial assistance, the corporation shall perform the functions delegated pursuant to subrule 106.4(4).

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106.4(3) *Application and award procedures.* Eligible businesses may submit applications to the authority for financial assistance. To be eligible, a business must meet the requirements in rule 261—106.6(15). The applications will receive an initial review to confirm program eligibility before being sent to the committee for a recommendation on funding. The committee will provide its recommendation to the board for a final determination on the provision of financial assistance. The board may approve, deny, or defer each application for financial assistance under the program. The board will consider applications for financial assistance on a first-come, first-served basis. If the board approves funding for a business, the authority will prepare a required contract specifying the terms and conditions under which the financial assistance is to be provided to the business.

106.4(4) *Delegation of certain administrative functions to the corporation.* The authority will delegate certain administrative functions of the program to the corporation. The functions that will be delegated are:

a. The initial application review process, including an analysis of whether the business meets all requirements of eligibility under the program and a recommendation on the amount of financial assistance to be provided and under what terms and conditions.

b. The tracking and monitoring of the business's SBIR/STTR application progress as well as the eventual outcome. The corporation shall report annually to the authority on the results of the program.

c. The tracking and monitoring of contract terms and conditions for applicants receiving financial assistance under the program.

d. The provision of technical assistance as described in subrule 106.4(2).

106.4(5) *Administrative functions not delegated.* The authority will retain, and not delegate, the performance of the following functions: (1) the final determination as to whether to approve, deny, or defer an award of financial assistance; (2) the disbursement of moneys provided for in an award of financial assistance; (3) the final determination as to whether there is a default in the terms of a contract entered into under the program, including all decisions regarding appropriate remedies for such a default; and (4) any other function not clearly delegated to the corporation pursuant to subrule 106.4(4).

261—106.5(15) Program funding.

106.5(1) *Program funding limitation.* Each year, the authority allocates moneys for purposes of the programs listed in 2011 Iowa Code Supplement section 15.411 as amended by 2012 Iowa Acts, House File 2473, section 31, including this program. The amount allocated each year will depend on the amount appropriated to the authority by the general assembly. The authority may allocate other funds to the program as such funds may from time to time become available.

106.5(2) *Individual applicant limitation.* The authority will not award more than \$25,000 in financial assistance to any applicant. A business shall not receive more than one award of financial assistance under the program.

261—106.6(15) Eligibility requirements. In order to be eligible for financial or technical assistance under the program, an applicant must meet the following requirements:

106.6(1) The business must be an innovative business.

106.6(2) The business must have a reasonable likelihood of receiving SBIR/STTR grant funds, must be likely to stimulate subsequent investment by industry, venture capital, and other sources, and must be likely to commercialize some promising technology.

261—106.7(15) Contract and report information required.

106.7(1) *Contract required.* An applicant awarded financial assistance under the program shall enter into a contract with the authority for the receipt of such funds. The authority will include in the contract all terms and conditions for receipt of the funds, including any terms recommended by the corporation. The tracking and monitoring of the contract terms will be delegated to the corporation. The corporation shall provide regular reports to the authority on the progress of the applicant and on the results of the tracking and monitoring. The authority will make the final determination as to compliance with the terms of the contract and as to whether and when to disburse funds to the applicant.

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106.7(2) Reporting information required. An applicant may be required to submit all information necessary for the authority to compile a report on the results of the program. The authority will include terms in the required contract effectuating this requirement.

These rules are intended to implement 2012 Iowa Acts, House File 2473.

ITEM 21. Amend rule 261—107.1(82GA,ch122) as follows:

261—107.1(82GA,ch122) Authority—fund termination and transition.

107.1(1) Authority. The authority for ~~establishing~~ adopting rules governing the targeted industries networking fund under this chapter is provided in 2007 Iowa Acts, House File 829, section 7(7).

107.1(2) Fund termination and transition. The targeted industries networking fund in this chapter was established in order to implement 2007 Iowa Acts, House File 829, section 7(7), and 2011 Iowa Code Supplement section 15.412(3)“i.” In 2012 Iowa Acts, House File 2473, section 31, the general assembly rescinded the provisions that provided the statutory basis for the fund. The rules in this chapter that were in effect upon the repeal of the fund shall apply to all awards made and all contracts entered into under the fund on or before June 30, 2012, and shall continue to apply until such time as all such contracts, including all amendments to such contracts, reach the end of their effective contract periods and are closed by the authority. No new awards will be made under the fund, and no new contracts will be entered into on or after July 1, 2012.

ITEM 22. Amend rule 261—107.3(82GA,ch122) as follows:

261—107.3(82GA,ch122) Definitions.

“Authority” means the economic development authority created in 2011 Iowa Code Supplement section 15.105.

“Board” means the Iowa members of the economic development board established in Iowa Code section 15.103 authority appointed by the governor and in whom the powers of the authority are vested pursuant to 2011 Iowa Code Supplement section 15.105.

“Committee” means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116 established by the board pursuant to 261—Chapter 1.

“Deal flow” means the creation and maintenance of a flow of business proposals for evaluation and decisions for financial backing.

“Department” means the Iowa department of economic development.

“Fund” means the targeted industries networking fund.

“Networking event” means a sponsored event that facilitates linkages between businesses, investors, and academic problem solvers to create new deal flow within the targeted industries.

“Targeted industry” means the industries of advanced manufacturing, biosciences, and information technology.

ITEM 23. Strike “department” wherever it appears in rules **261—107.4(82GA,ch122)** and **261—107.8(82GA,ch122)** and insert “authority” in lieu thereof.

ITEM 24. Amend rule 261—107.6(82GA,ch122) as follows:

261—107.6(82GA,ch122) Application and review process.

107.6(1) An industry group, business or other sponsor of a networking event must submit an application for financial assistance, in the form specified by the ~~department~~ authority, to the ~~Iowa Department of Economic Development, Innovation and Commercialization Division~~ Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available ~~by contacting the authority at this that address or at the department’s~~ from the authority’s Web site at ~~www.iowalifechanging.com~~ www.iowaeconomicdevelopment.com.

107.6(2) To apply for financial assistance from the fund, an industry group, business or other sponsor of a networking event shall submit an application to the ~~department~~ authority, in the form specified by the ~~department~~ authority. The application will be reviewed by ~~department~~ authority staff, the committee

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and the board. The committee will make a recommendation to the board regarding an application. The board has final decision-making authority on requests for financial assistance from the fund. The board may approve, defer or deny an application.

107.6(3) An application for financial assistance shall include all information required by the ~~department~~ authority including, but not limited to, the following:

- a. No change.
- b. *Event format.* Events must have a planned structure, including an agenda. Formats may include business panels, business executive presentations with question and answer periods, intellectual property showcases and presentations, roundtable discussions, “speed ~~dating~~ networking” sessions, workshops, plant and laboratory tours, or other formats deemed appropriate by the ~~department~~ authority. Strictly social events and member-only events for associations will not qualify for funding.
- c. and d. No change.

ITEM 25. Amend **261—Chapter 107**, implementation sentence, as follows:

These rules are intended to implement 2007 Iowa Acts, chapter 122, and 2012 Iowa Acts, House File 2473.

ITEM 26. Rescind 261—Chapter 108 and adopt the following new chapter in lieu thereof:

CHAPTER 108

ACCELERATION AND DEVELOPMENT OF INNOVATIVE IDEAS AND BUSINESSES

261—108.1(15) Authority. The authority for adopting rules establishing a program to accelerate the development of innovative ideas and businesses by providing assistance for the expansion of the proof of commercial relevance concept, the expansion of applied research, and support for a manufacturing extension partnership program under this chapter is provided in 2012 Iowa Acts, House File 2473, division II.

261—108.2(15) Purpose and description of program components.

108.2(1) The purpose of the program is to accelerate the development of innovative ideas and businesses.

108.2(2) The program has three primary components:

- a. A component for the expansion of the proof of commercial relevance concept.
- b. A component for the expansion of applied research.
- c. A component to provide support for a manufacturing extension partnership program.

261—108.3(15) Definitions. As used in this chapter, unless the context otherwise requires:

“*Applicant*” means an innovative business or other business, a university, a nonprofit organization, or another entity applying to the authority for assistance under the program.

“*Applied research*” means a systematic inquiry into the practical application of science and technology. Applied research includes translational research, participative research, and other related terms that are similar to or share the goals of applied research.

“*Assistance*” means technical and financial assistance available under the program.

“*Authority*” means the economic development authority created in 2011 Iowa Code Supplement 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 2011 Iowa Code Supplement section 15.105.

“*Committee*” means the technology commercialization committee established by the board pursuant to 261—Chapter 1.

“*Corporation*” means the Iowa innovation corporation created pursuant to 2011 Iowa Code Supplement section 15.107.

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“*Financial assistance*” means assistance provided only from the funds, rights, and assets legally available to the authority and includes but is not limited to assistance in the form of grants, loans, forgivable loans, and royalty agreements.

“*Innovative business*” means the same as defined in 2011 Iowa Code Supplement section 15E.52 as amended by 2012 Iowa Acts, House File 2473, section 33.

“*MEP*” means a manufacturing extension partnership and its associated program component.

“*POCR*” means the proof of commercial relevance concept and its associated program component.

“*Program*” means the components of the program established in this chapter pursuant to 2011 Iowa Code Supplement section 15.411 as amended by 2012 Iowa Acts, House File 2473, section 31.

261—108.4(15) Program description, application procedures, and delegation of functions.

108.4(1) General description. The program provides technical assistance and financial assistance for the expansion of PO CR, the expansion of applied research, and support for MEP. All awards of financial assistance must ultimately be approved by the board, after submission of a proposal by the applicant and a recommendation on the proposal by the committee. A contract must be entered into with the authority before moneys will be disbursed to an applicant.

108.4(2) Program component descriptions and activities. The program has three primary components: a PO CR component, an applied research component, and an MEP component. The corporation shall be the entity responsible for ensuring that technical and other applicable assistance is provided to applicants and shall also work with the authority on the provision of financial assistance. In working with the authority to provide financial assistance, the corporation shall perform the functions delegated pursuant to subrule 108.4(4).

a. The PO CR component makes financial assistance available to applicants who undertake projects that commercialize new technologies. The authority, in conjunction with the corporation, will award financial assistance to not more than six applicants each year under the component. The financial assistance will be awarded to innovative businesses that are pursuing the validation of the marketability of a technology. Applicants may submit applications to the authority for assistance under this component. Such applications should describe in detail what technologies the applicant is researching, how the applicant is pursuing commercialization of those technologies, and how the financial assistance will be used to bring the new technologies to market in Iowa.

b. The applied research component makes financial assistance available to innovative businesses in order to allow them to better connect university research to their needs and to accelerate the transfer of new technologies to the marketplace. The authority, in conjunction with the corporation, may award financial assistance to university researchers who are attempting to bring their research more in line with market and industrial needs by forming partnerships with innovative businesses. Financial assistance under this component may take the form of grant funds. If grant funds are awarded, the applicant shall be required to match the amount of grant funds with other moneys at a ratio of one to one. Applicants may submit applications to the authority for assistance under this component. Such applications should describe in detail what activities the applicant will engage in to accelerate the validation of technology for the marketplace.

c. The MEP component makes financial assistance available to service providers that form partnerships with innovative businesses to conduct workshops for the purpose of providing assistance in determining and prioritizing applied research needs based on gaps in productivity or product needs and that offer to broker connections between innovative businesses and the researchers who can perform the necessary applied research. Financial assistance is also available to innovative businesses under this component for product development, design verification, custom equipment development, manufacturing process development, and technology development and commercialization. The authority, in conjunction with the corporation, will award financial assistance to eligible innovative businesses. Applicants may submit applications to the authority for assistance under this component. Such applications should describe in detail the nature of the partnerships being formed, what activities the partnership will undertake, and how such activities will further the goals of this component. Applicants must submit applications for assistance under this component and must describe in detail

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how the proposed services will expand the applicant's market penetration, create a new product with market relevance, or enhance an existing product by further innovation.

108.4(3) *Application and award procedures.* Applicants to the program may submit applications to the authority for financial assistance. To be eligible, an applicant must meet the requirements of one of the components described in subrule 108.4(2). The applications will receive an initial review to confirm program eligibility before being sent to the committee for a recommendation on funding. The committee will provide its recommendation to the board for a final determination on the provision of financial assistance. The board may approve, deny, or defer each application for financial assistance under the program. The board will consider applications for financial assistance on a first-come, first-served basis. If the board approves funding for a business, the authority will prepare a required contract specifying the terms and conditions under which the financial assistance is to be provided to the business.

108.4(4) *Delegation of certain administrative functions to the corporation.* The authority will delegate certain administrative functions of the program to the corporation. The functions that will be delegated are:

a. The initial application review process, including an analysis of the application and a determination as to whether the applicant meets all requirements of eligibility under the program and a recommendation on the amount of financial assistance to be provided and under what terms and conditions.

b. The tracking and monitoring of the applicant's progress as well as the eventual outcomes achieved as a result of an award. The corporation shall report annually to the authority on the results of the program.

c. The tracking and monitoring of contract terms and conditions for applicants receiving financial assistance under the program.

d. The provision of technical assistance as described in subrule 108.4(2).

108.4(5) *Administrative functions not delegated.* The authority will retain, and not delegate, the performance of the following functions: (1) the final determination as to whether to approve, deny, or defer an award of financial assistance; (2) the disbursement of moneys provided for in an award of financial assistance; (3) the final determination as to whether there is a default in the terms of a contract entered into under the program, including all decisions regarding appropriate remedies for such a default; and (4) any other function not clearly delegated to the corporation pursuant to subrule 108.4(4).

261—108.5(15) Program funding.

108.5(1) *Program funding limitation.* Each year, the authority allocates moneys for purposes of the programs listed in 2011 Iowa Code Supplement section 15.411 as amended by 2012 Iowa Acts, House File 2473, section 31, including this program. The amount allocated each year will depend on the amount appropriated to the authority by the general assembly. The authority may allocate other funds to the program as such funds may from time to time become available.

108.5(2) *Individual applicant limitation.* The authority reserves the right to determine how much financial assistance any one applicant will receive. A contract is required of each successful applicant, and such contract will provide for the amount and terms and conditions of the award.

261—108.6(15) Contract and report information required.

108.6(1) *Contract required.* An applicant awarded financial assistance under the program shall enter into a contract with the authority for the receipt of such funds. The authority will include in the contract all terms and conditions for receipt of the funds, including any terms recommended by the corporation. The tracking and monitoring of the contract terms will be delegated to the corporation. The corporation shall provide regular reports to the authority on the progress of the applicant and on the results of the tracking and monitoring. The authority will make the final determination as to compliance with the terms of the contract and as to whether and when to disburse funds to the applicant.

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108.6(2) Reporting information required. An applicant may be required to submit all information necessary for the authority to compile a report on the results of the program. The authority will include terms in the required contract effectuating this requirement.

These rules are intended to implement 2012 Iowa Acts, House File 2473.

ITEM 27. Amend rule 261—109.1(82GA,ch122) as follows:

261—109.1(82GA,ch122) Authority—fund termination and transition.

109.1(1) Authority. The authority for ~~establishing~~ adopting rules governing the targeted industries career awareness fund under this chapter is provided in 2007 Iowa Acts, House File 829, section 7(9).

109.1(2) Fund termination and transition. The targeted industries career awareness fund in this chapter was established pursuant to 2011 Iowa Code Supplement section 15.412(3)“b.” In 2012 Iowa Acts, House File 2473, section 31, the general assembly rescinded the provisions that provided the statutory basis for the fund. The rules in this chapter that were in effect upon the repeal of the fund shall apply to all awards made and all contracts entered into under the program on or before June 30, 2012, and shall continue to apply until such time as all such contracts, including all amendments to such contracts, reach the end of their effective contract periods and are closed by the authority. No new awards will be made under the fund, and no new contracts will be entered into on or after July 1, 2012.

ITEM 28. Amend rule 261—109.3(82GA,ch122) as follows:

261—109.3(82GA,ch122) Definitions.

“Authority” means the economic development authority created in 2011 Iowa Code Supplement section 15.105.

“Board” means the Iowa members of the economic development board established in Iowa Code section 15.103 authority appointed by the governor and in whom the powers of the authority are vested pursuant to 2011 Iowa Code Supplement section 15.105.

“Career awareness campaign” means a statewide educational and public awareness campaign to inform students, parents and educators about career opportunities within the targeted industries.

“Committee” means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116 established by the board pursuant to 261—Chapter 1.

“Department” means the Iowa department of economic development.

“Fund” means the targeted industries career awareness fund.

“Targeted industry” means the industries of advanced manufacturing, biosciences, and information technology.

ITEM 29. Strike “department” wherever it appears in rules **261—109.4(82GA,ch122)**, **261—109.5(82GA,ch122)**, **261—109.8(82GA,ch122)** and **261—109.9(82GA,ch122)** and insert “authority” in lieu thereof.

ITEM 30. Amend rule 261—109.7(82GA,ch122) as follows:

261—109.7(82GA,ch122) Application and review process.

109.7(1) For career awareness campaigns beginning on or after September 1, 2007, an industry association group must submit an application for financial assistance, in the form specified by the ~~department authority~~, to the ~~Iowa Department of Economic Development, Innovation and Commercialization Division Authority~~, 200 East Grand Avenue, Des Moines, Iowa 50309. Required forms and instructions are available by contacting the authority at ~~this that address or at the department’s~~ from the authority’s Web site at ~~www.iowalifechanging.com~~ www.iowaeconomicdevelopment.com.

109.7(2) To apply for financial assistance from the fund, an industry association group shall submit an application to the ~~department authority~~, in the form specified by the ~~department authority~~. The application will be reviewed by ~~department authority~~ staff, the committee and the board. The committee will make a recommendation to the board regarding an application. The board has final

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decision-making authority on requests for financial assistance from the fund. The board may approve, defer or deny an application.

109.7(3) An application for financial assistance shall include all information required by the ~~department~~ authority including, but not limited to, the following:

a. to *f.* No change.

ITEM 31. Amend rule 261—111.1(15,83GA,SF142) as follows:

261—111.1(15,83GA,SF142) Authority—program termination and transition.

111.1(1) Authority. The authority for ~~establishing~~ adopting rules governing the supply chain development program is 2011 Iowa Code section 15.411(10).

111.1(2) Program termination and transition. The supply chain development program in this chapter was established in order to implement 2007 Iowa Acts, House File 829, section 7(7), and 2011 Iowa Code Supplement section 15.412(3) “g.” In 2012 Iowa Acts, House File 2473, section 31, the general assembly rescinded the provisions that provided the statutory basis for the program. The rules in this chapter that were in effect upon the repeal of the program shall apply to all awards made and all contracts entered into under the program on or before June 30, 2012, and shall continue to apply until such time as all such contracts, including all amendments to such contracts, reach the end of their effective contract periods and are closed by the authority. No new awards will be made under the program, and no new contracts will be entered into on or after July 1, 2012.

ITEM 32. Amend rule 261—111.2(15,83GA,SF142) as follows:

261—111.2(15,83GA,SF142) Purpose. The purpose of this program is for the ~~Iowa department of~~ economic development authority to collaborate with the department of workforce development to create a supplier capacity and product database. Targeted industries will be provided technical assistance for supply chain development through improved linkages to Iowa suppliers, the targeted industries’ production capabilities and capacities, and technology commercialization services.

ITEM 33. Amend rule 261—111.3(15,83GA,SF142) as follows:

261—111.3(15,83GA,SF142) Definitions.

“Authority” means the economic development authority created in 2011 Iowa Code Supplement section 15.105.

“Board” means the Iowa members of the economic development board established in Iowa Code section 15.103 authority appointed by the governor and in whom the powers of the authority are vested pursuant to 2011 Iowa Code Supplement section 15.105.

“Committee” means the technology commercialization committee authorized by Iowa Code section 15.116 established by the board pursuant to 261—Chapter 1.

~~“Department” means the Iowa department of economic development.~~

“Performance improvement programs” means process management philosophies, best practices, and appropriate tools from methodologies in use in manufacturing total quality and value systems that support supply chain development and provide a competitive advantage.

“Supply chain” means a network of facilities that procure raw materials, transform them into intermediate goods and then final products, and deliver the products to customers through a distribution system.

“Supply chain development” means strategic and operational activities implemented by manufacturers to effectively and efficiently meet the requirements of their existing customers and to identify possible new customers.

“Targeted industry” means the industries of advanced manufacturing, biosciences, and information technology.

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ITEM 34. Amend rule 261—111.5(15,83GA,SF142) as follows:

261—111.5(15,83GA,SF142) Matching funds requirement. In order to receive financial assistance, an applicant must demonstrate the ability to secure one dollar of nonstate moneys for every one dollar received from the ~~department~~ authority. This requirement does not apply to collaborative projects between the ~~Iowa department~~ of economic development authority and the department of workforce development.

ITEM 35. Amend rule 261—111.6(15,83GA,SF142) as follows:

261—111.6(15,83GA,SF142) Eligible applicants.

111.6(1) and **111.6(2)** No change.

111.6(3) The ~~department~~ authority will establish discrete projects and collaborative projects with the department of workforce development, which do not require application, for supplier capacity and product database initiatives.

ITEM 36. Amend rule 261—111.8(15,83GA,SF142) as follows:

261—111.8(15,83GA,SF142) Application process.

111.8(1) An organization, institution of higher learning, individual or business must submit an application to the ~~Iowa Department~~ of Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309, in a form provided by the ~~department~~ authority. Required forms and instructions are available by contacting the authority at ~~this that address or may be printed from the department's Internet site~~ authority's Web site at www.iowalifechanging.com www.iowaeconomicdevelopment.com.

111.8(2) No change.

111.8(3) An application for technical assistance under the program shall include any information required by the ~~department~~ authority including, but not limited to, all of the following:

a. to f. No change.

ITEM 37. Strike “department” wherever it appears in rules **261—111.10(15,83GA,SF142)** and **261—111.11(15,83GA,SF142)** and insert “authority” in lieu thereof.

ITEM 38. Amend **261—Chapter 111**, implementation sentence, as follows:

These rules are intended to implement 2011 Iowa Code section Supplement sections 15.411 and 15.412 as amended by 2009 Iowa Acts, Senate File 142, section 1 2012 Iowa Acts, House File 2473, sections 31 and 32.

ITEM 39. Rescind and reserve **261—Chapter 112**.

ITEM 40. Amend rule 261—114.1(83GA,HF2076) as follows:

261—114.1(83GA,HF2076 15) Authority. The authority for establishing rules governing the Iowa innovation council under this chapter is provided in ~~2010 Iowa Acts, House File 2076, section 4~~ 2011 Iowa Code Supplement section 15.117A as amended by 2012 Iowa Acts, Senate File 2212 and House File 2473.

ITEM 41. Strike “department” and “(83GA,HF2076)” wherever they appear in rules **261—114.2(83GA,HF2076)**, **261—114.4(83GA,HF2076)**, **261—114.6(83GA,HF2076)**, **261—114.7(83GA,HF2076)** and **261—114.10(83GA,HF2076)** and insert “authority” and “(15),” respectively, in lieu thereof.

ITEM 42. Amend rule 261—114.3(83GA,HF2076) as follows:

261—114.3(83GA,HF2076 15) Definitions.

“Authority” means the economic development authority created in 2011 Iowa Code Supplement section 15.105.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

~~“Board” means the Iowa members of the economic development board established in Iowa Code section 15.103 authority appointed by the governor and in whom the powers of the authority are vested pursuant to 2011 Iowa Code Supplement section 15.105.~~

~~“Chief technology officer” means the person appointed pursuant to Iowa Code section 15.117 as amended by 2010 Iowa Acts, House File 2076. The chief technology officer serves as chairperson of the council pursuant to 2010 Iowa Acts, House File 2076, section 4 2011 Iowa Code Supplement section 15.117A as amended by 2012 Iowa Acts, Senate File 2212 and House File 2473.~~

~~“Committee” means the technology commercialization committee created by the board pursuant to Iowa Code section 15.116 established by the board pursuant to 261—Chapter 1.~~

~~“Council” means the Iowa innovation council established by 2010 Iowa Acts, House File 2076, section 4 2011 Iowa Code Supplement section 15.117A as amended by 2012 Iowa Acts, Senate File 2212 and House File 2473.~~

~~“Department” means the Iowa department of economic development.~~

~~“Director” means the director of the department authority or the director’s designee.~~

~~“Targeted industry” means the industries of advanced manufacturing, bioscience, and information technology. Alternative and renewable energy is considered a sector within the advanced manufacturing and bioscience industries.~~

~~“Vice chairperson” means the voting member elected to serve as the council vice chairperson for a one-year term.~~

ITEM 43. Amend rule 261—114.5(83GA, HF2076) as follows:

261—114.5(83GA, HF2076 15) Council membership.

114.5(1) The council shall consist of the following members:

a. No change.

b. Nine voting members as set forth below:

(1) No change.

(2) The director of the ~~department~~ authority, or the director’s designee.

(3) The chief technology officer appointed pursuant to Iowa Code section 15.117 ~~as amended by 2010 Iowa Acts, House File 2076~~, who shall serve as chairperson of the council.

(4) ~~The person designated as the chief information officer pursuant to Iowa Code section 8A.104, subsection 12, or, if no person has been so designated, the director of the department of administrative services workforce development~~, or the director’s designee.

(5) to (8) No change.

c. No change.

114.5(2) No change.

114.5(3) A vacancy on the council shall be filled in the same manner as the original selection and shall be for the remainder of the term.

ITEM 44. Strike “(83GA, HF2076)” wherever it appears in rules **261—114.8(83GA, HF2076)**, **261—114.9(83GA, HF2076)**, **261—114.11(83GA, HF2076)** and **261—114.12(83GA, HF2076)** and insert “(15)” in lieu thereof.

ITEM 45. Amend rule 261—114.13(83GA, HF2076) as follows:

261—114.13(83GA, HF2076 15) Reporting. The executive committee shall review, comment on, and formally submit any and all reports on behalf of the council. The chief technology officer is designated by the board as the signing officer for certain documents. The chief technology officer is authorized to sign correspondence, applications, reports, or other nonfinancial documents produced by the council. The chief technology officer shall serve as a key spokesperson for the council and be responsible for coordinating the communication of information requested by the ~~department~~ authority in sufficient detail to permit the ~~department~~ authority to prepare ~~the report required pursuant to 2010 Iowa Acts, House File 2076, section 2, and any other reports deemed necessary by the department~~, any reports that may be required by the authority, the board, the general assembly or the governor’s office.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

ITEM 46. Amend **261—Chapter 114**, implementation sentence, as follows:
These rules are intended to implement ~~2010 Iowa Acts, House File 2076~~ 2011 Iowa Code Supplement section 15.117A as amended by 2012 Iowa Acts, Senate File 2212 and House File 2473.

NATURAL RESOURCES DEPARTMENT**Notice of Stakeholder Group**

Air Quality Voluntary Operating Permits for Minor Sources

Pursuant to Executive Order 80, the Director of the Iowa Department of Natural Resources hereby gives Notice as to the formation of a Stakeholder Group to review air quality voluntary operating permits for minor sources.

The purpose of the stakeholder group is to make recommendations to increase efficiency and streamline the permit process for air quality voluntary operating permits for minor sources.

All interested stakeholders who represent the varying interests impacted by the permit mentioned above should contact Director Chuck Gipp, c/o Jim McGraw, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. The Director will determine which stakeholders should make up the group in order to represent the varied interests. Information may be sent by fax to (515)242-5094 or by e-mail to Jim.McGraw@dnr.iowa.gov no later than October 31, 2012. All stakeholders are asked to provide the following information:

1. Name;
2. Telephone number;
3. E-mail address;
4. City;
5. Profession;
6. General availability to meet;
7. Explanation of stakeholder interest and how the rule would impact the stakeholder; and
8. Description of how the stakeholder can add to the resolution of the issue.

NATURAL RESOURCES DEPARTMENT**Notice of Stakeholder Group**

Permits for Diversion, Storage and Withdrawal of Water

Pursuant to Executive Order 80, the Director of the Iowa Department of Natural Resources hereby gives Notice as to the formation of a Stakeholder Group to review ~~567—Chapter 50, “Scope of Division—Definitions—Forms—Rules of Practice,”~~ Iowa Administrative Code.

The purpose of the stakeholder group is to streamline the application and review process for the diversion, storage and withdrawal of water, specifically addressing issues that lead to faster and more efficient permit-processing times. As a result of the drought experienced by the state of Iowa, the Department of Natural Resources is looking at all possible ways to increase its customer assistance to permittees.

All interested stakeholders who represent the varying interests impacted by the permit mentioned above should contact Director Chuck Gipp, c/o Shelli Grapp, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. The Director will determine which stakeholders should make up the group in order to represent the varied interests. Information may be sent by fax to (515)725-0348 or by e-mail to Shelli.Grapp@dnr.iowa.gov no later than October 31, 2012. All stakeholders are asked to provide the following information:

1. Name;

NATURAL RESOURCES DEPARTMENT(cont'd)

2. Telephone number;
3. E-mail address;
4. City;
5. Profession;
6. General availability to meet;
7. Explanation of stakeholder interest and how the issue impacts the stakeholder; and
8. Description of how the stakeholder can add to the resolution of faster and more efficient permit processing.

REVENUE DEPARTMENT

Notice of Stakeholder Group

Property Tax Division

Pursuant to Executive Order 80, the Director of the Iowa Department of Revenue hereby gives Notice as to the formation of a Stakeholder Group to review certain revisions to 701—Chapter 71, “Assessment Practices and Equalization,” Iowa Administrative Code.

The purpose of the stakeholder group is to evaluate the proposal formulated by the agricultural adjustment committee convened by the Property Tax Division of the Department to provide a methodology for uniformity in adjusting assessments of non-cropland in the distribution of the agricultural productivity value to each agriculturally classed parcel within each assessing jurisdiction. The stakeholder group will meet to make recommendations and evaluate the following proposed amendment to subrule 71.3(1), which is intended to incorporate the conceptual framework recommended by the agricultural adjustment committee. The proposed amendment to subrule 71.3(1) is shown as underscored text below.

71.3(1) Productivity. In determining the productivity and net earning capacity of agricultural real estate, the assessor shall also use available data from Iowa State University, the United States Department of Agriculture (USDA) National Agricultural Statistics Service, the USDA Farm Service Agency, the Iowa department of revenue, or other reliable sources. The assessor shall also consider the results of a modern soil survey, if completed. The assessor shall determine the actual valuation of agricultural real estate within the assessing jurisdiction and spread such valuation throughout the jurisdiction so that each parcel of real estate is assessed at its actual value as defined in Iowa Code section 441.21.

In spreading such valuation to each parcel, the assessor shall adjust non-cropland. The adjustment shall be applied to non-cropland with a corn suitability rating that is greater than 50 percent of the average corn suitability rating for tillable land for the county. The adjustment shall be determined for each county based upon the 5-year average difference in cash rent between non-irrigated cropland and pasture land as published by the National Agricultural Statistics Service (NASS). The assessor may utilize the Farm Service Agency (FSA) published Common Land Unit (CLU) digital data or other reliable sources in determining non-cropland.

All interested stakeholders who represent the varying interests impacted by the proposal mentioned above should contact Director Courtney M. Kay-Decker, c/o Kristina DeLisi, Department of Revenue, Hoover State Office Building, 1305 E. Walnut Street, Des Moines, Iowa 50319. The Director will determine which stakeholders should make up the group in order to represent the varied interests. Information may be sent by fax to (515)242-6040 or by e-mail to kristina.delisi@iowa.gov no later than October 31, 2012. All stakeholders are asked to provide the following information:

1. Name;
2. Telephone number;
3. E-mail address;
4. City;

REVENUE DEPARTMENT(cont'd)

5. Profession;
6. General availability to meet;
7. Explanation of stakeholder interest and how the rule impacts the stakeholder; and
8. Description of how the stakeholder can add to the resolution of the burden of lack of uniformity in agricultural adjustment methodologies across the State of Iowa.

ARC 0407C**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 17A.3 and 421.17, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 224, “Telecommunication Services,” Iowa Administrative Code.

The subject matter of paragraph 224.6(2)“b” is sourcing of prepaid wireless services. Item 1 amends paragraph 224.6(2)“b” to clarify the rule and ensure compliance with the Streamlined Sales and Use Tax Agreement. The proposed amendment to paragraph 224.6(2)“b” will not necessitate additional expenditures by the Department of Revenue.

Item 2 proposes the adoption of new rule 701—224.8(34A). The new rule explains the administration of the prepaid wireless service enhanced 911 surcharge and is necessary to implement 2012 Iowa Acts, Senate File 2332.

Item 2 will necessitate additional expenditures by the Department of Revenue. In order to administer the program under the guidelines established in 2012 Iowa Acts, Senate File 2332, the Department must make updates to both its paper and electronic registration, filing, and collection systems and devote staff time to administering the program. The fiscal note on 2012 Iowa Acts, Senate File 2332, estimated these changes will cost \$65,190. Administrative costs are estimated at \$43,500. These estimates do not include the cost of audit, enforcement, or collection activities, which is unknown at this time. The Department is permitted to retain 2 percent of the surcharges collected in order to offset these new administrative expenses.

Item 2 places some additional burdens on sellers of prepaid wireless service, who will be required to collect the enhanced 911 surcharge and remit it to the Department at the same time that they file their sales tax returns. This burden is minimized because the remittance process mirrors the remittance process for state sales tax. Retailers are also compensated for the additional burden; they are allowed to retain 3 percent of the surcharge collected.

Item 3 proposes the adoption of new rule 701—224.9(423). The new rule provides guidance on the sales tax exemption for central office and transmission equipment used by certain telecommunications providers. The new rule is necessary to implement Iowa Code section 423.3(47A), a phased-in exemption that began to take effect in 2006 and took full effect on July 1, 2012.

Item 3 will not necessitate additional expenditures by the Department. The Department has determined that the proposed rule on the exemption for central office and transmission equipment will result in savings that benefit the telecommunications industry.

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

The Department has 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 December 8, 2012, to the Policy Section, Policy and

REVENUE DEPARTMENT[701](cont'd)

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 the proposed amendments on or before November 6, 2012. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8036 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 November 6, 2012.

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

These amendments are intended to implement Iowa Code sections 423.3(47A), 423.20 and 423.15 and 2012 Iowa Acts, Senate File 2332, section 10.

The following amendments are proposed.

ITEM 1. Amend paragraph **224.6(2)“b”** as follows:

~~b. Prepaid~~ The sale of prepaid calling service or prepaid wireless calling service is sourced as provided under Iowa Code section 423.15. ~~However, if the seller has sufficient information available, the sale of prepaid wireless calling service may be sourced to the location of the place of primary use.~~ However, in the case of prepaid wireless calling service, Iowa Code section 423.15(1)“e” shall include as an option the location associated with the mobile telephone number.

EXAMPLE 1: An Iowa seller sells a prepaid wireless service airtime card to a consumer at an Iowa retail location. The sale of the prepaid wireless service will be sourced to Iowa.

EXAMPLE 2: An Iowa resident purchases a prepaid wireless service airtime card at a Nebraska retail location. The sale of the prepaid wireless service will be sourced to Nebraska.

EXAMPLE 3: An Iowa consumer with an Iowa billing and mailing address purchases prepaid wireless service through a retailer’s Web site. No items are delivered. The sale would be sourced to the consumer’s Iowa billing address.

EXAMPLE 4: A seller based in California uses a Web site to sell prepaid wireless services to consumers in a number of states. A consumer with an Iowa billing address and a Nebraska mailing address purchases prepaid wireless service from the seller’s Web site. The consumer already owns a prepaid wireless phone; therefore, no item is delivered. Since there is no in-person transaction, and no item delivered, the sale would be sourced to the consumer’s billing address in Iowa.

EXAMPLE 5: A seller based in California uses a Web site to sell prepaid wireless services to consumers in a number of states. A consumer with an Iowa mailing address and a Florida billing address purchases a prepaid wireless phone and 100 minutes of prepaid wireless service from the California seller. The prepaid wireless phone is shipped to the Iowa mailing address. The sale would be sourced to Iowa.

EXAMPLE 6: A consumer who is currently living in Iowa to attend a local university orders prepaid wireless service from a California seller through the seller’s Web site. No items are delivered. The consumer uses a Nebraska billing address. The sale would be sourced to Nebraska.

ITEM 2. Adopt the following **new** rule 701—224.8(34A):

701—224.8(34A) Prepaid wireless E911 surcharge.

224.8(1) Definitions. The definitions in 701—224.2(423) apply to this rule. The following definitions are also applicable to this rule.

“Consumer” means a person who purchases prepaid wireless telecommunications service in a retail transaction.

“Department” means the department of revenue.

“E911” means enhanced 911 emergency communications service.

“Prepaid wireless E911 surcharge” means the surcharge that is required to be collected by a seller from a consumer in the amount established under this rule.

REVENUE DEPARTMENT[701](cont'd)

“*Provider*” means a person who provides prepaid wireless telecommunications service pursuant to a license issued by the Federal Communications Commission.

“*Retail transaction*” means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale. If more than one separately priced item of prepaid wireless calling service is purchased by an end user, each item purchased shall be deemed to be a separate retail transaction.

Items of prepaid wireless calling service include, but are not limited to, prepaid wireless phones, prepaid wireless phone calling cards, rechargeable prepaid wireless phones, rechargeable prepaid wireless phone calling cards, and prepaid wireless service plans.

EXAMPLE 1: If a seller sells two prepaid wireless phone calling cards, two retail transactions have occurred.

EXAMPLE 2: If a seller sells additional minutes for a rechargeable prepaid wireless phone calling card that was purchased at an earlier date, a retail transaction has occurred.

EXAMPLE 3: If a seller sells three separate one-month service plans to a consumer during one sale, three retail transactions have occurred.

EXAMPLE 4: If the consumer has the ability to purchase additional minutes directly from a prepaid wireless phone, each time minutes are purchased, a retail transaction occurs.

“*Seller*” means a person that sells prepaid wireless telecommunications service to another person.

224.8(2) Registration. Each seller that sells prepaid wireless service must register according to the procedures established by the department. The department will make information regarding the procedures available to the public.

224.8(3) Collecting, filing, and remitting.

a. Each seller is responsible for collecting the applicable E911 surcharge from the consumer with respect to each retail transaction occurring in this state. A seller may determine whether the transaction occurs in this state by referring to the department rules on the sourcing of sales of prepaid wireless telecommunications service located in paragraph 224.6(2) “*b.*” See also 2012 Iowa Acts, Senate File 2332, section 10, and Iowa Code sections 423.20 and 423.15.

b. The surcharge must be separately itemized on the invoice, receipt or other similar document, or otherwise disclosed to the consumer.

c. The prepaid wireless E911 surcharge is the liability of the consumer and not of the seller or any provider, except that the seller shall be liable to remit all prepaid wireless E911 surcharges that the seller collects from consumers as provided in paragraph 224.8(3) “*a.*,” including all such surcharges that the seller is deemed to collect where the amount of the surcharge has not been separately stated on an invoice, receipt, or similar document provided to the consumer by the seller.

d. The amount of the prepaid wireless E911 surcharge that is collected by a seller from a consumer, if such amount is separately stated on an invoice, receipt, or other similar document provided to the consumer by the seller, shall not be included in the base for measuring any tax, fee, other surcharge, or other charge that is imposed by this state, any political subdivision of this state, or any intergovernmental agency.

e. The seller must complete an E911 Surcharge Schedule and the surcharge portion of the Iowa Sales Tax and Surcharge Return or Iowa Retailer’s Use Tax and Surcharge Return and file the information with the department.

f. The schedule, return and the collected surcharge are due at the times provided by Iowa Code chapter 423 with respect to the sales and use tax.

g. The seller may deduct and retain 3 percent of prepaid wireless E911 surcharges that are collected by the seller from consumers.

h. The seller is not required to collect the surcharge if a minimal amount of prepaid wireless telecommunications service is sold in conjunction with a prepaid wireless device for a single, nonitemized price. A minimal amount of service is any service denominated as \$5 or less or ten minutes or less.

EXAMPLE: If a seller sells a prepaid wireless phone that comes with ten minutes of service, and the price of the service is not itemized, the seller is not required to collect the surcharge. But if the seller sells

REVENUE DEPARTMENT[701](cont'd)

a prepaid wireless phone with fifteen minutes of service, the seller must collect the surcharge, regardless of whether the price of the service is itemized.

224.8(4) *Audit, appeal, and enforcement.*

a. The audit and appeal procedures applicable to sales and use tax under Iowa Code chapter 423 shall apply to the prepaid wireless E911 surcharge. See also Iowa Code sections 421.10 and 421.60.

b. Pursuant to the authority established in Iowa Code chapter 423, the department shall have the power to assess the seller for penalty and interest on any past due surcharge and exercise any other enforcement powers established in Iowa Code chapter 423. See also Iowa Code sections 421.7 and 421.27.

c. The seller shall maintain, and shall make available to the department for inspection for three years, its books and records in a manner that will permit the department to determine whether the seller has complied with or is complying with the provisions of 2012 Iowa Acts, Senate File 2332, section 10.

224.8(5) *Procedures for documenting that a sale is not a retail transaction.* The procedures for establishing that a sale of prepaid wireless telecommunications service is not a sale is similar to the procedure for documenting sale for resale transactions under Iowa Code chapter 423.

224.8(6) *Procedures for remitting the surcharge to the treasurer.* The department shall transfer all remitted prepaid wireless E911 surcharges to the treasurer of state for deposit in the E911 emergency communications fund created under Iowa Code section 34A.7A, subsection 2, within 30 days of receipt of the E911 surcharge from sellers. Prior to remitting the surcharges to the treasurer, the department shall deduct and retain an amount, not to exceed 2 percent of collected surcharges, to reimburse the department's direct costs of administering the collection and remittance of prepaid wireless E911 surcharges.

This rule is intended to implement 2012 Iowa Acts, Senate File 2332, section 10.

ITEM 3. Adopt the following **new** rule 701—224.9(423):

701—224.9(423) State sales tax exemption for central office equipment and transmission equipment. Effective July 1, 2012, central office equipment and transmission equipment primarily used in the furnishing of telecommunications services on a commercial basis are exempt when used by the following providers: local exchange carriers and competitive local exchange service providers as defined in Iowa Code section 476.96; franchised cable television operators, mutual companies, municipal utilities, cooperatives, and companies furnishing communications services that are not subject to rate regulation as provided in Iowa Code chapter 476; long distance companies as defined in Iowa Code section 477.10; or for a commercial mobile radio service as defined in 47 C.F.R. §20.3. The exemption was phased in beginning in 2006 according to the schedule described in subrule 224.9(2).

224.9(1) *Definitions.*

“*Central office equipment*” means equipment utilized in the initiating, processing, amplifying, switching, or monitoring of telecommunications services including ancillary equipment and apparatus which support, regulate, control, repair, test, or enable such equipment to accomplish its function. Central office equipment includes:

1. Stored program control digital switches and their associated equipment used to switch or route communication signals with a system from the origination point to the appropriate destination.

2. Peripheral equipment used to support the transmission of communications over the network such as emergency power equipment, fault alarm equipment, multiplex equipment, digital cross connects, terminating equipment, fiber optic electronics, communication hardware equipment, and test equipment.

3. Circuit equipment which utilizes the message path to carry signaling information or which utilizes separate channels between switching offices to transmit signaling information independent of the subscribers' communication paths or transmission channels.

4. Radio equipment including radio-transmitters and receivers utilized to transmit communication signals through the air from one location to another. Radio equipment also includes repeaters, which are located every 20 to 30 miles; at these points, radio signals are received, amplified and retransmitted.

REVENUE DEPARTMENT[701](cont'd)

“Transmission equipment” means equipment utilized in the process of sending information from one location to another location. Transmission equipment includes ancillary equipment and apparatus which support, regulate, control, repair, test, or enable such equipment to accomplish its function.

224.9(2) Schedule for phase-in of exemption. This exemption was phased-in beginning in 2006 according to the following schedule:

- a. If the sale or rental occurs on or after July 1, 2006, through June 30, 2007, one-seventh of the state tax on the sales price shall be refunded.
- b. If the sale or rental occurs on or after July 1, 2007, through June 30, 2008, two-sevenths of the state tax on the sales price shall be refunded.
- c. If the sale or rental occurs on or after July 1, 2008, through June 30, 2009, three-sevenths of the state tax on the sales price shall be refunded.
- d. If the sale or rental occurs on or after July 1, 2009, through June 30, 2010, four-sevenths of the state tax on the sales price shall be refunded.
- e. If the sale or rental occurs on or after July 1, 2010, through June 30, 2011, five-sevenths of the state tax on the sales price shall be refunded.
- f. If the sale or rental occurs on or after July 1, 2011, through June 30, 2012, six-sevenths of the state tax on the sales price shall be refunded.
- g. If the sale or rental occurs on or after July 1, 2012, the sales price is exempt and no payment of tax and subsequent refund are required.

224.9(3) Refund claims. For sales or rental occurring on or after July 1, 2006, through June 30, 2012, a refund of the tax paid as provided in subrule 224.9(2) must be applied for, not later than six months after the month in which the sale or rental occurred, in the manner and on the forms provided by the department. Refunds shall only be of the state tax collected. Refunds authorized shall accrue interest at the rate in effect under Iowa Code section 421.7 from the first day of the second calendar month following the date the refund claim is received by the department.

This rule is intended to implement Iowa Code section 423.3(47A).

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 David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for October is 3.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

TREASURER OF STATE(cont'd)

New official state interest rates, effective October 9, 2012, 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 .20%

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 0391C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 163.1(1), the Department of Agriculture and Land Stewardship hereby amends Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

These amendments lower the age at which a slaughtered Cervidae animal is subject to testing for chronic wasting disease.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin as **ARC 0263C** on August 8, 2012. No comments on the Notice were received from the public. Since publication of the Notice, a corresponding change in the definition of "cervid CWD surveillance identification program" has been added.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective November 1, 2012. The amendments confer a benefit on the public by allowing the state to continue to be in compliance with the updated federal program requirements.

These amendments are subject to the Department's general waiver provisions.

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

These amendments are intended to implement Iowa Code section 163.1.

These amendments will become effective November 1, 2012.

The following amendments are adopted.

ITEM 1. Amend rule **21—64.104(163)**, definition of "Cervid CWD surveillance identification program," as follows:

"Cervid CWD surveillance identification program" or *"CCWDSI program"* means a CWD surveillance program that requires identification and laboratory diagnosis on all deaths of Cervidae ~~46~~ 12 months of age and older including, but not limited to, deaths by slaughter, hunting, illness, and injury. A copy of approved 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.

ITEM 2. Amend subrule 64.106(1) as follows:

64.106(1) Slaughter establishments. All slaughtered Cervidae ~~46~~ 12 months of age and older must have brain tissue submitted at slaughter and examined for CWD by an approved 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.

[Filed Emergency After Notice 9/21/12, effective 11/1/12]

[Published 10/17/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/12.

ARC 0401C

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed

Pursuant to the authority of Iowa Code section 8A.104(5), the Department of Administrative Services (DAS) amends Chapter 50, "Human Resources Definitions," Chapter 51, "Coverage and Exclusions," Chapter 52, "Job Classification," Chapter 53, "Pay," Chapter 54, "Recruitment, Application and Examination," Chapter 56, "Filling Vacancies," Chapter 57, "Appointments," Chapter 58, "Probationary Period," Chapter 59, "Promotion, Transfer, Temporary Assignment, Reassignment and Voluntary Demotion," Chapter 60, "Separations, Disciplinary Actions and Reduction in Force," Chapter 61, "Grievances and Appeals," and Chapter 63, "Leave," Iowa Administrative Code.

The Department of Administrative Services is undertaking a comprehensive review of all existing DAS rules. This filing is the first installment related to this review and encompasses amendments related to the Human Resources Enterprise (HRE) within DAS. The HRE rules relating to benefits were previously reviewed and updated in 2009. DAS intends to adopt additional amendments relating to Information Technology Enterprise (ITE) operations as well as the operations of the General Services Enterprise and the State Accounting Enterprise.

These amendments make several necessary improvements to existing rules including but not limited to the following: amending certain definitions to reflect existing statutes, eliminate unnecessary terms, and make various technical and grammatical changes.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 27, 2012, as **ARC 0180C**. No public comment was received.

The Notice of Intended Action included several items related to the Information Technology Enterprise. As a result of further discussion between the Chief Information Officer and members of the Department of Administrative Services, the Department intends to revisit the ITE rules at a later date; consequently Items 1 to 11 as published under Notice of Intended Action were not adopted, and the subsequent items were renumbered accordingly.

Two other adjustments were made to the amendments to reflect comments from the Administrative Rules Review Committee. In the introductory paragraph of rule 11—57.5(8A), the qualifier "unless otherwise permitted by law" was added to a new provision pertaining to former employees. In addition, the words "within the last 12 months" as they related to the most recent performance review were deleted from the third sentence of the introductory paragraph of subrule 60.3(3) and from the last sentence of paragraph 60.3(5)"b."

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

These amendments are intended to implement Iowa Code chapter 8A, subchapter IV.

These amendments will become effective November 21, 2012.

The following amendments are adopted.

ITEM 1. Amend the following definitions in rule **11—50.1(8A)**:

"Agency" means a department, independent agency, or statutory office ~~provided for in the Iowa Code section 7E.2.~~

"Certification" means the referral of ~~available~~ qualified names from an eligible list to an agency for the purpose of making a selection in accordance with these rules.

"Class" or "job classification" or "job class" means one or more positions so similar in duties, responsibilities, and qualifications that each may be assigned to the same job title and pay plan.

"Classification plan" means the ~~printed~~ published list of job classifications and the related elements assigned to each. The classification plan is published annually by the department and revised as necessary.

"Grievance" means ~~an expressed difference, dispute, or controversy between an employee and the appointing authority, with respect to circumstances or conditions of employment~~ a written complaint alleging a specific violation of these rules or of Iowa Code chapter 8A, subchapter IV.

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“Merit system” means ~~those positions or employees in the state personnel system determined by the director to be covered by the provisions of 2003~~ the system of human resource administration based on merit principles and scientific methods to govern the appointment, compensation, promotion, welfare, development, transfer, layoff, removal, and discipline of its civil employees and other instances of state employment established pursuant to Iowa Code Supplement chapter 8A as it pertains to qualifications, examinations, probation, and just cause discipline and discharge hearings.

“Minimum qualifications” means the minimum education, experience, or other background required to be considered eligible to apply for, or otherwise perform the duties of a particular job classification. ~~Minimum qualifications are published in classification descriptions, and pertain only to positions covered by merit system provisions.~~

“Overtime” means those hours that exceed 40 in a workweek for which an eligible employee is entitled to be compensated ~~unless otherwise specified in a collective bargaining agreement.~~

“Pay increase” means ~~a periodic step or percentage an~~ increase in pay within the pay range for the class based on time spent, performance, or both.

“Permanent employee” means any executive branch employee (except board of regents employees) who has completed at least six months of continuous nontemporary employment. When used in conjunction with coverage by the merit system provisions referred to in ~~2003 Iowa Code Supplement section 8A.411, it~~ “permanent employee” further means those employees who have completed the period of probationary status provided for in 2003 Iowa Code Supplement section 8A.413. For peace officers employed by the department of public safety, “permanent employee” means a peace officer who has completed a 12-month probationary period after appointment.

“Premium overtime rate of compensation” means compensation equal to one and one-half hours for each hour of overtime.

“Probationary employee” means any executive branch employee (except board of regents employees) who has completed less than six months of continuous nontemporary employment. When used in conjunction with coverage by the merit system provisions referred to in ~~2003 Iowa Code Supplement section 8A.411, it~~ “probationary employee” further means those employees who have not completed the period of probationary status provided for in 2003 Iowa Code Supplement section 8A.413. For peace officers employed by the department of public safety, “probationary employee” means a peace officer who has completed less than 12 months of continuous nontemporary employment following appointment to a peace officer classification.

“Reassignment” means the movement of an employee ~~and the position the employee occupies~~ within the same organizational unit or to another organizational unit at the discretion of the appointing authority. A reassignment may include a change in duties, work location, days of work or hours of work, and may be temporary or permanent. A reassignment may result in a change ~~from~~ from the employee’s previous job classification.

“Same pay grade” means those pay grades in the various pay plans having the same pay grade number ~~as well as those pay grades using a three-step pay range where those steps correspond to the top three steps of a six-step range. A three-step pay grade shall be considered the same as the corresponding six-step pay grade in determining whether an action is a promotion, demotion, or transfer.~~

“Standby” means those times when eligible employees are required by the appointing authority to restrict their activities during off-duty hours so as to be immediately available for duty ~~when required by the appointing authority, and is other than simply the requirement to leave word of their whereabouts in case of the need to be contacted.~~

ITEM 2. Rescind the definitions of “Fee-for-services contractor,” “Immediate family” and “Job classification” in rule **11—50.1(8A)**.

ITEM 3. Amend rule 11—51.2(8A) as follows:

11—51.2(8A) Merit system. The merit system shall include and apply to those positions in the state personnel system which have been determined by the director to be covered by ~~the provisions of 2003 Iowa Code Supplement section 8A.411 as it pertains to qualifications, examinations, probation, and just~~

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cause discipline and discharge hearings, ~~hereafter~~ hereinafter referred to as merit system provisions. Whenever the director determines that a position should be covered by or not covered by merit system provisions, the director shall notify the appointing authority in writing of the decision and the effective date.

51.2(1) *Exclusion of division administrators and policy-making positions.* The appointing authority of each agency shall submit to the director for approval the position number and title of each position referred to in ~~2003 Iowa Code Supplement~~ section 8A.412; and proposed for exclusion from coverage by the merit system provisions referred to in ~~2003 Iowa Code Supplement~~ section 8A.411(4). Subsequent changes in the number or duties of these positions shall be submitted to the director for exclusion approval.

51.2(2) No change.

51.2(3) *Other exclusions.* For further information regarding exclusions from merit system coverage, refer to ~~2003 Iowa Code Supplement~~ section 8A.412.

ITEM 4. Amend **11—Chapter 51**, implementation sentence, as follows:

These rules are intended to implement ~~2003 Iowa Code Supplement~~ section 8A.413 and Iowa Code chapters 19B and 70A.

ITEM 5. Amend subrule 52.4(5) as follows:

52.4(5) The maximum time periods in the position classification review process may be extended when mutually agreed to in writing ~~and signed~~ by the parties.

ITEM 6. Amend subrule 52.5(1) as follows:

52.5(1) If, following a position classification review request, a decision notice is not issued within the time limit provided for in these rules, or the appointing authority or the incumbent does not agree with the department's final position classification review decision, the appointing authority or the incumbent may request a classification appeal committee hearing. The request shall be in writing and shall be ~~mailed~~ submitted to: Classification Appeal Committee Chair, Department of Administrative Services—Human Resources Enterprise, Hoover State Office Building, Level A, Des Moines, Iowa 50319-0150. The classification appeal hearing process is a contested case as defined by Iowa Code chapter 17A.

ITEM 7. Amend paragraph **52.5(4)“a”** as follows:

a. The classification appeal committee shall schedule a hearing ~~within 30 calendar days following receipt of the request for a hearing unless otherwise mutually agreed to in writing and signed by the parties pursuant to Iowa Code section 17A.12.~~

ITEM 8. Amend subrule 52.6(1) as follows:

52.6(1) Position classification changes shall not be retroactive and shall become effective only after approval by the director. Position classification changes approved by the director that are not made effective by the appointing authority within 90 calendar days following the date approved shall be void. Position classification changes that will have a budgetary impact shall not become effective until approved by the department of management. If the appointing authority decides not to implement the change or the department of management does not approve funding for the change, duties commensurate with the current job classification shall be restored by the appointing authority within three pay periods following the date of that decision.

ITEM 9. Amend **11—Chapter 52**, implementation sentence, as follows:

These rules are intended to implement ~~2003 Iowa Code Supplement~~ section 8A.413 and Iowa Code chapters 19B and 70A.

ITEM 10. Amend rule **11—53.2(8A)** as follows:

11—53.2(8A) Pay plan content. Pay plans shall have numbered pay grades showing minimum and maximum salaries ~~and intermediate salary steps, if applicable.~~

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ITEM 11. Amend subrule 53.4(1) as follows:

53.4(1) *Employees.* The director shall assign classes to pay plans and grades and shall assign employees to classes. Employees shall be paid ~~either at one of the established steps or~~ at a rate between the minimum and maximum of the pay grade of the class to which the employee is assigned. Pay decisions shall be at the discretion of the appointing authority; unless otherwise provided for in this chapter or by the director.

ITEM 12. Amend subrule 53.4(6) as follows:

53.4(6) *General pay increases.* The director shall administer general pay increases for employees that have been authorized by the legislature and approved by the governor. An employee in a ~~noncontract class position~~ whose pay has been red-circled above the maximum pay rate of the class to which the employee is assigned shall not receive a general pay increase; unless specifically authorized by the Acts of the general assembly or otherwise provided for in these rules.

ITEM 13. Amend subrule 53.4(7) as follows:

53.4(7) *Pay corrections.* An employee's pay shall be corrected if it is found to be in violation of these rules or a collective bargaining agreement. ~~If the correction is the result of an error or omission, the pay may be corrected within 12 pay periods following the date the employee's pay was incorrectly set or the transaction that should have occurred was omitted.~~ Corrections shall be made on the first day of a pay period.

a. Retroactive pay. An employee may receive retroactive pay ~~for a period of up to 90 calendar days preceding the date the error was corrected or the omission occurred~~ in the same fiscal year for which the pay should have been paid. A request for retroactive pay must be received and processed no later than August 31 following the close of the fiscal year for which the request is made. Requests for retroactive pay ~~beyond 90 calendar days or which extend into a previous fiscal year~~ are not made in a timely fashion must be submitted to the state appeal board.

b. No change.

ITEM 14. Amend subrule 53.5(1) as follows:

53.5(1) *Individual advanced appointment rate.* For new hires, reinstatements, or promotions ~~and upward reclassifications~~ of employees in contract classes, the appointing authority may ~~grant steps or request pay rates~~ in excess of the minimum based on education and experience directly related to duties that exceed the minimum qualifications of the class. The appointing authority shall maintain a written record of the justification for the advanced appointment rate. The record shall be a part of the official employee file. All employees possessing equivalent qualifications in the same class and with the same appointing authority may be adjusted to the advanced rate. Individual advanced appointment rates are subject to prior approval by the department.

ITEM 15. Amend subrule 53.5(5) as follows:

53.5(5) *Temporary, seasonal, and internship.* When an appointment is made to a class on a temporary, seasonal, or internship basis, the employee may be paid at any rate within the pay grade to which the class is assigned. Such employees may be given authorized, noncontract salary, across-the-board adjustments within the minimum and maximum rates of the pay grade. Temporary, seasonal and internship employees are not eligible for within-grade increases based on performance or time in service.

ITEM 16. Amend subrule 53.6(4) as follows:

53.6(4) *Pay plan changes.* If a transaction results in an employee's being paid from a different pay plan ~~without steps~~, the employee shall be paid at the employee's current pay rate, except as provided in subrules 53.6(1) and 53.6(2). ~~When the transaction results in an employee's being paid from a pay plan with steps, the employee shall be paid at a step in the pay plan that is closest to but not less than the employee's current pay rate, except that for~~ For demotions, the employee's pay shall be at the discretion of the appointing authority so long as if the employee's pay is not greater than it was prior to the demotion. For setting eligibility dates, see subrule 53.7(5).

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ITEM 17. Amend paragraph **53.6(6)“b”** as follows:

b. Contract classes. If an employee is promoted to a contract-covered class ~~without steps~~, the employee shall receive a 5 percent pay increase. ~~If promoted to a contract-covered class with steps, the employee shall receive a one-step pay increase,~~ except as provided in subrules 53.5(1), 53.6(1), 53.6(2), and 53.6(4).

ITEM 18. Amend subrule 53.6(7) as follows:

53.6(7) Demotion. If an employee demotes voluntarily or is disciplinarily demoted, the employee may be paid at any ~~step or~~ pay rate that does not exceed the employee's pay at the time of demotion, except as provided in subrules 53.6(1), 53.6(2) and 53.6(4). For setting eligibility dates, see subrule 53.7(5).

ITEM 19. Amend subrule 53.6(10) as follows:

53.6(10) Return from leave. If an employee returns from an authorized leave, the employee shall be paid at the same ~~step or~~ pay rate as prior to the leave, including any pay grade, pay plan, class or general salary increases for which the employee would have been eligible if not on leave, except as provided for in subrules 53.6(1) and 53.6(2). For setting eligibility dates, see subrule 53.7(5).

ITEM 20. Amend subrule 53.6(12) as follows:

53.6(12) Reinstatement. When an employee is reinstated, the employee may be paid at any ~~step or~~ pay rate for the class to which the employee is reinstated.

ITEM 21. Amend subrule 53.7(1) as follows:

53.7(1) General. An employee, upon completion of a minimum pay increase eligibility period, may receive a periodic ~~step or percentage~~ increase in base pay that is within the pay grade and pay plan of the class to which the employee is assigned upon completion of a minimum pay increase eligibility period.

a. Pay increase eligibility periods. The minimum pay increase eligibility period for employees ~~paid from pay plans without steps~~ shall be 52 weeks, except that it shall be 26 weeks for new hires and employees who receive an increase in base pay as a result of a promotion, reclassification or pay grade change. ~~Minimum pay increase eligibility periods for employees paid from pay plans with steps shall be the number of weeks in the pay plan that corresponds to the employee's step.~~

b. Noncreditable periods. Except for required educational and military leave, periods of leave without pay exceeding 30 calendar days shall not count toward an employee's pay increase eligibility period.

c. Reduction of time periods. The director may authorize a reduction in the pay increase eligibility periods for classes a position where there are is an unusual recruitment and retention ~~circumstances~~ circumstance.

ITEM 22. Amend subrule 53.7(5) as follows:

53.7(5) Eligibility dates. An employee's pay increase eligibility date shall be set at the time of hire, and if the employee starts on the first working day of the pay period, it shall be the first day of the pay period following completion of the employee's minimum pay increase eligibility period. Otherwise, it shall be the first day of the pay period following the date the employee starts work.

a. General. A new eligibility date shall be set when an employee receives an increase in base pay, except when transferring in the same pay grade to a different pay plan. ~~The following pay increase eligibility periods shall be used to set these dates.~~

~~(1) Fifty-two~~ Such date will be set at 52 weeks for employees paid from pay plans without steps, except ~~that~~ for new hires and employees who receive a pay increase as a result of a promotion, reclassification or pay grade change. The date for such employees it shall be 26 weeks following the effective date of the action.

~~(2) For employees paid from pay plans with steps, it shall be the number of weeks in the pay plan that corresponds to the employee's pay step after the pay increase.~~

b. to d. No change.

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~~*e.*—*Prior service credit.* If a transfer or demotion results in an employee's having a longer pay increase eligibility period, credit shall be given for the time served toward completion of the employee's new pay increase eligibility period.~~

f. e. *Administrative changes.* The director may change eligibility dates when economic or other pay adjustments are made to the classification plan or pay plans.

ITEM 23. Amend subrule 53.8(1) as follows:

53.8(1) *Leadworker.* An employee who is temporarily assigned lead work duties, as defined in rule 11—50.1(8A), may be given additional pay of up to 15 percent unless otherwise provided in an applicable collective bargaining agreement.

ITEM 24. Amend subrule 53.9(4) as follows:

53.9(4) *Discretionary payments.* A lump sum payment for exceptional job performance may be given to an employee ~~whenever the appointing authority deems it appropriate.~~ A written explanation setting forth the reasons shall first be submitted to the director for approval.

ITEM 25. Amend subrule 54.2(6) as follows:

54.2(6) *Disqualification or removal of applicants.* The director may refuse to place an applicant on a list of eligibles, refuse to refer an applicant for a vacancy, refuse to approve the appointment of an applicant, or remove an applicant from a list of eligibles for a position if it is found that the applicant:

a. to g. No change.

h. Has resigned in lieu of discharge for cause.

~~*i.*~~ *i.* Has been convicted of a crime that is shown to have a direct relationship to the duties of a job class or position.

~~*j.*~~ *j.* Is proven to be an unrehabilitated substance abuser who would be unable to perform the duties of the job class or who would constitute a threat to state property or to the safety of others.

~~*k.*~~ *k.* Is not a United States citizen and does not have a valid permit to work in the United States under regulations issued by the U.S. Immigration and Naturalization Service.

Applicants disqualified or removed under this subrule shall be notified in writing by the director within five workdays following removal. Applicants may informally request that the director reconsider their disqualification or removal by submitting additional written evidence of their qualifications or reasons why they should not be removed in accordance with rule 11—61.3(8A). Formal appeal of disqualification or removal shall be in accordance with 11—subrule 61.2(4).

ITEM 26. Amend subrule 54.3(3) as follows:

54.3(3) *Background checks.* Background checks and investigations, including, but not limited to, checks of arrest or conviction records, fingerprint records, driving records, financial or credit records, and child or dependent adult abuse records, constitute an examination or test within the meaning of this subrule, and Iowa Code chapter 19A 8A and 161—subrule 8.1(1). Confidential documents provided to the director by other agencies in conjunction with the administration of this rule shall continue to be maintained in ~~their~~ the documents' confidential status. The director is subject to the same policies and penalties regarding the confidentiality of the documents as any employee of the agency providing the documents.

Background checks shall be conducted only after receiving approval from the director concerning the areas to be checked and the standards to be applied in evaluating the information gathered. Background checks are subject to the following limitations and requirements:

a. and b. No change.

c. ~~The director~~ appointing authority shall provide a statement that shall be presented ~~by the appointing authority~~ to each applicant that who is to be investigated under this subrule. This statement shall inform the applicant that the applicant is subject to a background check as a condition of employment and the topics to be covered in the background check. It shall also inform the applicant that all information gathered will be treated as confidential within the meaning of Iowa Code section 22.7, but that all such information gathered shall be available to the applicant upon request through the agency authorized to release such information, unless otherwise specifically provided by law. The

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statement shall be signed and dated by the applicant and shall include authorization from the applicant for the appointing authority to conduct the background check as part of the application and selection process and to share the information gathered with the director.

~~d.—Information obtained from a background check is not necessarily a bar to an applicant's employment.~~

~~e.—Appointing authorities shall send information periodically to the director on forms prescribed by the director. This information shall include the following:~~

- ~~(1) The total number of applicants for each position who were eligible for a background check.~~
- ~~(2) A list of all applicants for whom background checks were conducted, by organizational unit, name, social security number, type of background check, and result (pass or fail).~~
- ~~(3) Documentation of specific business necessity and job relatedness when any inequitable rejection rate is identified by the director.~~

ITEM 27. Amend subrule 54.4(2) as follows:

54.4(2) Examination administration. The director or appointing authority shall arrange for suitable locations and conditions to conduct examinations. Locations in various areas of the state and out of state may be used. Examinations may be postponed, canceled, or rescheduled.

~~a. Examination of persons with disabilities.~~ Persons with disabilities may request specific examination accommodations. Reasonable accommodations will be granted in accordance with policies for accommodations established by the department. ~~Persons in the certified disability program or any other formal waiver program established by the department may be exempt from examinations.~~

~~b.—Special admittance.~~ Requests for special admittance after the closing date for application shall be submitted in writing to the director or the appointing authority. ~~The request shall explain why the applicant seeks special admittance.~~

~~e. b. Retaking examinations.~~ Applicants may not retake aptitude, psychological, video-based or other examinations for 60 calendar days following the last date the examination was taken except as provided for in rule 11—54.6(8A). Violation of the waiting period for an examination shall result in the voiding of the current examination score ~~being voided~~ and the imposition of an additional 60-calendar-day waiting period ~~being imposed~~.

Keyboard examinations, such as typing, may be retaken at any time without a waiting period, ~~if equipment is available.~~

The most recent examination score shall determine the applicant's qualification for the corresponding eligible lists.

Applicants who are required to take examinations covered by the rules or procedures of other agencies are subject to applicable rules or procedures on retakes for such examinations of that agency.

ITEM 28. Amend rule 11—54.6(8A) as follows:

11—54.6(8A) Review of written examination questions. Applicants may request to review their incorrectly answered questions on department-administered written examinations except that aptitude, psychological, and video-based examinations are not subject to review. An applicant who reviews written examination questions may not retake that examination or an examination with the same or similar content for 60 calendar days following the review ~~and then only if the class is open for recruitment.~~ Violation of this waiting period shall result in the voiding of the current examination score ~~being voided~~ and the imposition of an additional 60-calendar-day waiting period ~~being imposed~~.

ITEM 29. Amend rule 11—56.6(8A) as follows:

11—56.6(8A) Incomplete lists. If the number of names available on a nonpromotional list is less than six, the appointing authority will be granted provisional appointment authority.

ITEM 30. Amend rule 11—57.1(8A) as follows:

11—57.1(8A) Filling vacancies. Unless otherwise provided for in these rules or the Iowa Code, the filling of all vacancies shall be subject to the provisions of these rules. No vacant position in the executive

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branch shall be filled until the position has been classified in accordance with Iowa Code Supplement chapter 8A and these rules.

An employee who has participated in the phased retirement program shall not be eligible for permanent employment for hours in excess of those worked at the time of retirement. ~~An~~ A former employee who has participated in the any early retirement or early termination program shall not be eligible for any state employment, except as provided for in the applicable program.

A person who has served as a commissioner or board member of a regulatory agency shall not be eligible for employment with that agency until two years after termination of the appointment.

ITEM 31. Amend rule 11—57.5(8A), introductory paragraph, as follows:

11—57.5(8A) Reinstatement. A permanent employee who left employment for other than just cause may be reinstated with permanent or probationary status to any class for which qualified at the discretion of an appointing authority. Reinstatement shall not require appointment from a list of eligibles. Former employees who retired and applied for retirement benefits under an eligible state retirement system or program are not eligible for reinstatement unless otherwise permitted by law.

ITEM 32. Amend rule 11—58.1(8A), introductory paragraph, as follows:

11—58.1(8A) Duration. All original full-time or part-time appointments to permanent positions shall require a six-month period of probationary status. Appointments to peace officer positions at the department of public safety require a 12-month probationary period following appointment. Employees with probationary status shall not be eligible for promotion, reinstatement following separation, or other rights to positions unless provided for in this chapter, nor have reduction in force, recall, or appeal rights.

ITEM 33. Amend rule 11—58.4(8A) as follows:

11—58.4(8A) Promotion during the period of probationary status. A probationary employee who is promoted during the period of probationary status to a position covered by merit system provisions shall be hired in accordance with 11—subrule 56.3(2)(3). The total required probationary period shall include the probationary service in the class from which the employee is promoted. The rate of pay shall be set in accordance with 11—subrule 53.6(6).

ITEM 34. Amend rule 11—59.1(8A) as follows:

11—59.1(8A) Promotion.

~~59.1(1)~~ An appointing authority may promote an employee with permanent status if the employee meets the minimum qualifications and other promotional screening requirements for the position. The employee must be on the list of eligibles for the position and available under the conditions stated on the list request.

~~59.1(2)~~ Agencies shall collect and forward to the director data on the characteristics of applicants considered for promotion in accordance with the director's requirements and these rules.

ITEM 35. Amend rule 11—59.2(8A) as follows:

11—59.2(8A) Reassignment. An appointing authority may reassign an employee. Reassignments may be intra-agency or interagency. Interagency reassignments require the approval of both the sending and the receiving appointing authorities.

An employee who refuses a reassignment may be discharged in accordance with rule 11—60.2(8A), except as provided for in the ~~second unnumbered paragraph~~ of this rule.

If the reassignment of an employee would result in the loss of merit system coverage, an appointing authority may not reassign that employee without the employee's written consent regarding the change in merit system coverage. A copy of the consent letter shall be forwarded by the appointing authority to the director. If the employee does not consent to the change in coverage, a reduction in force may be initiated in accordance with these rules or the applicable collective bargaining agreement.

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ITEM 36. Amend paragraph **60.1(1)“a”** as follows:

a. To resign or retire in good standing, an employee must give the appointing authority at least 14 calendar days' prior notice unless the appointing authority agrees to a shorter period. A written notice of resignation or retirement shall be given by the employee to the appointing authority, with a copy forwarded to the director by the appointing authority at the same time. An employee who fails to give this prior notice may, at the request of the appointing authority, be barred from certification or appointment to that agency for a period of up to two years. Resignation or retirement shall not be subject to appeal under 11—Chapter 61 unless it is alleged that it was submitted under duress.

Employees who are absent from duty for three consecutive workdays without proper authorization from the appointing authority may be considered to have voluntarily terminated employment. The appointing authority shall notify the employee ~~by registered letter (return receipt requested) that they must return to work within two workdays following receipt of the notification or be removed from the payroll. If the appointing authority receives notice from the U.S. post office that the letter was undeliverable, the employee may be removed from the payroll five days following receipt of that notice.~~ of the authority's decision to remove the employee from the payroll. Notification shall be sent to the employee's last-known address, with delivery confirmation required. The appointing authority shall consider requests to review circumstances.

ITEM 37. Rescind subrule 60.1(3) and adopt the following **new** subrule in lieu thereof:

60.1(3) Early retirement incentive program—1992. This early retirement incentive program is provided for in 1992 Iowa Acts, chapter 1220. Employees who participated in this program are not eligible to accept any further employment with the state of Iowa. This prohibition does not apply to a program participant who is later elected to public office.

ITEM 38. Rescind subrule 60.1(4) and adopt the following **new** subrule in lieu thereof:

60.1(4) Sick leave and vacation incentive program—2002. This termination incentive program is provided for in 2001 Iowa Acts, Second Extraordinary Session, chapter 5. An employee who elected participation in this program is not eligible to accept any further permanent employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

ITEM 39. Rescind subrule 60.1(5) and adopt the following **new** subrule in lieu thereof:

60.1(5) Sick leave and vacation incentive program—Fiscal Year 2003. This termination incentive program is provided for in 2002 Iowa Acts, Second Extraordinary Session, chapter 1001. An employee who elected participation in this program is not eligible to accept any further permanent part-time or full-time employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

ITEM 40. Rescind subrule 60.1(6) and adopt the following **new** subrule in lieu thereof:

60.1(6) Sick leave and vacation incentive program—Fiscal Year 2005. This termination incentive program is provided for in 2004 Iowa Acts, chapter 1035. An employee who elected participation in this program is not eligible to accept any further permanent part-time or full-time employment with the state of Iowa from the date of termination from employment. This prohibition does not apply to a program participant who is later elected to public office.

ITEM 41. Amend rule 11—60.2(8A), introductory paragraph, as follows:

11—60.2(8A) Disciplinary actions. Except as otherwise provided, in addition to less severe progressive discipline measures, any employee is subject to any of the following disciplinary actions when the action is based on a standard of just cause: suspension, reduction of pay within the same pay grade, disciplinary demotion, or discharge. Disciplinary action involving employees covered by collective bargaining agreements shall be in accordance with the provisions of the agreement. Disciplinary action shall be based on any of the following reasons: inefficiency, insubordination, less than competent job performance, refusal of a reassignment, failure to perform assigned duties, inadequacy in the performance of assigned duties, dishonesty, improper use of leave, unrehabilitated

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substance abuse, negligence, conduct which adversely affects the employee's job performance or the agency of employment, conviction of a crime involving moral turpitude, conduct unbecoming a public employee, misconduct, or any other just cause.

ITEM 42. Amend subrule 60.2(2) as follows:

60.2(2) Reduction of pay within the same pay grade. An appointing authority may reduce the pay of an employee who is covered by the overtime provisions of the federal Fair Labor Standards Act to a lower ~~step or~~ rate of pay within the same pay grade assigned to the employee's class for any number of pay periods considered appropriate. A written statement of the reasons for the reduction and its duration shall be sent to the employee within 24 hours after the effective date of the action, and a copy shall be sent to the director by the appointing authority at the same time.

Employees who are exempt from the overtime provisions of the federal Fair Labor Standards Act will not be subject to reductions of pay within the same pay grade except for infractions of safety rules of major significance, and then only after the appointing authority receives prior approval from the director.

ITEM 43. Amend paragraph **60.3(2)“d”** as follows:

d. The appointing authority shall develop a plan for the reduction in force and shall submit that plan to the director for approval in advance of the effective date. The plan must be approved by the director before it can become effective. The plan shall include the reason(s) for and the effective date of the reduction in force, the reduction in force unit(s), the reason(s) for choosing the unit(s) if the unit(s) is smaller than a bureau, the number of permanent merit system covered employees by class to be eliminated or reduced in hours, the cutoff date for length of service and performance credits to be utilized in determining retention points, and any other information requested by the director. ~~The appointing authority shall post each approved reduction in force plan for 60 calendar days in conspicuous places throughout the reduction in force unit. The posting shall include the names of all permanent merit system covered employees for each affected job class in the reduction in force unit by retention point order.~~

ITEM 44. Amend subrule 60.3(3), introductory paragraph, as follows:

60.3(3) Retention points. The reduction in force shall be in accordance with total retention points made up of a combination of points for length of service and points for performance record. The director, at the request of the appointing authority, may approve specific exemptions from reduction in force where special skills or abilities are required and have been previously documented in the records of the department as essential for performance of the assigned job functions. An employee with greater retention points who has received a rating of less than “meets expectations” on the most recent performance review given, or who has a disciplinary suspension or demotion within the last 12 months, may be subject to reduction in force before the employee with the next lowest retention points, subject to approval of the director. A cutoff date shall be set by the appointing authority beyond which no points shall be credited. Length of service and performance credits shall be calculated as follows:

ITEM 45. Amend subrule 60.3(4), introductory paragraph, as follows:

60.3(4) Order of reduction in force. Permanent merit system covered employees in the approved reduction in force unit shall be placed on a list in descending order by class beginning with the employee having the highest total retention points in the class in the layoff unit. Reduction in force selections shall be made from the list in inverse order regardless of full-time or part-time status, except as provided in subrule 60.3(3). If two or more employees have the same combined total retention points, the order of reduction shall be determined by giving preference in the following sequence:

ITEM 46. Amend paragraphs **60.3(5)“b”** and **“c”** as follows:

b. Employees who choose to exercise bumping rights must do so to a position in the applicable reduction in force unit. Bumping may be to a lower class in the same series or to a lower formerly held class (or its equivalent if the class has been retitled) in which the employee had nontemporary status while continuously employed in the state service. Bumping shall not be permitted to classes from which employees were voluntarily or disciplinarily demoted. Bumping by nonsupervisory employees shall be limited to positions in nonsupervisory classes. Bumping to classes that have been designated as collective bargaining exempt shall be limited to persons who occupy classes with that designation at the time of

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

the reduction in force. Bumping shall be limited to positions covered by merit system provisions and positions covered by a collective bargaining agreement.

The director may, at the request of the appointing authority, approve specific exemptions from the effects of bumping where special skills or abilities are required and have been previously documented in the records of the department of administrative services as essential for performance of the assigned job functions. An employee with greater retention points who has received a rating of less than “meets expectations” on the most recent performance review given, or who has a disciplinary suspension or demotion within the last 12 months, may be subject to reduction in force before the employee with the next lowest retention points, subject to approval of the director.

c. When bumping as set forth in paragraph 60.3(5)“b.” ~~of this subrule,~~ the employee shall indicate the class, but the appointing authority shall designate the specific position assignment within the reduction in force unit. The appointing authority may designate a vacant position if the department of management certifies that funds are available and after all applicable contract transfer and recall provisions have been exhausted. The appointing authority shall notify the employee in writing of the exact location of the position to which the employee will be assigned. After receipt of the notification, the employee shall have five calendar days in which to notify the appointing authority in writing of the acceptance of the position or be laid off.

Bumping to another noncontract class in lieu of layoff shall be based on retention points regardless of full-time or part-time status and shall not occur if the result would be to cause the removal or reduction of an employee with more total retention points except as provided for in this subrule. If bumping occurs, the employee with the fewest total retention points in the class shall then be subject to reduction in force.

Pay upon bumping shall be in accordance with 11—subrule 53.6(11).

ITEM 47. Amend paragraph **60.3(6)“g”** as follows:

g. Notice of recall shall be sent by certified mail, restricted delivery with delivery confirmation. Employees must respond to an offer of recall within five calendar days following the date the notice was received. A notice that is undeliverable to the most recent address of record will be considered a declination of recall. The declination of a recall offer shall be documented in writing by the appointing authority, with a copy to the director.

ITEM 48. Amend rule 11—61.1(8A) as follows:

11—61.1(8A) Grievances. The grievance procedure is an informal process. It is not a contested case.

All employees shall have the right to file grievances. The right to file a grievance and the grievance procedure provided for in these rules shall be made known and available to employees throughout the agency by the appointing authority through well-publicized means. Employees covered by a collective bargaining agreement may use this grievance procedure for issues that are not covered by their respective collective bargaining agreements.

Grievances shall state the issues involved, the relief sought, the date the incident or violation took place and any rules involved, and shall be filed on forms prescribed by the director. Grievances involving suspension, reduction in pay within the same pay grade, disciplinary demotion, or discharge shall be filed as appeals in accordance with subrule 61.2(6) and commence with Step 3 of the grievance procedure described in subrule 61.1(1).

~~Employees covered by collective bargaining agreements shall be governed by the terms of their contract grievance procedures for those provisions contained in the contract. Otherwise, the provisions of this rule shall apply.~~

61.1(1) to 61.1(5) No change.

ITEM 49. Rescind paragraph **61.2(1)“d.”**

ITEM 50. Amend subrule 61.2(5) as follows:

61.2(5) Appeal of grievance decisions. An employee who has alleged a violation of 2003 Iowa Code Supplement sections 8A.401 to 8A.458 or the rules adopted to implement 2003 Iowa Code Supplement sections 8A.401 to 8A.458 may, within 30 calendar days after the date the director’s response at the third step of the grievance procedure was issued or should have been issued, file an appeal with the

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

public employment relations board. A nontemporary, noncontract employee covered by merit system provisions who is suspended, reduced in pay within the same pay grade, disciplinarily demoted, or discharged, except during the employee's period of probationary status, may, if not satisfied with the decision of the director, request an appeal hearing before the public employment relations board within 30 calendar days after the date the director's decision was issued or should have been issued. However, when the grievance concerns allegations of discrimination within the meaning of Iowa Code chapter 216, the Iowa civil rights commission procedures shall be the exclusive remedy for appeal and shall, in such instances, constitute final agency action. In all other instances, decisions by the public employment relations board constitute final agency action.

ITEM 51. Amend subrule 63.3(12) as follows:

63.3(12) If an absence because of illness, injury or other proper reason for using sick leave provided for in this rule extends beyond the employee's accrued sick leave, the appointing authority may require or permit additional time off to be charged to any other accrued leave ~~except that employees. Employees~~ shall, upon request, be paid accrued ~~vacation and~~ compensatory leave in a lump sum ~~to prevent delay of long-term disability benefits.~~ When all accrued sick leave has been used, the employee may be granted leave without pay or terminated except as provided in subrule 63.5(4). ~~Leave without pay for temporary disabilities for medically related reasons shall be in accordance with rule 11—63.5(8A), prior to termination.~~

ITEM 52. Amend subrule 63.4(1), introductory paragraph, as follows:

63.4(1) It is the appointing authority's responsibility to designate leave as FMLA leave. The appointing authority shall designate leave as FMLA leave when the leave qualifies for FMLA leave, even if the employee makes no request for FMLA leave or does not want the leave to be counted as FMLA leave. When both spouses are employed by the state, they shall be limited to a combined total of 12 weeks of FMLA leave taken in accordance with paragraph "a" or "c" below. The hourly equivalent for part-time employees shall be prorated based upon the average number of hours worked during the previous ~~six~~ 12 months. Leave may be for one or more of the following reasons:

ITEM 53. Amend subrule 63.5(4), introductory paragraph, as follows:

63.5(4) When requested in writing and verified by the employee's physician or other licensed practitioner, an employee shall be granted sick leave, either paid, unpaid or a combination of the two at the discretion of the employee, for at least an eight-week period when the purpose is to provide recovery from a medically related disability ~~except that leave without pay shall not be granted unless accrued sick leave has been exhausted. If the employee's accrued sick leave is exhausted prior to completion of the eight-week period, the employee shall be granted additional leave, paid or unpaid, for the remainder of the period, in accordance with these rules.~~ The appointing authority may grant leave in excess of the eight-week period. Paid leave shall not be granted in excess of that accrued. At any time during the period of leave, the appointing authority may require that the employee submit written verification of continuing disability from the employee's physician or other licensed practitioner. In addition to the reason listed, subrule 63.5(2) shall also apply under the following circumstances:

[Filed 9/26/12, effective 11/21/12]

[Published 10/17/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/12.

ARC 0392C

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 163.1(1), 203.2 and 206.5(7), the Department of Agriculture and Land Stewardship hereby amends Chapter 45, "Pesticides," and Chapter 90, "State Licensed Warehouses and Warehouse Operators," Iowa Administrative Code.

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

The amendments conform the rules to statutory changes made in 2012 Iowa Acts, Senate File 2311, by eliminating the one-year license for pesticide application and the corresponding fee. The amendments also change the timing for providing evidence of replacement insurance and add conditions a warehouse must meet in order to forward stored grain to another warehouse located outside of Iowa.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0234C** on July 25, 2012. No comments were received from the public. No changes were made to the amendments published under Notice.

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

These amendments are intended to implement 2012 Iowa Acts, Senate File 2311, sections 85 to 98 (division XII), sections 99 to 117 (division XIII), sections 118 and 119 (division XIV), sections 120 to 125 (division XV), sections 126 to 129 (division XVI), and sections 130 to 136 (division XVII).

These amendments will become effective November 21, 2012.

The following amendments are adopted.

ITEM 1. Amend subrule 45.3(6) as follows:

45.3(6) Registration renewal grace period. The registration period shall be January 1 through December 31 of each year. However, a registrant shall be granted a grace period of three months ending on the ~~first~~ last day of March of each year for registration renewal. A registrant shall be assessed a late fee equaling 25 percent of the registration fees due by the registrant ~~delivering an application for a registration renewal received on or after the first day of March~~ April of each year. Application for registration renewal shall be made on forms prescribed by the secretary and certified by the registrant.

ITEM 2. Amend rule 21—45.4(206) as follows:

21—45.4(206) Registration of products. ~~Two~~ One exact ~~copies~~ copy of the labeling of each proposed product shall be submitted with the application. Also, there shall be submitted an ingredient statement, which shall comply with the provisions of 21—45.13(206) herein, the proposed directions for use of the product, and a list of the specific pests, ~~for control of which it is that the product to be sold is intended to control~~, if such information is not contained in the labeling. Other pertinent information concerning ~~inert~~ ingredients and physical properties of the product shall also be included on request by the secretary.

ITEM 3. Amend paragraphs **45.22(2)“a”** and **“b”** as follows:

a. Initial certification. To be initially certified as a commercial, noncommercial or public applicator, a person shall demonstrate a fundamental knowledge of the minimum state and federal standards of competency for commercial applicators by passing an examination administered by the department. The examination ~~shall~~ may cover subjects relating to the safe handling, application and storage of pesticides, the correct calibration of equipment used for the application of pesticides, and the effects of pesticides upon groundwater. The examination ~~shall~~ may also cover subjects related to the minimum standards of competency for commercial applicators outlined in 40 CFR 171.4(b) and (c) as revised July 1, 1992.

b. A person who employs noncommercial applicators shall apply for a noncommercial applicator's license; and all noncommercial applicators shall be certified by successfully completing the appropriate examinations for the type of restricted use pesticide applications being made and shall be required to pay the certification fee of ~~\$30 for a one-year certification or~~ \$75 for a three-year certification for each employee certified. Noncommercial applicators shall be subject to the \$25 annual license fee. The provisions of Iowa Code section 206.13 relating to licenses and requirements for their insurance shall not apply to a noncommercial applicator, providing that the noncommercial applicator:

(1) and (2) No change.

ITEM 4. Amend paragraph **45.22(4)“b”** as follows:

b. Each commercial, noncommercial and public applicator's certification shall expire December 31 ~~of the first year for those applicators applying for a one-year certification, and December 31 of the third year for those applicators applying for a~~ of the three-year certification and shall be renewed by the department upon receipt of evidence that the applicator has paid the required certification fee and has completed an instructional course consisting of either an examination or continuing instructional

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

courses as prescribed by the department. A commercial, noncommercial or public applicator shall pass an examination each third year following initial certification or may elect to attend two hours of approved continuing instructional courses each year during the renewal period. A commercial, noncommercial or public applicator seeking recertification by attending continuing instructional courses shall attend courses approved for each certification category in which a the person is seeking recertification. A two-hour continuing instructional course may be approved for more than one certification category. A commercial, noncommercial or public applicator failing to complete the required two hours of approved instruction for each year during the renewal period shall be required to pass an examination prior to recertification. ~~A 30-day grace period from the date of expiration will be allowed for the renewal of commercial, noncommercial and public applicator's certification.~~

ITEM 5. Amend paragraph **45.22(15)“c”** as follows:

c. A certified handler's certification shall expire December 31 of the ~~first year for those operators applying for a one-year certification and December 31 of the third year for those operators applying for a~~ of the three-year certification and shall be renewed by the secretary upon receipt of evidence that the applicator has passed a written examination similar and equal to that required to obtain initial certification and has paid the required certification fee. ~~A 30-day grace period from the date of expiration will be allowed for the renewal of the certified handler's certification, and a 21-day grace period from the day of initial employment shall be allowed to meet the certification requirements.~~

ITEM 6. Amend subrule 45.22(16) as follows:

45.22(16) *Transition to recertification by instruction.* Recertification may be accomplished by ~~successfully completing~~ successful completion of the required written examination every third year or ~~completing completion of~~ an approved two-hour instructional course each year of the renewal period.

a. Private applicator recertification. ~~A private applicator with a certification expiration date prior to December 31, 1996, may apply for recertification by providing evidence of completion of an approved instructional course during the third year of the renewal period. A private applicator whose certification expires December 31, 1996, or any year thereafter, may apply for recertification by providing evidence of completion of an approved two-hour instructional course for each year during the preceding three-year renewal period. A private applicator failing to meet the required annual two-hour instruction requirement for recertification during the three-year certification renewal period shall apply for recertification by providing evidence of satisfactorily completing an examination. Applications for recertification shall be submitted with a \$15 certification fee. A private applicator whose certification has expired who applies pesticides following the 30-day grace period provided in Iowa Code section 206.5(8) shall have completed the certification instruction or testing requirement and submitted the required certification fee prior to applying a restricted use pesticide.~~

b. Commercial, noncommercial, and public applicator recertification. ~~A commercial, noncommercial or public applicator whose certification expires December 31, 1993, may apply for recertification by providing evidence of completion of an approved instructional course during 1993. A commercial, noncommercial or public applicator whose certification expires December 31, 1994, may apply for recertification by providing evidence of completion of an approved two-hour instructional course in both 1993 and 1994. A commercial, noncommercial or public applicator whose certification expires December 31, 1995, or any year thereafter, may apply for recertification by providing evidence of completion of an approved two-hour instructional course in each of the three calendar years preceding the expiration date. Applications for recertification shall be submitted with the appropriate certification fee.~~

~~A commercial applicator whose certification has expired who applies pesticides following the 30-day grace period provided in Iowa Code section 206.5(8) shall have completed the certification instruction or testing requirement and submitted the required certification fee prior to applying any pesticide.~~

~~*c.* Programs held prior to April 15, 1994, for pesticide applicator training may be approved for two hours of continuing instruction.~~

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

ITEM 7. Adopt the following **new** definition of “United States Warehouse Act” in rule **21—90.2(203C)**:

“*United States Warehouse Act*” means the United States Warehouse Act, 7 U.S.C. Ch. 10.

ITEM 8. Amend subrules 90.10(2) and 90.10(3) as follows:

90.10(2) *Cancellation of insurance.* When the department receives notice from an insurance company that the company ~~has canceled~~ is canceling the insurance of a licensed warehouse, the department ~~shall automatically suspend the warehouse operator license if the department does not receive replacement insurance within 75 days of receipt of the notice of cancellation~~ shall send written notice to the warehouse operator. The notice shall explain the department’s enforcement action that will result from the warehouse operator’s noncompliance. The department shall suspend the warehouse operator license if the department does not receive proof of replacement insurance by the insurance cancellation date. The department shall ~~cause~~ immediately conduct an inspection of the licensed warehouse ~~immediately at the end of the 75-day period~~ upon suspension of the license. If replacement insurance is not filed within 10 days following suspension, the department shall ~~automatically~~ revoke the warehouse operator license. When the department revokes a license, the department shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage of the revocation. The department shall further notify each receipt holder and all known persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day following the revocation. The notice shall be sent by ordinary mail to the last-known address of each person having grain in storage.

90.10(3) *Expiration of insurance.* The department shall send the warehouse operator a reminder letter 30 days prior to the effective date of the expiration of the insurance of a licensed warehouse. The notice shall explain the department’s enforcement action that will result from the warehouse operator’s noncompliance. The department shall ~~automatically~~ suspend the warehouse operator license if replacement insurance is not received by the department ~~within 15 days before~~ by the expiration date. The department shall ~~immediately cause~~ conduct an inspection of the licensed warehouse ~~at the end of the 15-day period~~ upon suspension of the license. If the licensee does not file replacement insurance within 10 days following suspension, the department shall ~~automatically~~ revoke the warehouse operator license. When the department revokes a license, the department shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage that the license has been revoked. The department shall further notify each receipt holder and all persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day following the revocation. The notice shall be sent by ordinary mail to the last-known address of each person having grain in storage.

ITEM 9. Adopt the following **new** subrule 90.10(4):

90.10(4) *Insufficient insurance.* The department shall provide written notice to the warehouse operator when the department has evidence that the value of commodities in the warehouse is greater than the limit of liability of the insurance policy. The notice shall explain the department’s enforcement action that will result from the warehouse operator’s noncompliance. The department shall suspend the warehouse operator license if the department does not receive proof of sufficient insurance coverage within 30 days of the notice. The department shall immediately conduct an inspection of the licensed warehouse upon suspension of the license. If the warehouse operator does not provide proof of sufficient insurance coverage within 10 days of the license suspension, the department shall revoke the license. When the department revokes the license, the department shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage that the license has been revoked. The department shall further notify each receipt holder and all persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day following the revocation. The notice shall be sent by ordinary mail to the last-known address of each person having grain in storage.

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

ITEM 10. Amend rule 21—90.21(203C), introductory paragraph, as follows:

21—90.21(203C) Grain stored in another warehouse. Upon approval of by the bureau, a warehouse operator may store grain in another licensed warehouse located in the state of Iowa accordance with Iowa Code section 203C.39 as amended by 2012 Iowa Acts, Senate File 2311, section 116.

ITEM 11. Renumber subrules **90.21(1)** to **90.21(6)** as **90.21(2)** to **90.21(7)**.

ITEM 12. Adopt the following **new** subrule 90.21(1):

90.21(1) Decision criteria. The department shall consider the following in deciding to approve or deny a warehouse operator's request to store grain in another licensed warehouse:

a. The other licensed warehouse is located in Iowa and is either licensed by the department pursuant to Iowa Code chapter 203C or licensed pursuant to the United States Warehouse Act.

b. The other licensed warehouse is located in another state and is licensed pursuant to the United States Warehouse Act.

c. The other licensed warehouse is located in another state and is licensed pursuant to that state's statutes and that state's warehouse license provides all of the following:

(1) Financial requirements and examination programs essentially equivalent to Iowa's;

(2) Insurance coverage equivalent to Iowa's; and

(3) Indemnification, surety bond coverage, letter of credit or other security satisfactory to the department.

ITEM 13. Amend renumbered subrule 90.21(4) as follows:

90.21(4) Trust warehouse receipts. A warehouse operator who stores grain in another warehouse shall obtain a nonnegotiable warehouse receipt for the grain stored. The receipt shall clearly show the following notation: "Held in Trust for the Depositors of (name of original receiving warehouse)". The warehouse receipt shall be on an official form as specified in 21—90.15(203C), ~~or on an official United States Department of Agriculture authorized bonded warehouse receipt as provided for in the United States Warehouse Act~~ or on an official form as specified in the regulations of the state in which the warehouse receipt is issued.

[Filed 9/21/12, effective 11/21/12]

[Published 10/17/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/12.

ARC 0406C

ALCOHOLIC BEVERAGES DIVISION[185]

Adopted and Filed

Pursuant to the authority of Iowa Code section 123.21, the Alcoholic Beverages Division hereby amends Chapter 4, "Liquor Licenses—Beer Permits—Wine Permits," Iowa Administrative Code.

This amendment adopts new rule 185—4.5(123), which establishes guidelines for liquor control license holders to mix, store, and dispense mixed drinks or cocktails which are not for immediate consumption on a licensed premises, subject to and mandated by 2012 Iowa Acts, House File 2465, section 22, and pursuant to rules adopted by the Alcoholic Beverages Division. This amendment is necessary to:

- Establish the requirements for mixing, storing, dispensing, and disposing of mixed drinks or cocktails that are not for immediate consumption,
- Establish labeling and reporting requirements,
- Establish that certain ingredients are prohibited, and
- Establish that a licensee who mixes, stores, and dispenses mixed drinks or cocktails that are not for immediate consumption shall comply with all applicable state and federal alcohol and food safety laws.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on July 11, 2012, as **ARC 0205C**. This amendment was also Adopted and Filed Emergency as **ARC 0204C** and published on the same date. A public hearing was held on August 2, 2012, at the offices of the Division. The sole commenter expressed displeasure with the 72-hour time period that licensees are allowed to mix, store, and dispense a mixed drink or cocktail not for immediate consumption; concern that the time period may be extended in the future; and belief that a special license should be required in order to conduct the process.

Upon further internal review, the Division made changes to the new rule as published under Notice of Intended Action and Adopted and Filed Emergency to eliminate redundant or unnecessary language and clarify intent for the reader. Specifically, changes have been made to the following: The introductory paragraph of rule 185—4.5(123) has been changed to incorporate the allowable length of time for which a mixed drink or cocktail can be mixed, stored, and dispensed when it is not for immediate consumption; subparagraph 4.5(5)“b”(1) has been eliminated in its entirety, and the subsequent subparagraphs have been renumbered; renumbered subparagraph 4.5(5)“b”(9) has been changed to specify the label requirements for a container when the entire contents of the container have been transferred to a pourable container; renumbered subparagraph 4.5(5)“b”(10) has been changed to clarify the treatment of a used label; renumbered subparagraph 4.5(5)“b”(11) has been changed to clarify when a label is required to be applied to a container; paragraph 4.5(6)“c” has been changed to mirror the exact language in Iowa Code section 123.49(2)“d” as amended by 2012 Iowa Acts, House File 2465, section 22; paragraph 4.5(7)“a” has been changed to clarify that any mixed drink or cocktail remaining after 72 hours is expired; minor grammatical changes have been made to subrule 4.5(8) to improve readability; and subrule 4.5(9) has been rewritten to eliminate paragraph 4.5(9)“a” in its entirety since it pertained to a type of beverage which is not subject to the requirements and restrictions of this rule.

The Alcoholic Beverages Commission adopted this rule on September 12, 2012.

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

This amendment is intended to implement Iowa Code chapter 123 and 2012 Iowa Acts, House File 2465, section 22.

This amendment shall become effective on November 21, 2012, at which time the Adopted and Filed Emergency amendment is rescinded.

The following amendment is adopted.

Adopt the following new rule 185—4.5(123):

185—4.5(123) Mixed drinks or cocktails not for immediate consumption. An on-premises liquor control licensee may mix, store, and allow the consumption of mixed drinks or cocktails which are not for immediate consumption for up to 72 hours, subject to the requirements and restrictions provided in 2012 Iowa Acts, House File 2465, section 22, and this rule.

4.5(1) Definitions.

a. Immediate consumption. For purposes of Iowa Code section 123.49(2)“d” as amended by 2012 Iowa Acts, House File 2465, section 22, and this rule, “immediate consumption” is defined as the compounding and fulfillment of a mixed drink or cocktail order upon receipt of the order for the mixed drink or cocktail.

b. Mixed drink or cocktail. A mixed drink or cocktail is a beverage composed in whole or in part of alcoholic liquors, combined with other alcoholic beverages or nonalcoholic beverages or ingredients including but not limited to ice, water, soft drinks, or flavorings.

4.5(2) Location. Mixed drinks or cocktails which are not for immediate consumption shall be mixed, stored, and consumed on the liquor control licensed premises. Mixed drinks or cocktails shall not be removed from the licensed premises.

4.5(3) Quantity. A mixed drink or cocktail which is not for immediate consumption shall be mixed and stored in, and dispensed from, a labeled container in a quantity not to exceed three gallons.

4.5(4) Container. A mixed drink or cocktail which is not for immediate consumption shall at all times be in a container compliant with applicable state and federal food safety statutes and regulations.

a. The mixed drink or cocktail shall be mixed and remain stored in the same container.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

b. The mixed drink or cocktail shall be removed from the stored container for one of the following dispensing purposes:

(1) To compound and fulfill a mixed drink or cocktail order upon receipt of the order for the mixed drink or cocktail.

(2) For transfer into a pourable container. The pourable container shall have affixed a label compliant with subrule 4.5(5) displaying label information identical to that on the container from which the contents were poured. The expiration date and time shall not be extended by the transfer of product to a pourable container.

c. The mixed drink or cocktail may be strained into another container when each of the following conditions is met:

(1) The mixed drink or cocktail is returned without delay to the labeled container from which it was strained.

(2) The container and process are compliant with applicable state and federal food safety statutes and regulations.

d. An original package of alcoholic liquor as purchased from the division or an original package of wine shall not be used to mix, store, or dispense a mixed drink or cocktail, pursuant to Iowa Code section 123.49(2) "d" as amended by 2012 Iowa Acts, House File 2465, section 22, and section 123.49(2) "e."

e. The mixed drink or cocktail shall not be mixed, stored, or dispensed from a container bearing an alcoholic beverage name brand.

4.5(5) Label. A label shall be placed on a container when the contents of the mixed drink or cocktail are placed into the empty container.

a. Contents are defined in subrule 4.5(6).

b. The label shall be subject to the following requirements and restrictions:

(1) The label shall be affixed to the container in a conspicuous place.

(2) The label shall legibly identify the month, day, and year the contents are placed into the empty container.

(3) The label shall legibly identify the time the contents were placed into the empty container. The time shall be reported to the minute utilizing the 12-hour clock, and include either the ante meridian (AM) or post meridian (PM) part of time.

(4) The label shall legibly identify the month, day, and year the contents expire.

(5) The label shall legibly identify the time the contents expire. The time shall be reported in the same manner as reported in subparagraph 4.5(5) "b"(4).

(6) The label shall legibly specify the title of the recipe used for the contents of the container.

(7) The label shall legibly identify the person who prepared the contents of the container.

(8) The label shall legibly identify the size of the batch within the container and be conspicuously marked with the words "CONTAINS ALCOHOL."

(9) The label shall be removed from the container once the entire contents have been consumed, transferred to a pourable container pursuant to subparagraph 4.5(4) "b"(2), or destroyed and disposed of in accordance with applicable law.

(10) A label shall not be reused, nor shall a removed label be reapplied to a container.

(11) A new label, subject to the requirements and restrictions of paragraph 4.5(5) "b," shall be placed on the container for each prepared batch of mixed drinks or cocktails which is not for immediate consumption.

c. A licensee may access a label template on the Web site of the division located at www.IowaABD.com.

4.5(6) Contents. Contents include alcoholic beverages, nonalcoholic ingredients, or combination thereof, which are not for immediate consumption.

a. A licensee is limited to utilizing alcoholic beverages in the mixed drink or cocktail which are authorized by the license.

b. A licensee shall utilize alcoholic beverages in the mixed drink or cocktail which are obtained as prescribed by Iowa Code chapter 123.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

c. The added flavors and other nonbeverage ingredients of the mixed drink or cocktail shall not include hallucinogenic substances, added caffeine or added stimulants including but not limited to guarana, ginseng, and taurine, or a controlled substance as defined in Iowa Code section 124.401.

4.5(7) Disposal.

a. Any mixed drink or cocktail, or portion thereof, not consumed within 72 hours of the contents' being placed into the empty container is expired and shall be destroyed and disposed of in accordance with applicable law.

b. An expired mixed drink or cocktail which is not for immediate consumption shall not be:

- (1) Added to an empty container and relabeled; or
- (2) Added to another mixed drink or cocktail which is not for immediate consumption.

4.5(8) Records. A licensee shall maintain accurate and legible records for each prepared batch of mixed drinks or cocktails which is not for immediate consumption.

a. Records shall contain:

(1) The month, day, and year the contents are placed into the empty container.

(2) The time the contents are placed into the empty container. The time shall be reported in the same manner as reported in subparagraph 4.5(5) "b"(4).

(3) Each alcoholic beverage, including the brand and the amount, placed in the container. The amount of each alcoholic beverage shall be reported utilizing the metric system.

(4) Each nonalcoholic ingredient placed in the container.

(5) The recipe title and directions for preparing the contents of the container.

(6) The size of the batch.

(7) The identity of the person who prepared the contents of the container.

(8) The month, day, and year the contents of the container are destroyed and disposed of or entirely consumed.

(9) The time the contents of the container are destroyed and disposed of or entirely consumed. The time shall be reported in the same manner as reported in subparagraph 4.5(5) "b"(4).

(10) The method of destruction and disposal or shall specify that the entire contents were consumed.

(11) The identity of the person who destroyed and disposed of the contents, if the contents were not consumed.

b. A licensee may access record-keeping forms on the Web site of the division located at www.IowaABD.com, by sending a request by fax to (515)281-7375, or by sending a request by mail to Alcoholic Beverages Division, 1918 SE Hulsizer Road, Ankeny, Iowa 50021.

c. Records shall be maintained on the licensed premises for a period of three years and shall be open to inspection pursuant to Iowa Code section 123.30(1).

4.5(9) Dispensing machines. A dispensing machine which contains a mixed drink or cocktail with alcoholic beverages is subject to the requirements and restrictions of this rule.

4.5(10) Food safety compliance. A licensee who mixes, stores, and allows the consumption of mixed drinks or cocktails which are not for immediate consumption shall comply with all applicable state and federal food safety statutes and regulations.

4.5(11) Federal alcohol compliance. A licensee who mixes, stores, and allows the consumption of mixed drinks or cocktails which are not for immediate consumption shall comply with all applicable federal statutes and regulations. Prohibitions include but are not limited to processing with non-tax-paid alcoholic liquor, aging alcoholic liquor in barrels, heating alcoholic liquor, bottling alcoholic liquor, and refilling alcoholic liquor or wine bottles.

ALCOHOLIC BEVERAGES DIVISION[185](cont'd)

4.5(12) Violations. Failure to comply with the requirements and restrictions of this rule shall subject the licensee to the penalty provisions of Iowa Code section 123.39.

This rule is intended to implement Iowa Code subsection 123.49(2) as amended by 2012 Iowa Acts, House File 2465, section 22.

[Filed 9/28/12, effective 11/21/12]

[Published 10/17/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/12.

ARC 0396C

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the Iowa College Student Aid Commission hereby rescinds Chapter 16, "Washington, D.C., Internship Grant," Iowa Administrative Code.

The rules in Chapter 16 describe the administration of the Washington, D.C., Internship Grant Program. This program was created by the 82nd General Assembly in 2008 Iowa Acts, House File 2679, and has not been funded since 2008. The agency rescinds these unnecessary rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0160C** on June 13, 2012. No comments were received. The adopted amendment is identical to that published under Notice.

This amendment was adopted during the September 21, 2012, meeting of the Iowa College Student Aid Commission.

After analysis and review of this rule making, the Commission finds that there is no impact on jobs.

This amendment is intended to implement Iowa Code chapter 261.

This amendment will become effective on November 21, 2012.

The following amendment is adopted.

Rescind and reserve **283—Chapter 16**.

[Filed 9/24/12, effective 11/21/12]

[Published 10/17/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/12.

ARC 0397C

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the Iowa College Student Aid Commission hereby adopts new Chapter 23, "Skilled Workforce Shortage Tuition Grant Program," Iowa Administrative Code.

New Chapter 23 describes the administration of a new Skilled Workforce Shortage Tuition Grant Program pursuant to 2012 Iowa Acts, Senate File 2321, section 20.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0248C** on August 8, 2012. No comments were received from the public. However, discussions with financial aid administrators identified a need to change the definition of "financial need" in paragraph 23.1(1)"b" to ensure that every eligible full-time student receives an award of at least \$200 per semester. As a consequence, paragraph 23.1(2)"f" has not been adopted and paragraph 23.1(2)"g" has been relettered as "f."

This amendment was adopted during the September 21, 2012, meeting of the Iowa College Student Aid Commission.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

After analysis and review of this rule making, the Commission finds that there could be a positive impact on jobs. This rule making increases the amount of scholarship dollars distributed to individuals who will attend higher education. Individuals will be able to attend higher education institutions and obtain good jobs.

This amendment is intended to implement Iowa Code chapter 261 as amended by 2012 Iowa Acts, Senate File 2321, section 20.

This amendment will become effective on November 21, 2012.

The following amendment is adopted.

Adopt the following **new** 283—Chapter 23:

CHAPTER 23
SKILLED WORKFORCE SHORTAGE TUITION GRANT PROGRAM

283—23.1(84GA,SF2321) Tuition grant based on financial need to Iowa residents enrolled in career-technical or career option programs at community colleges in the state. This grant shall commonly be known as the Kibbie grant.

23.1(1) Financial need.

a. Financial need shall be evaluated annually on the basis of a confidential financial statement filed on a form designated by the commission. For the purposes of determining financial need, the commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form used to calculate a formula developed by the U.S. Department of Education, the results of which are used to determine relative need known as expected family contribution. The FAFSA must be received by the processing agent by the date specified by the college student aid commission.

b. Financial need is defined as the greater of \$200 per semester or the equivalent or the difference between the total maximum federal Pell grant for the academic year for a full-time student with an expected family contribution of \$0 minus the Pell grant award received by the student minus the Iowa vocational-technical tuition grant received by the student.

23.1(2) Student eligibility.

a. A recipient must be an Iowa resident as defined by the Iowa department of education's Iowa community college uniform policy on student residency status.

b. A recipient must be enrolled at an Iowa community college for at least three semester hours or the equivalent in a career-technical, career option, or other training program which is eligible for federal Title IV funding and is in an industry which has been identified as having a shortage of skilled workers by the community college in a regional skills gap analysis or by the department of workforce development in the department's most recent quarterly report.

c. A recipient may receive an award under this program for general education classes identified by the community college as required for completion of a career-technical or career option program in an identified skilled workforce shortage area. A recipient must be concurrently enrolled in a career-technical or career option program.

d. A recipient may receive an award under this program for not more than the equivalent of four semesters. A recipient who is making satisfactory academic progress but cannot complete the course because of required classes may receive the grant for one additional semester.

e. A recipient who is a full-time student may receive no more than one-half of the student's tuition and fees, as established by the commission, or the amount of the student's established financial need, whichever is less. A recipient who is a part-time student shall receive a prorated portion of the full-time award. The proration will be established by the commission in a manner consistent with federal Pell Grant Program proration. Recipients who are part-time students enrolled in 3 to 5 credit hours will receive awards equal to one-fourth of the full-time award; recipients enrolled in 6 to 8 credit hours will receive awards equal to one-half of the full-time award; and recipients enrolled in 9 to 11 credit hours will receive awards equal to three-fourths of the full-time award.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

f. A recipient may again be eligible for an award under paragraph 23.1(2) “*d*” if the recipient resumes study after at least a two-year absence, except that award assistance shall not be used for coursework for which credit was previously received.

23.1(3) Priority for grants.

a. Applicants enrolled in programs required to fill the needs of industry in areas which have been identified as having shortages of skilled workers by the community college in a regional skills gap analysis or by the department of workforce development in the department’s most recent quarterly report will receive priority. Skill gap areas will be ranked by each community college in order of the perceived need, and awards will be made to applicants as long as funding remains available.

b. Applicants who apply by the priority date specified in the application are ranked in order of the estimated amount of the family’s contribution toward college expenses, and awards are granted to those who demonstrate need in order of family contribution from lowest to highest, insofar as funds permit.

23.1(4) Award notification. A grant recipient will be notified of the award by the community college to which application is made. The community college is responsible for completing necessary verification and for coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. The community college shall report changes in student eligibility to the commission.

23.1(5) Enrollment terms. For purposes of this program, the commission has defined “semester” as one of two terms of enrollment established by the community college between August 1 and May 30 of each academic year or the equivalent and a summer term of equal length or the equivalent. Grant payments are prorated according to paragraph 23.1(2) “*e*.”

23.1(6) Award transfers and adjustments. Recipients are responsible for promptly notifying the appropriate community college of any change in enrollment or financial situation. The community college will make necessary changes and notify the commission.

23.1(7) Restrictions. A student who is in default on a Stafford Loan, an SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the skilled workforce shortage tuition grant program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by the commission’s ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in 283—Chapters 4 and 5.

This rule is intended to implement 2012 Iowa Acts, Senate File 2321, section 20.

[Filed 9/24/12, effective 11/21/12]

[Published 10/17/12]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/12.

ARC 0394C

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

Pursuant to the authority of Iowa Code section 261.3, the Iowa College Student Aid Commission hereby amends Chapter 27, “Iowa Grant Program,” Iowa Administrative Code.

Chapter 27 describes the administration of the Iowa Grant Program. This amendment provides for the inclusion of new priority recipient requirements enacted by the Iowa General Assembly in 2012 Iowa Acts, House File 2465, sections 26, 27, and 28.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0249C** on August 8, 2012. No comments were received. This amendment is identical to that published under Notice.

This amendment was adopted during the September 21, 2012, meeting of the Iowa College Student Aid Commission.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

After analysis and review of this rule making, the Commission finds that there could be a positive impact on jobs. Individuals will be able to attend higher education institutions and obtain good jobs.

This amendment is intended to implement Iowa Code chapter 261 as amended by 2012 Iowa Acts, House File 2465, sections 26, 27, and 28.

This amendment will become effective on November 21, 2012.

The following amendment is adopted.

Amend **283—Chapter 27** as follows:

CHAPTER 27
IOWA GRANT PROGRAM

283—27.1(261) State-supported grants. The Iowa grant program is a state-supported and administered grant based on financial need for Iowa residents enrolled at approved institutions of postsecondary education in Iowa.

27.1(1) Definitions. As used in this chapter:

“*Accredited higher education institution*” means any public or private institution of higher learning or accredited private institution defined in Iowa Code section 261.9 that is located in Iowa that is and accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools (NCA).

“*Financial need*” means the difference between the student’s financial resources, including resources available from the student’s parents and the student, as determined by a ~~completed~~ parent’s or student’s completed financial statement, and the student’s anticipated expenses while attending the accredited higher education institution. Any federal, state, institutional, or private aid, other than work-study, shall also be considered an available resource. Financial need shall be determined at least annually on the basis of a confidential financial statement filed on a form designated by the commission. The commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form used to calculate a formula developed by the U.S. Department of Education, the results of which are used to determine expected family contribution. Relative need will be ranked based on the applicant’s expected family contribution (EFC) as determined by the U.S. Department of Education. The application form must be received by the needs analysis processor by the deadline date specified by the commission.

“*Full-time resident student*” means an individual resident of Iowa who is enrolled at an accredited higher education institution in a course of study including at least 12 semester hours or the ~~trimester or quarter~~ equivalent. “Course of study” does not include correspondence courses.

“*Located in Iowa*” means a college or university that is accredited by the Higher Learning Commission of the North Central Association of Colleges and Schools, that has made a substantial investment in a permanent Iowa campus and staff, and that offers a full range of courses leading to the degrees offered by the institution as well as a full range of student services.

“*Part-time resident student*” means an individual resident of Iowa who is enrolled at an accredited higher education institution in a course of study including at least three semester hours or the ~~trimester or quarter~~ equivalent. “Course of study” does not include correspondence courses.

“*Qualified student*” means a resident student who has established financial need and who is making satisfactory progress toward graduation at an eligible Iowa institution.

“*Tuition and mandatory fees*” means those college costs paid annually by all students enrolled on a full-time basis, as reported annually to the commission by each participating institution.

27.1(2) Student eligibility. A recipient must be an Iowa resident enrolled for at least three semester hours or the ~~trimester or quarter~~ equivalent in a program leading to a degree from an eligible Iowa institution. The criteria used by the state board of regents to determine residency for tuition purposes, 681—1.4(262), are adopted for this program.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

27.1(3) Award limits and eligibility requirements.

a. A grant may be awarded to any qualified person who is accepted for admission or is enrolled for at least three semester hours, or the ~~trimester or quarter~~ equivalent, in a program leading to a degree from an approved, accredited higher education institution and who demonstrates financial need.

b. The annual amount of the grant to a full-time student shall not exceed a the amount specified by Iowa law or the amount of the student's financial need or the maximum annual grant, whichever is less.

c. The maximum amount of a grant to a part-time student shall be prorated by dividing the maximum annual grant amount by 24 semester hours or the ~~trimester or quarter~~ equivalent, and multiplying that amount by the number of hours the student is enrolled.

d. Grants shall be awarded on an annual basis and shall be credited by the institution against the student's tuition, fees, and room and board charges at the beginning of each term in equal installments upon certification that the eligible student is enrolled.

e. If a credit balance remains after crediting the amount of the grant to the student's tuition, fees, and, if applicable, room and board charges, the institution may distribute the grant balance to the student who may use the proceeds for other bona fide education expenses such as books, equipment, and transportation.

f. If a student receiving a grant under the program discontinues attendance before the end of any academic period, but after receiving payment of grant funds for the academic period, the entire amount of any refund due the student, up to the amount of any payments made by the state, shall be distributed as follows:

(1) If an initial institutional allocation was made and funds are available due to the refund, the institution may offer additional awards, but in no case may an institution exceed its annual allocation.

(2) If institutional allocations are not made, then any refunds must be returned to the commission.

27.1(4) Extent of grant. A qualified full-time student may receive grants for not more than eight semesters of undergraduate study or the ~~trimester or quarter~~ equivalent. A qualified part-time resident student may receive grants for not more than 16 semesters of undergraduate study or the ~~trimester or quarter~~ equivalent.

27.1(5) Application process.

a. Eligible students shall apply for this grant through the use of an approved financial aid form, which uses the federally accepted method of needs analysis. For the purpose of determining financial need, the commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form used to calculate a formula developed by the U.S. Department of Education, the results of which are used to determine relative need. Priority applicants, as described in Iowa Code section 261.93 as amended by 2012 Iowa Acts, House File 2465, section 26, must complete an additional application if required by the commission.

b. Institutions shall coordinate aid packages to ensure that this grant program supplements rather than supplants federal and institutional gift aid awards and shall report need figures to the commission.

c. The institution shall clearly identify the Iowa grant on the student's aid award notice.

~~d. A student shall accept all available federal and state grants before being considered for grants under this program.~~

27.1(6) Full year of study. For purposes of this program, the commission has defined full year of study as either three quarters or two semesters or the equivalent. Grant payments are prorated according to this definition.

27.1(7) Priority for grants.

a. Applicants are ranked in order of the estimated amount which the family reasonably can be expected to contribute toward college expenses; and awards are granted to those who demonstrate need in order of family contribution, from lowest to highest, insofar as funds permit.

b. Priority will be given to a qualified student who is a resident of Iowa; who is under the age of 26, or the age of 30 if the student is a veteran who is eligible for benefits, or has exhausted the benefits, under the federal Post-9/11 Veterans Educational Assistance Act of 2009; who is not a convicted felon as defined in Iowa Code section 910.15; and who meets at least one of the following criteria and agrees to allow the commission to verify the criteria:

COLLEGE STUDENT AID COMMISSION[283](cont'd)

(1) Is the child of a peace officer, as defined in Iowa Code section 97A.1, who was killed in the line of duty as determined by the board of trustees of the Iowa department of public safety peace officers' retirement, accident, and disability system in accordance with Iowa Code section 97A.6, subsection 16.

(2) Is the child of a police officer or a fire fighter, as defined in Iowa Code section 411.1, who was killed in the line of duty as determined by the statewide fire and police retirement system in accordance with Iowa Code section 411.6, subsection 15.

(3) Is the child of a sheriff or deputy sheriff, as defined in Iowa Code section 97B.49C, who was killed in the line of duty as determined by the Iowa public employees' retirement system in accordance with Iowa Code section 97B.52, subsection 2.

(4) Is the child of a fire fighter included under Iowa Code section 97B.49B who was killed in the line of duty as determined by the Iowa public employees' retirement system in accordance with Iowa Code section 97B.52, subsection 2.

~~b. c.~~ Funds Remaining funds will be allocated to the sectors according to the appropriations language.

~~e. d.~~ If funds are insufficient to help all students with no means of contribution to their educational expenses, institutional aid administrators will select students to receive grants.

27.1(8) Award notification. A grant recipient is notified of the award by the educational institution to which application is made. Any award notification provided by an institution on probation with the accrediting agency must be made contingent upon the institution's maintaining affiliation with the accrediting agency. The institution is responsible for completing necessary verification and for coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. The institution ~~reports~~ shall report changes of student eligibility to the commission.

27.1(9) Award transfers and adjustments.

a. Awards may be transferred among eligible institutions unless funding limitations require institutional allocations.

b. Recipients are responsible for promptly notifying the appropriate institution of any change in enrollment or financial situation. The educational institution will make necessary changes and notify the commission.

27.1(10) Restrictions. A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the Iowa grant program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedure set forth in 283—Chapters 4 and 5, Iowa Administrative Code.

27.1(11) Institutional reporting. The commission will monitor the program according to this chapter and will require participating postsecondary institutions that receive funds for enrolled students to furnish any information necessary for the implementation or administration of the program.

This rule is intended to implement Iowa Code ~~sections~~ section 261.93 as amended by 2012 Iowa Acts, House File 2465, section 26, and section 261.97.

[Filed 9/24/12, effective 11/21/12]

[Published 10/17/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/12.

ARC 0393C

PHARMACY BOARD[657]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76 and 2011 Iowa Acts, chapter 63, section 36, the Board of Pharmacy hereby amends Chapter 8, "Universal Practice Standards," Iowa Administrative Code.

PHARMACY BOARD[657](cont'd)

The rule establishes the procedures to be followed for a pharmacy to apply for approval of a pilot or demonstration research project for innovative applications in the practice of pharmacy relating to the authority of prescription verification and the ability of a pharmacist to provide enhanced patient care. The rule defines the scope and duration of a proposed pilot or demonstration research project, application requirements, Board review and approval or denial processes, and project reporting requirements.

The rule establishes processes relating to waiver of Board rules for a specific purpose: implementation of a pilot or demonstration research project for innovative applications in the practice of pharmacy. The criteria for such a pilot or demonstration research project are clearly identified in the Iowa Code.

The provisions of this rule are not subject to waiver or variance.

Notice of Intended Action was published in the August 8, 2012, Iowa Administrative Bulletin as **ARC 0256C**. The Board received no written comments regarding the proposed rule. The adopted rule is identical to that published under Notice.

The rule was approved during the September 21, 2012, teleconference meeting of the Board of Pharmacy.

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

This rule is intended to implement 2011 Iowa Acts, chapter 63, section 36, as amended by 2012 Iowa Acts, House File 2464, section 31.

This rule will become effective on November 21, 2012.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this rule [8.40] is being omitted. This rule is identical to that published under Notice as **ARC 0256C**, IAB 8/8/12.

[Filed 9/21/12, effective 11/21/12]

[Published 10/17/12]

[For replacement pages for IAC, see IAC Supplement 10/17/12.]

ARC 0405C**PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Sign Language Interpreters and Translitterators hereby adopts amendments to Chapter 361, "Licensure of Sign Language Interpreters and Translitterators," Iowa Administrative Code.

The amendment rescinds paragraph 361.2(1)"d" and adopts a new paragraph 361.2(1)"d." The amendment corrects the names of currently accepted examinations and adds new examinations that the Board will accept for licensure.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 25, 2012, as **ARC 0228C**. A public hearing was held on August 14, 2012, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, Des Moines, Iowa. No public comments were received. This amendment is identical to the one published under Notice of Intended Action.

The amendment was adopted by the Board of Sign Language Interpreters and Translitterators on August 29, 2012.

After analysis and review of this rule making, there should be a positive impact on jobs. This amendment updates and adds to the list of acceptable examinations, thereby providing more opportunity for individuals to be licensed to practice in the state of Iowa.

This amendment is intended to implement Iowa Code section 154E.3.

This amendment will become effective November 21, 2012.

The following amendment is adopted.

Rescind paragraph **361.2(1)"d"** and adopt the following **new** paragraph in lieu thereof:

d. No application will be considered by the board until the applicant successfully meets one of the following requirements:

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- (1) Passes the National Association of the Deaf/Registry of Interpreters for the Deaf (NAD/RID) National Interpreter Certification (NIC) examination after November 30, 2011; or
- (2) Passes one of the following examinations administered by the Registry of Interpreters for the Deaf (RID):
 1. Oral Transliteration Certificate (OTC); or
 2. Certified Deaf Interpreter (CDI); or
- (3) Passes the Educational Interpreter Performance Assessment (EIPA) with a score of 3.5 or above after December 31, 1999; or
- (4) Passes the Cued Language Transliterator National Certification Examination (CLTNCE) administered by The National Certifying Body for Cued Language Translitterators; or
- (5) Currently holds one of the following NAD/RID certifications awarded through November 30, 2011, by the National Council on Interpreting (NCI):
 1. National Interpreter Certification (NIC); or
 2. National Interpreter Certification Advanced (NIC Advanced); or
 3. National Interpreter Certification Master (NIC Master); or
- (6) Currently holds one of the following certifications previously awarded by the RID:
 1. Certificate of Interpretation (CI); or
 2. Certificate of Transliteration (CT); or
 3. Certificate of Interpretation and Certificate of Transliteration (CI and CT); or
 4. Interpretation Certificate/Transliteration Certificate (IC/TC); or
 5. Comprehensive Skills Certificate (CSC); or
- (7) Currently holds one of the following certifications previously awarded by the National Association of the Deaf (NAD):
 1. NAD III (Generalist); or
 2. NAD IV (Advanced); or
 3. NAD V (Master).

[Filed 9/28/12, effective 11/21/12]

[Published 10/17/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/12.

ARC 0395C

PUBLIC EMPLOYMENT RELATIONS BOARD[621]

Adopted and Filed

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board hereby amends Chapter 1, "General Provisions," Iowa Administrative Code.

The amendment increases to \$1,200 per day of service the maximum compensation which qualified arbitrators and teacher termination adjudicators appointed from lists maintained by the Board may charge. The existing maximum rate of \$800 has been in effect for five years, is far less than the going market rate, and is viewed by the Board as insufficient to retain and attract qualified neutrals.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 8, 2012, as **ARC 0262C**. The Board received no comments on the amendment other than those expressed at the September 11, 2012, meeting of the Administrative Rules Review Committee. This amendment is identical to that published under Notice of Intended Action.

The Board adopted this amendment on September 19, 2012.

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

This amendment is intended to implement Iowa Code section 20.6(3).

This amendment will become effective on November 21, 2012.

The following amendment is adopted.

PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

Amend rule 621—1.8(20,279) as follows:

621—1.8(20,279) Fees of neutrals. Qualified arbitrators and teacher termination adjudicators appointed from lists maintained by the board may be compensated by a sum not to exceed ~~\$800~~ \$1,200 per day of service, plus their necessary expenses incurred.

[Filed 9/24/12, effective 11/21/12]

[Published 10/17/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/12.

ARC 0398C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 8, "Forms and Communications," Chapter 40, "Determination of Net Income," Chapter 42, "Adjustments to Computed Tax and Tax Credits," Chapter 52, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," Chapter 53, "Determination of Net Income," Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits," and Chapter 89, "Fiduciary Income Tax," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXV; No. 4, p. 339, on August 22, 2012, as **ARC 0292C**.

Item 1 amends subrule 8.2(2) to update the mailing addresses used when corresponding with the Department.

Item 2 amends subrule 8.3(2) to update the contact information for the Department regarding the approval of substitute tax forms.

Item 3 amends rule 701—40.38(422) by adding new subrule 40.38(10) regarding the partial capital gain deduction allowed for individual income tax for the sale of employer securities to an Iowa employee stock option plan.

Item 4 amends the implementation sentence for rule 701—40.38(422).

Item 5 amends rule 701—40.70(422) by adding new subrule 40.70(3) regarding the repeal of the exclusion from individual income tax for income from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television or video projects.

Item 6 amends the implementation sentence for rule 701—40.70(422).

Items 7 and 8 amend subrule 42.19(5) and the implementation sentence for rule 701—42.19(404A,422) to provide for changes for individual income tax related to the allocation of the historic preservation and cultural and entertainment district tax credit earned by a partnership, limited liability company or S corporation.

Item 9 amends rule 701—42.24(15E,422) for individual income tax to provide the amount of endow Iowa tax credit available for the 2012 calendar year.

Item 10 amends rule 701—42.37(15,422) by adding new subrule 42.37(4) for individual income tax to reflect the repeal of the film qualified expenditure tax credit.

Item 11 amends the implementation sentence for rule 701—42.37(15,422).

Item 12 amends rule 701—42.38(15,422) by adding new subrule 42.38(3) for individual income tax to reflect the repeal of the film investment tax credit.

Item 13 amends the implementation sentence for rule 701—42.38(15,422).

Item 14 amends rule 701—42.44(422) to update the sequence of tax credits for individual income tax.

Item 15 amends Chapter 42 by adding new rule 701—42.49(422) relating to the volunteer fire fighter and volunteer emergency medical services personnel tax credit for individual income tax.

Item 16 amends rule 701—52.12(422) to update the sequence of tax credits for corporation income tax.

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Item 17 amends subrule 52.18(5) to provide for changes for corporation income tax related to the allocation of the historic preservation and cultural and entertainment district tax credit earned by a partnership, limited liability company or S corporation. This change is similar to the change in Item 7.

Item 18 amends rule 701—52.23(15E,422) for corporation income tax to provide the amount of endow Iowa tax credit available for the 2012 calendar year. This change is similar to the change in Item 9.

Item 19 amends paragraph 52.28(2)“a” by adding an example regarding the amortization of the investment tax credit for businesses approved under the High Quality Jobs Program and the Enterprise Zone program.

Item 20 amends rule 701—52.34(15,422) by adding new subrule 52.34(4) for corporation income tax to reflect the repeal of the film qualified expenditure tax credit. This change is similar to the change in Item 10.

Item 21 amends the implementation sentence for rule 701—52.34(15,422).

Item 22 amends rule 701—52.35(15,422) by adding new subrule 52.35(3) for corporation income tax to reflect the repeal of the film investment tax credit. This change is similar to the change in Item 12.

Item 23 amends the implementation sentence for rule 701—52.35(15,422).

Item 24 amends rule 701—53.25(422) by adding new subrule 53.25(3) regarding the repeal of the exclusion from corporation income tax for income from the sale, rental or furnishing of tangible personal property or services directly related to the production of film, television or video projects. This change is similar to the change in Item 5.

Item 25 amends the implementation sentence for rule 701—53.25(422).

Item 26 amends rule 701—58.13(15E,422) for franchise tax to provide the amount of endow Iowa tax credit available for the 2012 calendar year. This change is similar to the change in Items 9 and 18.

Item 27 amends rule 701—58.19(15,422) for franchise tax to reflect the repeal of the film qualified expenditure tax credit.

Item 28 amends rule 701—58.20(15,422) for franchise tax to reflect the repeal of the film investment tax credit.

Items 29 through 33 amend subrules 89.3(3) and 89.8(4) and paragraphs 89.8(7)“t,” 89.8(8)“c” and 89.8(8)“n” to reflect changes for fiduciary income tax regarding the calculation of income for nonresident decedents and for estates and trusts with a situs outside Iowa. These changes reflect that nonresident decedents and estates and trusts with a situs outside Iowa are taxed similarly to nonresidents of Iowa for individual income tax.

Item 34 amends subrule 89.8(11) to update the list of tax credits that can be applied against fiduciary income tax.

Item 35 amends the implementation sentence for rule 701—89.8(422).

There have been no substantive changes to the amendments published under Notice of Intended Action. A change was made to subrule 8.2(2) to reflect the correct post office box number for the Field Services section of the Department.

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

These amendments are intended to implement Iowa Code sections 422.7 and 422.11D as amended by 2012 Iowa Acts, House File 2465, section 31; Iowa Code sections 422.7, 422.33, 422.35 and 422.60 as amended by 2012 Iowa Acts, House File 2337, sections 33 to 36; Iowa Code section 422.12 as amended by 2012 Iowa Acts, Senate File 2322; and 2012 Iowa Acts, House File 2337, sections 38 to 40.

REVENUE DEPARTMENT[701](cont'd)

These amendments will become effective November 21, 2012, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Chs 8, 40, 42, 52, 53, 58, 89] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 0292C**, IAB 8/22/12.

[Filed 9/26/12, effective 11/21/12]

[Published 10/17/12]

[For replacement pages for IAC, see IAC Supplement 10/17/12.]

ARC 0399C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby amends Chapter 68, "Motor Fuel and Undyed Special Fuel," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXV, No. 4, p. 351, on August 22, 2012, as **ARC 0285C**.

The subject matter of rule 701—68.2(452A) is the tax rates applicable to motor fuel and undyed special fuel. The amendments are necessary to change the expiration date of the current excise tax rates on motor fuel in subrule 68.2(2) in order to reflect the passage of 2012 Iowa Acts, House File 2472, and to amend the implementation clause of the rule.

There have been no substantive changes to the amendments published under Notice of Intended Action.

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

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

These amendments are intended to implement Iowa Code section 452A.3 as amended by 2012 Iowa Acts, House File 2472.

These amendments will become effective November 21, 2012, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The following amendments are adopted.

ITEM 1. Amend subrule 68.2(2) as follows:

68.2(2) Except as otherwise provided in this subrule, until June 30, ~~2012~~ 2013, this subrule shall apply to the excise tax imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state. The rate of the excise tax shall be based on the number of gallons of ethanol blended gasoline that is distributed in this state as expressed as a percentage of the number of gallons of motor fuel distributed in this state. Aviation gasoline shall not be used, beginning calendar year January 1, 2009, in determining the percentage basis for the tax rates effective July 1, 2010, and after. The number of gallons of ethanol blended gasoline and motor fuel distributed in this state shall be based on the total taxable gallons of ethanol blended gasoline and motor fuel as shown on the fuel tax monthly reports issued by the department for January through December for each determination period. The department shall determine the percentage for each determination period beginning January 1 and ending December 31. The rate for the excise tax shall apply for the period beginning July 1 and ending June 30 following the end of the determination period. The rate for the excise tax shall be as follows:

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Ethanol %	Ethanol Tax	Gasoline Tax
00/50	19.0	20.0
50+/55	19.0	20.1
55+/60	19.0	20.3
60+/65	19.0	20.5
65+/70	19.0	20.7
70+/75	19.0	21.0
75+/80	19.3	20.8
80+/85	19.5	20.7
85+/90	19.7	20.4
90+/95	19.9	20.1
95+/100	20.0	20.0

Except as otherwise provided in this subrule, after June 30, ~~2012~~ 2013, an excise tax of 20 cents is imposed on each gallon of motor fuel used for any purpose for the privilege of operating motor vehicles in this state.

ITEM 2. Amend rule **701—68.2(452A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section 452A.3 as amended by ~~2009~~ 2012 Iowa Acts, ~~Senate File 419, section 44~~ House File 2472, and sections 452A.8 and 452A.85.

[Filed 9/26/12, effective 11/21/12]

[Published 10/17/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/12.

ARC 0400C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby adopts amendments to Chapter 71, "Assessment Practices and Equalization," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXV, No. 4, p. 353, on August 22, 2012, as **ARC 0286C**.

Rule 701—71.1(405,427A,428,441,499B) provides for limitations on housing developments' tax status and assessment of platted lots. Under these amendments, the time frames associated with assessment of subdivided property are modified. The length of the modified time frames depends on numerous factors.

These amendments are adopted as a result of changes to Iowa Code sections 405.1 and 441.72 as amended by 2011 Iowa Acts, Senate File 533, sections 154 and 155.

Item 1 rescinds subrule 71.1(8) and adopts new subrule 71.1(8) to conform with 2011 Iowa Code Supplement section 405.1.

Item 2 adopts new subrule 71.1(9) to conform with 2011 Iowa Code Supplement section 441.72.

These amendments are identical to those published under the Notice of Intended Action.

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

After analysis and review of this rule making, the Department has determined the amendments will not have an impact on jobs.

These amendments are intended to implement 2011 Iowa Code Supplement sections 405.1 and 441.72.

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These amendments will become effective November 21, 2012, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The following amendments are adopted.

ITEM 1. Rescind subrule 71.1(8) and adopt the following **new** subrule in lieu thereof:

71.1(8) Housing development property.

a. Ordinances adopted or amended on or after January 1, 2011.

(1) Adoption of ordinance by board of supervisors. A county board of supervisors may adopt an ordinance providing that property acquired and subdivided for development of housing on or after January 1, 2011, shall continue to be assessed for taxation in the manner it was assessed prior to the acquisition. Each lot shall continue to be taxed in the manner it was taxed prior to acquisition for housing until the lot is sold for construction or occupancy of housing or 5 years from the date of subdivision, whichever occurs first.

(2) Amendments to ordinance by board of supervisors. On or after July 27, 2011, the board of supervisors of a county may amend an ordinance adopted or otherwise made effective under 2011 Iowa Code Supplement section 405.1(1) "a" to extend the 5-year time period for a period of time not to exceed 5 years beyond the end of the original 5-year period established under 2011 Iowa Code Supplement section 405.1(1). Thus, the maximum special assessment time for ordinances adopted on or subsequent to January 1, 2011, is 10 years. An extension of an ordinance under 2011 Iowa Code Supplement section 405.1(1) "a" may apply to all or a portion of the property that was subject to the original ordinance.

(3) Amendments to ordinance by city council. A city council may adopt an ordinance, affecting all or a portion of the property located within the incorporated area of the city subject to the county ordinance adopted under 2011 Iowa Code Supplement section 405.1(1) "a," extending the county ordinance not previously extended by the board of supervisors up to 5 years. An ordinance by a city council providing for an extension under 2011 Iowa Code Supplement section 405.1(3) shall be subject to the 5-year limitation under 2011 Iowa Code Supplement section 405.1(2). Thus, the maximum time to appeal an ordinance adopted on or subsequent to January 1, 2011, is 10 years if the city council amends an ordinance originally adopted by the county board of supervisors.

(4) Sale of lot; expiration of 5-year or extended period. Upon the sale of the lot for construction or occupancy for housing or upon the expiration of the 5-year or extended period, the property shall be assessed for taxation as residential or commercial multifamily property, whichever is applicable.

(5) Definition of "subdivide." As used in both paragraphs 71.1(8) "a" and "b," "subdivide" means to divide a tract of land into three or more lots.

b. Ordinances adopted on or after January 1, 2004, but prior to January 1, 2011.

(1) Ordinances adopted under 2011 Iowa Code Supplement sections 405.1(1) and 405.1(2), to the extent such ordinances affect the assessment of property subdivided for development of housing on or after January 1, 2004, but before January 1, 2011, shall remain in effect or otherwise be made effective, and such ordinances:

1. Adopted under 2011 Iowa Code Supplement section 405.1(1), applicable to counties with a population of less than 20,000, shall be extended, from a period of 5 years, to apply to a period of 10 years from the date of subdivision.

2. Adopted under 2011 Iowa Code Supplement section 405.1(2), applicable to counties with a population of 20,000 or more, shall be extended, from a period of 3 years, to apply to a period of 8 years from the date of subdivision.

Each lot shall continue to be taxed in the manner it was taxed prior to acquisition for housing until the lot is sold for construction or occupancy of housing, or 10 years pursuant to paragraph "1" above or 8 years pursuant to paragraph "2" above (or the extended period, if applicable) from the date of subdivision, whichever occurs first.

(2) Amendments to ordinance by board of supervisors. On or after July 27, 2011, the board of supervisors of a county may amend an ordinance adopted under 2011 Iowa Code Supplement section 405.1(1) or 405.1(2) to extend the 10- and 8-year periods, respectively, for a period of time not to exceed 5 years beyond the end of the 10- and 8-year periods established under 2011 Iowa Code Supplement

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section 405.1(1)“b.” Thus, the maximum special assessment time for ordinances adopted on or after January 1, 2004, but prior to January 1, 2011, for counties with a population of less than 20,000 shall be 15 years. For counties with a population of 20,000 or more, the maximum shall be 13 years.

(3) Amendments to ordinance by city council. A city council may adopt an ordinance, affecting all or a portion of the property located within the incorporated area of the city subject to the county ordinance adopted under 2011 Iowa Code Supplement sections 405.1(1) and 405.1(2), extending the county ordinances not previously extended by the board of supervisors up to 5 years. An ordinance by a city council providing for an extension under 2011 Iowa Code Supplement section 405.1(3) shall be subject to the 5-year limitation under 2011 Iowa Code Supplement section 405.1(2). Thus, the maximum time to appeal an ordinance adopted on or after January 1, 2004, but prior to January 1, 2011, for counties with a population of less than 20,000 shall be 15 years if the city council amends an ordinance originally adopted by the board of supervisors. For counties with a population of 20,000 or more, the maximum special assessment time shall be 13 years.

(4) Sale of lot. Upon the sale of the lot for construction or occupancy for housing or upon the expiration of the 10- or 8-year or extended period, the property shall be assessed for taxation as residential or commercial multifamily property, whichever is applicable.

ITEM 2. Adopt the following new subrule 71.1(9):

71.1(9) Assessment of platted lots.

a. When a subdivision plat is recorded pursuant to Iowa Code chapter 354 on or after January 1, 2011, the individual lots within the subdivision plat shall not be assessed, in the aggregate, in excess of the total assessment of the land as acreage or unimproved property for 5 years after the recording of the plat or until the lot is actually improved with permanent construction, whichever occurs first. When an individual lot has been improved with permanent construction, the lot shall be assessed for taxation purposes as provided in Iowa Code chapters 428 and 441.

b. For subdivision plats recorded pursuant to Iowa Code chapter 354 (relating to division and subdivision of land) on or after January 1, 2004, but before January 1, 2011, the individual lots within the subdivision plat shall not be assessed, in the aggregate, in excess of the total assessment of the land as acreage or unimproved property for 8 years after the recording of the plat or until the lot is actually improved with permanent construction, whichever occurs first. When an individual lot has been improved with permanent construction, the lot shall be assessed for taxation purposes as provided in Iowa Code chapters 428 and 441.

c. 2011 Iowa Code Supplement section 441.72 does not apply to special assessment levies.

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ARC 0403C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby amends Chapter 225, “Resale and Processing Exemptions Primarily of Benefit to Retailers,” Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXV, No. 4, p. 355, on August 22, 2012, as **ARC 0294C**.

Pursuant to 2012 Iowa Acts, Senate File 2342, section 13, rule 701—225.7(423) provides for the taxability of certain inputs used in taxable vehicle wash and wax services. Under this new rule, for bills received on or after May 25, 2012, sales of water, electricity, chemicals, solvents, sorbents, or reagents to a retailer to be used in providing a service that includes a vehicle wash and wax that is subject to Iowa Code section 423.2(6) are exempt from tax.

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This amendment is identical to that published under Notice of Intended Action.

This amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

After analysis and review of this rule making, the Department has determined the legislation that gives rise to this rule will have a positive impact on some small businesses, specifically those businesses that provide taxable vehicle wash and wax services, by allowing the businesses to purchase certain enumerated inputs used in providing vehicle wash and wax services exempt from sales tax.

This amendment is intended to implement 2011 Iowa Code Supplement section 423.3 as amended by 2012 Iowa Acts, Senate File 2342, section 13.

This amendment will become effective November 21, 2012, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The following amendment is adopted.

Adopt the following **new** rule 701—225.7(423):

701—225.7(423) Certain inputs used in taxable vehicle wash and wax services. On or after May 25, 2012, sales of water, electricity, chemicals, solvents, sorbents, or reagents to a retailer to be used in providing a service that includes a vehicle wash and wax that is subject to Iowa Code section 423.2(6) are exempt from tax. This rule applies to bills received or sales occurring, as the case may be, on or after May 25, 2012.

225.7(1) Definitions. For the purposes of this rule, the following definitions apply:

“Chemical” means a substance which is primarily used for producing a chemical effect. A chemical effect results from a chemical process wherein the number and kind of atoms in a molecule are changed in form (e.g., where oxygen and hydrogen are combined to make water). A chemical process is distinct from a physical process wherein only the state of matter changes (e.g., where water is frozen into ice or heated into steam).

“Reagent” means a substance used for various purposes (i.e., in detecting, examining, or measuring other substances; in preparing materials; in developing photographs) because it takes part in one or more chemical reactions or biological processes. A reagent is also a substance used to convert one substance into another by means of the reaction that it causes. To be a reagent for purpose of the exemption, a substance must be primarily used as a reagent.

“Retailer” or *“supplier”* means and includes every person engaged in the business of selling tangible personal property or taxable services at retail or the furnishing of gas, electricity, water, pay television, or communication service, and tickets or admissions to places of amusement and athletic events or operating amusement devices or other forms of commercial amusement from which revenues are derived. However, when in the opinion of the director it is necessary for the efficient administration of this rule to regard any salespersons, representatives, truckers, peddlers, or canvassers as agents of the dealers, distributors, supervisors, employers, or persons under whom the salespersons, representatives, truckers, peddlers, or canvassers operate or from whom they obtain tangible personal property sold by them irrespective of whether or not they are making sales on their own behalf or on behalf of such dealers, distributors, supervisors, employers, or persons, the director may so regard them, and may regard such dealers, distributors, supervisors, employers, or persons as retailers for the purposes of this rule. “Retailer” includes a seller obligated to collect sales or use tax.

“Secondary vehicle wash and wax facility” means a vehicle wash and wax facility whose primary purpose is to sell tangible personal property or services other than vehicle wash and wax services, but which also provides vehicle wash and wax services that are taxable under Iowa Code section 423.2(6). Examples of “secondary vehicle wash and wax facilities” include, but are not limited to, vehicle dealerships, convenience stores, service stations, and wholesale and retail fuel marketing locations that provide taxable vehicle wash and wax services in addition to their primary business purpose. A facility that provides vehicle wash and wax services that also sells tangible personal property or other services is presumed to be a “secondary vehicle wash and wax facility” unless it can prove otherwise.

“Solvent” means a substance in which another substance can be dissolved and which is primarily used for that purpose.

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“*Sorbent*” means a solid material, often in a powder or granular form, which acts to retain another substance, usually on the sorbent’s surface, thereby removing the other substance from the gas or liquid phase. The sorbent and the second material bond together at the molecular or atomic scale via physiochemical interactions. A substance is not a sorbent based on an ability to absorb heat or thermal energy.

“*Stand-alone vehicle wash and wax facility*” means a vehicle wash and wax facility whose primary purpose is to provide vehicle wash and wax services that are taxable under Iowa Code section 423.2(6). A vehicle wash and wax facility is considered a “stand-alone vehicle wash and wax facility” although it sells a de minimis amount of products and services related to vehicle wash and wax services. Nonexclusive examples of products and services related to vehicle wash and wax services include coin-operated vacuum stations and air fresheners and vehicle wipes which are sold out of vending machines.

“*Vehicle*” means any self-propelled motor vehicle designed primarily for carrying passengers (nine or fewer) excluding motorcycles and motorized bicycles; any pickup truck designed to carry both passengers and cargo; or any vehicle which is commonly on a highway and propelled by any power other than muscular power. Nonexclusive examples of a vehicle are motorcycles, motorized bicycles, pickup trucks, tractors, and trailers.

“*Vehicle wash and wax facility*” means any retailer that provides vehicle wash and wax services.

“*Vehicle wash and wax services*” or “*vehicle wash and wax*” means washing and waxing services performed inside or outside of the vehicle or both whether the services are performed by hand, machine, or coin-operated devices.

“*Water*” means water directly consumed or used in providing the taxable vehicle wash and wax service. “Water” does not include, for example, charges or fees for storm water, sanitary sewer, or solid waste services as these are not fees for water directly used or consumed in providing the taxable vehicle wash and wax service.

225.7(2) *Purchases made by a stand-alone vehicle wash and wax facility.* Purchases of water, electricity, chemicals, solvents, sorbents, or reagents by a stand-alone vehicle wash and wax facility are presumed to be 100 percent exempt from sales tax. The stand-alone vehicle wash and wax facility is not required to provide the suppliers of such items with an exemption certificate. See 701—paragraph 15.3(2) “g.”

225.7(3) *Purchases made by a secondary vehicle wash and wax facility.*

a. Sales price of electricity and water. The exemption for the sales price of electricity and water purchased by secondary vehicle wash and wax facilities applies only to the sales price from the sale of electricity and water directly consumed or used in providing vehicle wash and wax services, as distinguished from electricity and water used and consumed for other purposes not related to vehicle wash and wax services (e.g., electricity to operate office equipment or lighting; water used for cleaning the inside of a gas station or for irrigation).

(1) Separately metered electricity and water. Ideally, a secondary vehicle wash and wax facility will have separate meters to measure its nonexempt electricity and water usage and its exempt electricity and water used for providing taxable vehicle wash and wax services. A secondary vehicle wash and wax facility that separately meters its exempt and nonexempt electricity and water usage and does not use the exempt electricity and water for any other purpose than providing a taxable vehicle wash and wax service does not have to file an exemption certificate with the suppliers. See 701—paragraph 15.3(2) “g.” The supplier should not charge tax on the charges associated with the meters that measure electricity and water used solely for providing the taxable vehicle wash and wax services.

However, if water or electricity which is measured by the meter which separately measures the vehicle wash and wax facility is used for both taxable vehicle wash and wax services and nonexempt purposes (e.g., consumed in performance of its business operations), the secondary vehicle wash and wax facility must allocate the use of the electricity or water according to exempt and nonexempt use if an exemption for nontaxable use is to be claimed. To obtain the exemption for electricity or water under this rule, a secondary vehicle wash and wax facility that has both exempt and nonexempt electricity or water

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usage measured by the same meter must request the exemption by providing an exemption certificate to the electricity or water supplier.

The exemption certificate shall indicate what percentage of the electricity or water is used for taxable vehicle wash and wax services and is therefore exempt. The exemption certificate shall be in writing and detail how the percentages of exempt and nonexempt usage were developed. The rationale provided for the percentage of exempt water and electricity must be reasonable after the nature of the secondary vehicle wash and wax service facility's primary purpose and all other facts and circumstances are considered. A secondary vehicle wash and wax facility that cannot, or does not want to, determine the percentage of exempt electricity or water usage may forego the exemption. The exemption certificate is valid for three years, but the secondary vehicle wash and wax facility must amend its exemption certificate to reflect any changes that would affect the exemption amount (e.g., summer month water usage compared to winter month water usage).

(2) Exempt and nonexempt usage measured by the same meter. When electricity and water are purchased for vehicle wash and wax services as well as for taxable uses, and the use of the electricity or water is recorded on a single meter, a secondary vehicle wash and wax facility must allocate the use of the electricity or water according to exempt and nonexempt use if an exemption for nontaxable use is to be claimed. To obtain the exemption for electricity or water under this subparagraph, a secondary vehicle wash and wax facility that has both exempt and nonexempt electricity or water usage measured by the same meter must request the exemption by providing an exemption certificate to the electricity or water supplier.

The exemption certificate must indicate what percentage of the electricity or water is used for taxable vehicle wash and wax services and is therefore exempt. The exemption certificate shall be in writing and detail how the percentages of exempt and nonexempt usage were developed. The rationale provided for the percentages of exempt water and electricity must be reasonable after the nature of the secondary vehicle wash and wax service provider's primary purpose and all other facts and circumstances are considered. A secondary vehicle wash and wax facility that cannot, or does not want to, determine the percentages of exempt electricity and water usage may either forego the exemption or install a separate meter. The exemption certificate is valid for three years, but the secondary vehicle wash and wax facility must amend its exemption certificate to reflect any changes that would affect the exemption amount (e.g., summer month water usage compared to winter month water usage).

Exemption statutes are strictly construed against the taxpayer in favor of taxation (See *Dial Corp. v. Iowa Dep't of Revenue*, 634 N.W.2d 643, 646 (Iowa 2001)). The secondary vehicle wash and wax facility has the burden of proof regarding the exempt percentages (See *id.* and Iowa Code section 421.60(6)) and is liable for any mistakes or misrepresentations made regarding the computation or for failure to notify the electricity or water supplier in writing of the percentage of exempt usage, if required.

(3) Credit. A supplier of electricity or water that sells electricity or water to vehicle wash and wax facilities may bill customers for sales tax even if the facility qualifies for the exemption from sales tax under this rule if the supplier cannot adjust its billing process in time to accommodate this exemption. Subsequently, the electricity or water supplier shall provide a credit for tax collected from a vehicle wash and wax facility, and the credit is to appear on the first possible billing date after May 25, 2012.

b. Sales price of chemicals, solvents, sorbents, or reagents. The sales price of chemicals, solvents, sorbents, or reagents sold to a secondary vehicle wash and wax facility to be used in providing a taxable vehicle wash and wax service is presumed to be 100 percent exempt from sales tax if the secondary vehicle wash and wax facility's primary business does not consume or sell the same chemicals, solvents, sorbents, or reagents that are used in providing taxable vehicle wash and wax services. If the secondary vehicle wash and wax facility's primary business does not use or sell the same products used in providing the taxable vehicle wash and wax service, the facility does not have to provide the retailer with an exemption certificate. However, if the secondary vehicle wash and wax facility may consume the chemicals, solvents, sorbents, or reagents for any purpose other than providing taxable vehicle wash and wax services, the secondary vehicle wash and wax facility shall either:

(1) Purchase such items without tax liability if the majority of the chemicals, solvents, sorbents, or reagents are used in performing the vehicle wash and wax service and remit the tax to the department

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at the time such items are consumed in the operation of the primary business. The secondary vehicle wash and wax facility shall provide to the retailer an exemption certificate which indicates that not all items will be used in providing a taxable vehicle wash and wax service and the tax on such items will be remitted at a later date; or

(2) Pay tax to retailers at the time of purchase if the majority of the chemicals, solvents, sorbents, or reagents will be consumed in the operation of the primary business and deduct the original cost of any such items subsequently used in the vehicle wash and wax service when reporting tax on the facility's returns.

EXAMPLE A: An automobile dealership offers a taxable drive-through vehicle wash and wax service in addition to its primary business purpose of selling vehicles. The automobile dealership is a "secondary vehicle wash and wax facility" because the taxable vehicle wash and wax service is offered secondarily to its primary purpose of selling and servicing vehicles. In addition to providing vehicle wash and wax services to the general public (a taxable vehicle wash and wax service), the automobile dealership uses its vehicle wash and wax facility to wash and wax its inventory. Using the vehicle wash and wax facility to wash or wax inventory is not a taxable vehicle wash and wax service because the vehicle wash and wax service is not sold to customers; the service is "consumed" in performance of the automobile dealership's business operations. See 701—paragraph 18.3(1) "c."

The automobile dealership has electricity and water meters that each separately measure the electricity and water used and consumed in using the vehicle wash and wax facility. Although the automobile dealership separately meters electricity and water, the separate meters do not measure only taxable vehicle wash and wax services. Therefore, to claim the exemption, the automobile dealership shall provide the electricity and water suppliers with an exemption certificate that states the percentages of water and electricity used in providing taxable vehicle wash and wax services. The electricity and water suppliers shall separately state and bill for the taxable and exempt amounts.

The automobile dealership also uses some of the chemicals, solvents, sorbents, or reagents while washing and waxing its inventory, so the automobile dealership may either (1) purchase such items without tax liability if the majority of the chemicals, solvents, sorbents, or reagents are used in performing the vehicle wash and wax service and remit the tax at the time such items are consumed in the operation of the primary business, or (2) pay tax to retailers at the time of purchase if the majority of the chemicals, solvents, sorbents, or reagents will be consumed in the operation of the primary business and deduct the original cost of any such items subsequently used in the vehicle wash and wax service when reporting tax on the dealership's returns.

The exemption is available for the quantity of items used in providing the taxable vehicle wash and wax services even though the automobile dealership does not separately itemize on its receipts the amounts of electricity, water, chemicals, solvents, sorbents, or reagents used in providing the taxable vehicle wash and wax services.

EXAMPLE B: A gas station that also sells vehicle wash and wax services does not separately meter the electricity or water used and consumed in providing the taxable vehicle wash and wax services. With the exception of providing vehicle wash and wax services, the gas station does not provide any other additional services. The gas station wants to claim the exemption. To obtain the exemption for electricity or water under this rule, the gas station shall calculate, and has the burden of proving, the amount of exempt electricity or water it uses in providing taxable vehicle wash and wax services. The automobile dealership shall furnish to the electricity or water supplier an exemption certificate that indicates what percentage of the electricity or water is exempt.

Additionally, because the gas station only sells gasoline and taxable vehicle wash and wax services, it is unlikely that the gas station will consume the chemicals, solvents, sorbents, or reagents for any purpose other than providing taxable vehicle wash and wax services. Therefore, the sales price of the chemicals, solvents, sorbents, or reagents that the gas station purchased for use in providing taxable vehicle wash and wax services is 100 percent exempt from sales tax. The gas station does not have to provide the retailers of the chemicals, solvents, sorbents, or reagents with an exemption certificate.

EXAMPLE C: Same facts as Example B, except the gas station does not believe it is feasible to accurately determine the amount of electricity or water usage that can be attributed to the vehicle wash

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and wax facility. The gas station also does not believe it is economically beneficial to install separate meters to measure the usage of electricity or water for the sole purpose of claiming the exemption. Therefore, the gas station does not claim the exemption and pays sales tax on the full sales price of water or electricity.

This rule is intended to implement 2011 Iowa Code Supplement section 423.3 as amended by 2012 Iowa Acts, Senate File 2342, section 13.

[Filed 9/26/12, effective 11/21/12]

[Published 10/17/12]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 10/17/12.

ARC 0402C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby amends Chapter 235, "Rebate of Iowa Sales Tax Paid," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXV, No. 4, p. 360, on August 22, 2012, as **ARC 0295C**.

Pursuant to 2012 Iowa Acts, Senate File 2329, rule 701—235.2(423) provides for a sanctioned baseball and softball tournament facility and movie site. Under this new rule, qualifying rebates of Iowa state sales tax may be made to the owner or operator of a sanctioned baseball and softball tournament facility and movie site, as defined in the rule, for sales occurring on or after January 1, 2014, and ending January 1, 2024. Under this rule, those requesting the rebate must complete and file with the Department of Revenue an affidavit for a sanctioned baseball and softball tournament facility and movie site.

This amendment is identical to that published under the Notice of Intended Action.

This amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

After analysis and review of this rule making, the Department has determined the legislation that gives rise to this rule will have a positive impact on jobs by creating new retail and service businesses that can be staffed by Iowans.

This amendment is intended to implement 2011 Iowa Code Supplement sections 423.2(11) and 423.4 as amended by 2012 Iowa Acts, Senate File 2329.

This amendment will become effective November 21, 2012, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

The following amendment is adopted.

Adopt the following **new** rule 701—235.2(423):

701—235.2(423) Sanctioned baseball and softball tournament facility and movie site. Effective July 1, 2012, qualifying rebates of Iowa state sales tax may be made to the owner or operator of a sanctioned baseball and softball tournament facility and movie site as defined in this rule for sales occurring on or after January 1, 2014, and ending January 1, 2024. Qualifying rebates are for state sales tax only. Local option taxes are not subject to rebate under this program.

235.2(1) Definitions. For the purpose of this program the following definitions apply:

"Change of control" means any of the following:

1. Any change in the ownership of the original or any subsequent legal entity that is the owner or operator of the baseball and softball tournament facility and movie site such that more than 51 percent of the equity interests in the legal entity cease to be owned by individuals who are residents of Iowa, an Iowa corporation, or combination of both.

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2. The original owners of the legal entity that is the owner or operator of the baseball and softball tournament facility and movie site shall collectively cease to own more than 50 percent of the voting equity interests of such legal entity or shall otherwise cease to have effective control of such legal entity.

“Department” means the department of revenue.

“Iowa corporation” means a corporation incorporated under the laws of Iowa where at least 51 percent of the corporation’s equity interests are owned by individuals who are residents of Iowa.

“Owner or operator” means a for-profit legal entity where at least 51 percent of its equity interests are owned by individuals who are residents of Iowa, an Iowa corporation, or combination of both and that is the owner or operator of a baseball and softball tournament facility and movie site and is primarily a promoter of baseball and softball tournaments.

“Population” means the population based upon the 2010 certified federal census.

“Sanctioned baseball and softball tournament facility and movie site” or “facility” means a baseball and softball tournament complex and tourist destination, which facility is located on a maximum of 279 acres, located inside or within three miles of the city limits of a city with a population of at least 4,000 but not more than 5,500 residents, which city is located in a county with a population of at least 93,000 but not more than 100,000 residents and where the construction on the baseball and softball tournament facility commenced not later than one year following July 1, 2013, and the cost of the construction upon completion was at least \$38 million.

235.2(2) Affidavit by owner or operator. The owner or operator of a baseball and softball tournament facility and movie site seeking a rebate of sales tax imposed and collected by retailers upon sales of any goods, wares, merchandise, admission tickets, or services furnished to purchasers at the facility must file with the department the following affidavit certifying that qualifications for the rebate have been met:

Iowa Department of Revenue
Sales Tax Rebate Affidavit

NAME OF AFFIANT	*	AFFIDAVIT FOR SANCTIONED
	*	BASEBALL AND SOFTBALL
ADDRESS OF AFFIANT	*	TOURNAMENT FACILITY AND
	*	MOVIE SITE

The undersigned duly swears that the named Baseball and Softball Tournament Facility and Movie Site complies with criteria to be entitled to rebate of sales tax as required in Iowa Code section 423.4 as follows:

1. The facility is sanctioned as a baseball and softball tournament facility and movie site;
2. The sanctioned baseball and softball tournament facility and movie site is located on a maximum of 279 acres of Iowa land;
3. The sanctioned baseball and softball tournament facility and movie site is located in a city with a population, as defined by the rules governing this program, of at least 4,000 but not more than 5,500 residents;
4. The city in which the sanctioned baseball and softball tournament facility and movie site is located is in a county with a population, as defined by the rules governing this program, of at least 93,000 but not more than 100,000 residents;
5. Construction of the sanctioned baseball and softball tournament facility and movie site was commenced on or before July 1, 2013;
6. Cost of construction of the sanctioned baseball and softball tournament facility and movie site upon completion is at least \$38 million; and
7. There has not been a “change of control” as defined in the rules governing this program regarding the legal ownership or operation of the baseball and softball tournament facility and movie site.

The undersigned duly swears that he or she is the owner or operator of the sanctioned baseball and softball tournament facility and movie site or that the undersigned is the authorized representative of

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the sanctioned baseball and softball tournament facility and movie site and has the authority to sign this document. The undersigned swears that he or she has personal knowledge regarding the facts contained in this affidavit and that the statements set forth in this affidavit are true and accurate and that the sanctioned baseball and softball tournament facility and movie site has met all of the requirements as contained herein.

Name of Affiant	Date
Position of Affiant	

235.2(3) Notification to the department of revenue. The owner or operator of the sanctioned baseball and softball tournament facility and movie site shall provide the department with the identity of all retailers at the facility that will be collecting sales tax and shall keep the information current. The owner or operator of the facility shall notify the department within ten days of the termination of a retailer from collecting sales tax at the facility. In addition, the owner or operator of the facility shall notify the department within ten days of the start-up of a retailer collecting sales tax at the facility.

235.2(4) Limitations. The sanctioned baseball and softball tournament facility and movie site rebate program applies only to transactions that occur on or after January 1, 2014, but before January 1, 2024, and for which sales tax was collected. Only the state sales tax is subject to rebate. The rebate is limited to the Iowa sales tax rate. Local option taxes paid and collected are not subject to rebate. Rebates of sales taxes to a facility are not authorized for transactions that occur on or after the date of the change of control of the facility. The amount of sales tax revenues transferred from the general fund to the baseball and softball tournament facility and movie site fund is that portion of sales tax receipts remaining in the general fund after the department transfers, in the order prescribed:

- a. Local option sales taxes to those taxing jurisdictions imposing local option taxes;
- b. If the sales tax rate is increased to greater than 6 percent, an amount of sales tax equal to the amount generated by the increase in the tax rate—limited to 3/8 of 1 percent of the sales tax rate that exceeds 6 percent—to the natural resources and outdoor recreation trust fund; and
- c. One-sixth of the remaining sales tax revenues to the secure an advanced vision for education fund.

235.2(5) Termination of rebate program. The rebate program for the sanctioned baseball and softball tournament facility and movie site terminates on the earliest of the following dates:

- a. January 1, 2024; or
- b. Thirty days following the date on which \$16.5 million in total rebates have been provided; or
- c. Thirty days following the date of the change of control of the facility.

235.2(6) Sourcing of sales. Advance ticket and admissions sales shall be considered occurring at the sanctioned baseball and softball tournament facility and movie site regardless of where the transactions actually occur. Consequently, the state sales tax and any applicable local option tax in effect for the jurisdiction in which the facility is located must be imposed on the purchase price of advance ticket and admissions sales.

Other types of sales eligible for rebate under this program include, but are not limited to, sales by vendors and sales at concessions, gift shops, and museums.

235.2(7) Requirements to obtain a rebate of state sales tax by the sanctioned baseball and softball tournament facility and movie site.

- a. The rebate request must be submitted to the department on the authorized department form;
 - b. The rebate request form must be filed quarterly with the department and in a timely manner;
- and

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c. All the information requested on the rebate request form must be completed.

This rule is intended to implement 2011 Iowa Code Supplement sections 423.2(11) and 423.4 as amended by 2012 Iowa Acts, Senate File 2329.

[Filed 9/26/12, effective 11/21/12]

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ARC 0409C

**TELECOMMUNICATIONS AND TECHNOLOGY
COMMISSION, IOWA[751]**

Adopted and Filed

Pursuant to the authority of Iowa Code section 8D.3(3)“b,” the Iowa Telecommunications and Technology Commission hereby amends Chapter 1, “Description of Organization,” Chapter 9, “Requests for Waiver of Network Use by Certified Users,” and Chapter 15, “Advisory Councils, Committees and Groups,” Iowa Administrative Code.

The amendments reflect changes made in the organizational structure of the Iowa Communications Network; in the definition of “certified user”; and in the requirements for posting advisory councils’, committees’ and groups’ agendas, meeting notices and minutes on the Iowa Communications Network Web site.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 8, 2012, as **ARC 0269C**. A public hearing was held on August 29, 2012. No written comments were received. No changes were made from the Notice.

The Iowa Telecommunications and Technology Commission adopted these amendments on September 20, 2012.

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

These amendments are intended to implement Iowa Code chapter 8D.

These amendments will become effective on November 21, 2012.

The following amendments are adopted.

ITEM 1. Amend subrules 1.5(1) and 1.5(2) as follows:

1.5(1) Executive director. The executive director or the commission’s designee administers the programs and services of the commission in compliance with the Iowa Code and the rules adopted by the commission. The executive director’s office is responsible for providing legislative liaison and public information functions, as well as providing administrative support to the commission. The executive director’s office provides information and education to the public about the commission and the fiberoptic network and maintains the commission’s Web site.

1.5(2) Administrative elements. In order to carry out the functions of the commission, the following divisions have been established:

a. ~~The business and governmental services~~ administrative division coordinates the activities between the engineers, individual sites, and authorized users. The division is responsible for providing cost estimates for services; tracking service requests; executing installation services; assisting authorized users in finding the best structure to meet the users’ needs; developing new products and services; maintaining price tables; and providing customer service and assistance. ~~The division is responsible for providing legislative liaison and public information functions as well as providing administrative support to the commission. The division provides information and education to the public about the commission and the fiberoptic network and maintains the commission’s Web site.~~ The division is also responsible for maintaining the financial books and records of the commission, accounting, billing, asset inventory and management, personnel transactions, travel vouchers, claims

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for payments of goods and services, processing cash receipts, purchasing, and contracting activities, as well as coordination with the attorney general's office for legal counsel.

~~*b.* The finance division is responsible for maintaining the financial books and records of the commission, accounting, billing, asset inventory and management, personnel transactions, travel vouchers, claims for payments of goods and services, processing cash receipts, purchasing, and contracting activities, as well as coordination with the attorney general's office for legal counsel.~~

e. b. The network operations and engineering division is responsible for provisioning of video services, data/Internet services, and voice services for authorized users. The division is responsible for all operational aspects of the fiberoptic network. The division is responsible for the technical operation of the fiberoptic network, including research and development; network systems; agency information systems functions; and maintenance of a circuit database.

ITEM 2. Amend rule 751—9.1(8D), introductory paragraph, as follows:

751—9.1(8D) Request for waiver. A certified user is entitled to file a request for a waiver pursuant to Iowa Code section 8D.9(2). For the purposes of this chapter, “certified user” means an area education agency, community college, or regents institution,~~or private college~~ that has certified with the commission that it is or will be a part of the network.

ITEM 3. Amend subrule 15.3(3) as follows:

15.3(3) *Provide notices of meetings and minutes of meetings.*

a. Each advisory council, committee or group shall prepare minutes of its meetings and submit the minutes to the commission within ~~30~~ 60 days of the date of the meeting for posting on the Iowa communications network Web site.

b. Each advisory council, committee or group shall provide notice of its meetings to interested parties identified by the commission or the advisory council, committee or group. An advisory council, committee or group shall submit an electronic agenda and notice to the ICN one week prior to a scheduled meeting for posting on the Iowa communications network Web site.

[Filed 9/28/12, effective 11/21/12]

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