



# IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXXII  
November 18, 2009

NUMBER 11  
Pages 1215 to 1328

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COMMERCE DEPARTMENT[181]“umbrella”

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- Filed, Third-party administrators, ch 58 **ARC 8310B** . . . . . 1288

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- Filed, Commercial explosive licensing, rescind 5.7, 5.851, 5.865, 5.866; adopt ch 235 **ARC 8303B** . . . . . 1310
- Filed, Fire fighter certification, 251.202 **ARC 8302B** . . . . . 1316
- Filed, State building code, amendments to chs 300, 301, 303 **ARC 8305B** . . . . . 1316
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- Filed, Delivery and receipt of radon information, 14.1(6) **ARC 8285B** . . . . . 1327

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- Notice, Taxable and exempt sales; hotel and motel tax, 17.1, 18.40, 103.1, 105.3, 235.1, 241.3 to 241.5 **ARC 8306B** . . . . . 1262

## PREFACE

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

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

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

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

KATHLEEN K. WEST, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Deputy Editor		(515)281-8157
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### CITATION of Administrative Rules

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

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

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

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

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

## Schedule for Rule Making 2009

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
13	Wednesday, November 25, 2009	December 16, 2009
14	Wednesday, December 9, 2009	December 30, 2009
15	Wednesday, December 23, 2009	January 13, 2010

**PLEASE NOTE:**

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, December 8, 2009, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the December 2, 2009, Iowa Administrative Bulletin.

#### **ADMINISTRATIVE SERVICES DEPARTMENT[11]**

Benefits, amendments to chs 50, 63, 64 Filed **ARC 8265B** ..... 11/4/09

#### **AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

Insect pests and diseases, 46.15 Filed **ARC 8293B** ..... 11/18/09

Senior farmers' market nutrition program—purchase of unpasteurized, pure honey, 50.3

Filed **ARC 8308B** ..... 11/18/09

Weights and measures, 85.39 Filed **ARC 8292B** ..... 11/18/09

#### **ATTORNEY GENERAL[61]**

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#### **ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]**

Film, television, and video project promotion program, amendments to ch 36

Notice of Termination **ARC 8275B** ..... 11/4/09

Enterprise zones—housing tax credits, 59.8(2)“a”(7) Notice of Termination **ARC 8273B** ..... 11/4/09

#### **EDUCATIONAL EXAMINERS BOARD[282]**

EDUCATION DEPARTMENT[281]“umbrella”

Portfolio review and evaluation fees, 12.8 Notice **ARC 8251B** ..... 11/4/09

Portfolio review and evaluation for applicants from recognized non-Iowa institutions, 13.3

Notice **ARC 8249B** ..... 11/4/09

Exchange licenses for applicants from recognized non-Iowa institutions, 13.17 Notice **ARC 8250B** ..... 11/4/09

Licenses and endorsements, 13.28(24), 13.29, 14.1(2), 18.4, 18.5, 18.10(3)

Filed Emergency **ARC 8248B** ..... 11/4/09

#### **ENVIRONMENTAL PROTECTION COMMISSION[567]**

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Clean water state revolving fund, amendments to chs 90 to 93 Notice **ARC 8312B** ..... 11/18/09

Satellite facilities and regional collection centers, amendments to chs 123, 211 Notice **ARC 8313B** ..... 11/18/09

#### **ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]**

Annual election of board officers at first in-person meeting after April 30, 1.1(2) Filed **ARC 8287B** ..... 11/18/09

Date and time of filing campaign disclosure statements and reports, 4.1(3), 4.10, 4.58

Filed Without Notice **ARC 8290B** ..... 11/18/09

Ballot issue committees—filing of a statement of organization, 4.3(1)

Filed Without Notice **ARC 8289B** ..... 11/18/09

Item purchased at fair market value from an Iowa committee—exclusion as a contribution,

4.32 Filed **ARC 8286B** ..... 11/18/09

Form PFD to be filed only electronically, 7.1, 7.3 Filed **ARC 8288B** ..... 11/18/09

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

PUBLIC DEFENSE DEPARTMENT[601]“umbrella”

E911 service board membership, 10.2, 10.3(1), 10.4(2), 10.7(2), 10.8(6), 10.11 Filed **ARC 8314B** ..... 11/18/09

#### **HUMAN SERVICES DEPARTMENT[441]**

Nursing facility quality assurance assessment and payments, ch 36 div II, 36.6, 36.7,

81.6(11)“p,” 81.6(21) Filed **ARC 8258B** ..... 11/4/09

Eligibility for FIP, food assistance or Medicaid, amendments to chs 40, 41, 65, 75, 76, 92

Notice **ARC 8272B** ..... 11/4/09

Elimination of FIP diversion program, amendments to ch 47 Filed **ARC 8259B** ..... 11/4/09

Medicare savings programs—LIS benefits, 75.1, 75.52(3), 76.1(1), 76.7(4) Filed **ARC 8260B** ..... 11/4/09

Adoption assistance, HIPP program, 75.1, 75.2(1), 75.21 Notice **ARC 8311B** ..... 11/18/09

Medicaid for children with disabilities, 75.1(43)“d”(3) Filed Emergency After Notice **ARC 8261B** ..... 11/4/09

Billing for time-related services, 79.3(2)“c”(3)“3” Filed **ARC 8262B** ..... 11/4/09

Medical assistance advisory council, 79.7 Filed **ARC 8263B** ..... 11/4/09

HAWK-I program—amendments to eligibility process, 86.1, 86.3(7)“b,” 86.9(2) Notice **ARC 8279B** ..... 11/18/09

HAWK-I eligibility—effective date of coverage, 86.2(4)“b,” 86.5 Filed **ARC 8281B** ..... 11/18/09

HAWK-I—conditions of eligibility, 86.2(7), 86.2(12) Filed **ARC 8280B** ..... 11/18/09

IowaCare—citizenship and documentation requirements, 92.2(2), 92.2(4) Notice **ARC 8256B** ..... 11/4/09

Child care assistance, 170.1 to 170.5 Notice **ARC 8274B** ..... 11/4/09

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

Dependent adult abuse in facilities and programs, ch 52 Filed **ARC 8294B** ..... 11/18/09

**INSURANCE DIVISION[191]**

COMMERCE DEPARTMENT[181]"umbrella"

Consent for prohibited persons to engage in the business of insurance, ch 13 Filed **ARC 8309B** ..... 11/18/09

Long-term care partnership program, amendments to chs 39, 72 Filed **ARC 8271B** ..... 11/4/09

Third-party administrators, ch 58 Filed **ARC 8310B** ..... 11/18/09

**IOWA FINANCE AUTHORITY[265]**

Title guaranty division, amendments to ch 9 Notice **ARC 8264B** ..... 11/4/09

Low-income housing tax credits, 12.1, 12.2 Filed **ARC 8266B** ..... 11/4/09

**LABOR SERVICES DIVISION[875]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Child labor—civil penalties, permits, certificates of age, 32.1, 32.2, 32.11, 32.12 Filed **ARC 8300B** ..... 11/18/09

Inflatable amusement rides, 61.1(1), 62.2(9) Notice **ARC 8301B** ..... 11/18/09

Boilers and pressure vessels, amendments to chs 80, 90 to 94, 96 Filed **ARC 8283B** ..... 11/18/09

**NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Nonresident deer hunting—special licenses, 94.1(5) Filed **ARC 8252B** ..... 11/4/09

Wild turkey spring hunting—special licenses, 98.9(5) Filed **ARC 8253B** ..... 11/4/09

Wild turkey fall hunting, ch 99 title, 99.1, 99.2(4) Filed **ARC 8254B** ..... 11/4/09

Nonambulatory deer hunting licenses, 106.1(9) Filed **ARC 8255B** ..... 11/4/09

**PHARMACY BOARD[657]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

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Notice **ARC 8267B** ..... 11/4/09

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**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Consistency with statute—"felony" changed to "crime," 45.2(11) Notice **ARC 8278B** ..... 11/18/09

Consistency with statute—"felony" changed to "crime," 134.2(11) Notice **ARC 8277B** ..... 11/18/09

Consistency with statute—"felony" changed to "crime," 329.2(11) Notice **ARC 8282B** ..... 11/18/09

**PUBLIC HEALTH DEPARTMENT[641]**

Continuing education for plumbing and mechanical systems professionals, ch 30

Notice of Termination **ARC 8276B** ..... 11/4/09

Continuing education for plumbing and mechanical systems professionals, ch 30

Notice **ARC 8268B**, also Filed Emergency **ARC 8270B** ..... 11/4/09

**PUBLIC SAFETY DEPARTMENT[661]**

Fire marshal administration, fire safety requirements, rescind ch 5; adopt ch 200; amend chs

201, 202, 205 Filed **ARC 8307B** ..... 11/18/09

Commercial explosive licensing, rescind 5.7, 5.851, 5.865, 5.866; adopt ch 235 Filed **ARC 8303B** ..... 11/18/09

Fire fighter certification, 251.202 Filed **ARC 8302B** ..... 11/18/09

State building code, amendments to chs 300, 301, 303 Filed **ARC 8305B** ..... 11/18/09

State historic building code, 350.1(3) Filed **ARC 8304B** ..... 11/18/09

**REAL ESTATE COMMISSION[193E]**

Professional Licensing and Regulation Bureau[193]

COMMERCE DEPARTMENT[181]"umbrella"

Transfer of license and required transfer form, 6.2(1)"b" Filed **ARC 8284B** ..... 11/18/09

Permitted activities of unlicensed support personnel, 7.13(4) Notice **ARC 8291B** ..... 11/18/09

Delivery and receipt of radon information, 14.1(6) Filed **ARC 8285B** ..... 11/18/09

**REVENUE DEPARTMENT[701]**

Taxable and exempt sales; hotel and motel tax, 17.1, 18.40, 103.1, 105.3, 235.1, 241.3 to

241.5 Notice **ARC 8306B** ..... 11/18/09

## ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

**EDITOR'S NOTE: Terms ending April 30, 2011.**

Senator Merlin Bartz  
2081 410th Street  
Grafton, Iowa 50440

Senator Thomas Courtney  
2200 Summer Street  
Burlington, Iowa 52601

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

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**Administrative Rules Coordinator**  
Governor's Ex Officio Representative  
Capitol, Room 11  
Des Moines, Iowa 50319  
Telephone (515)281-0208

**EDUCATIONAL EXAMINERS BOARD[282]**

Portfolio review and evaluation fees, 12.8 IAB 11/4/09 <b>ARC 8251B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	November 25, 2009 1 p.m.
Portfolio review and evaluation for applicants from non-Iowa institutions, 13.3 IAB 11/4/09 <b>ARC 8249B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	November 25, 2009 1 p.m.
Exchange licenses for applicants from non-Iowa institutions, 13.17 IAB 11/4/09 <b>ARC 8250B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	November 25, 2009 1 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Clean water state revolving fund, amendments to chs 90 to 93 IAB 11/18/09 <b>ARC 8312B</b>	Public Library 235 E. Hilton St. Marengo, Iowa	December 8, 2009 10:30 a.m.
	Public Library 609 Cayuga St. Storm Lake, Iowa	December 9, 2009 1 p.m.
	DNR Water Supply Office 401 SW 7th St., Suite M Des Moines, Iowa	December 10, 2009 10 a.m.
Satellite facilities and regional collection centers, amendments to chs 123, 211 IAB 11/18/09 <b>ARC 8313B</b>	Fourth Floor West Conference Room Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa	December 8, 2009 11 a.m. to 12 noon

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

Health care facilities, 50.10 to 50.13, 56.3, 56.6, 56.13 to 56.16, 58.57 IAB 10/7/09 <b>ARC 8190B (ICN Network)</b>	ICN Room, Sixth Floor Lucas State Office Bldg. 321 E. 12th St. Des Moines, Iowa	November 19, 2009 3 p.m.
	Room 118, Iowa Lakes Community College 1900 N. Grand Ave. Spencer, Iowa	November 19, 2009 3 p.m.
	Room 024, Looft Hall Iowa Western Community College 2700 College Rd. Council Bluffs, Iowa	November 19, 2009 3 p.m.
	Room D, Public Library 123 S. Linn St. Iowa City, Iowa	November 19, 2009 3 p.m.
	Room 110, Tama Hall Hawkeye Community College 1501 E. Orange Rd. Waterloo, Iowa	November 19, 2009 3 p.m.
	Room 106, Activity Center North Iowa Community College 500 College Dr. Mason City, Iowa	November 19, 2009 3 p.m.



**INSPECTIONS AND APPEALS DEPARTMENT[481] (Cont'd)**

<b>(ICN Network)</b>	Room 2, Keystone AEA 2310 Chaney Rd. Dubuque, Iowa	November 19, 2009 3 p.m.
	Public Library 529 Pierce St. Sioux City, Iowa	November 19, 2009 3 p.m.

**IOWA FINANCE AUTHORITY[265]**

Title guaranty division, amendments to ch 9 IAB 11/4/09 <b>ARC 8264B</b>	Iowa Finance Authority Office 2015 Grand Ave. Des Moines, Iowa	November 24, 2009 1 p.m.
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**LABOR SERVICES DIVISION[875]**

Inflatable amusement rides, 61.1(1), 62.2(9) IAB 11/18/09 <b>ARC 8301B</b>	Stanley Room Iowa Workforce Development 1000 E. Grand Ave. Des Moines, Iowa	December 10, 2009 9 a.m. (If requested)
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**PROFESSIONAL LICENSURE DIVISION[645]**

Consistency with statute—"felony" changed to "crime," 45.2(11) IAB 11/18/09 <b>ARC 8278B</b>	Fifth Floor Board Room 526 Lucas State Office Bldg. Des Moines, Iowa	December 8, 2009 9:30 to 10 a.m.
Consistency with statute—"felony" changed to "crime," 134.2(11) IAB 11/18/09 <b>ARC 8277B</b>	Fifth Floor Board Room 526 Lucas State Office Bldg. Des Moines, Iowa	December 8, 2009 9 to 9:30 a.m.
Consistency with statute—"felony" changed to "crime," 329.2(11) IAB 11/18/09 <b>ARC 8282B</b>	Fifth Floor Board Room 526 Lucas State Office Bldg. Des Moines, Iowa	December 8, 2009 10 to 10:30 a.m.

**PUBLIC HEALTH DEPARTMENT[641]**

Continuing education for plumbing and mechanical systems professionals, ch 30 IAB 11/4/09 <b>ARC 8268B</b> <b>(ICN Network)</b>	National Guard Armory 3200 2nd Mech Dr. Sioux City, Iowa	November 24, 2009 11 a.m. to 1 p.m.
	Iowa Western Community College – 3 2700 College Rd. Council Bluffs, Iowa	November 24, 2009 11 a.m. to 1 p.m.
	National Guard Armory 3306 Airport Blvd. Waterloo, Iowa	November 24, 2009 11 a.m. to 1 p.m.
	Ottumwa Regional Health Center 1001 E. Pennsylvania Ottumwa, Iowa	November 24, 2009 11 a.m. to 1 p.m.
	Mississippi Bend AEA 9 729 21st St. Bettendorf, Iowa	November 24, 2009 11 a.m. to 1 p.m.
	State Historical Building 600 E. Locust Des Moines, Iowa	November 24, 2009 11 a.m. to 1 p.m.

**PUBLIC HEALTH DEPARTMENT[641] (Cont'd)****(ICN Network)**

Iowa Western Community College – 2 923 E. Washington Clarinda, Iowa	November 24, 2009 11 a.m. to 1 p.m.
National Guard Armory 1160 19th St. SW Mason City, Iowa	November 24, 2009 11 a.m. to 1 p.m.
Crestwood High School 1000 4th Ave. East Cresco, Iowa	November 24, 2009 11 a.m. to 1 p.m.
Archdiocesan Pastoral Center 1229 Mount Loretta Dubuque, Iowa	November 24, 2009 11 a.m. to 1 p.m.
Spirit Lake High School 2701 Hill Ave. Spirit Lake, Iowa	November 24, 2009 11 a.m. to 1 p.m.
Prairie Lakes AEA 1 Triton Circle, Library Bldg. Fort Dodge, Iowa	November 24, 2009 11 a.m. to 1 p.m.
University of Iowa – 1 Room 103, North Hall End of N. Madison St. Iowa City, Iowa	November 24, 2009 11 a.m. to 1 p.m.
Burlington High School 421 Terrace Dr. Burlington, Iowa	November 24, 2009 11 a.m. to 1 p.m.

**REAL ESTATE COMMISSION[193E]**

Permitted activities of unlicensed support personnel, 7.13(4) IAB 11/18/09 <b>ARC 8291B</b>	Second Floor Professional Licensing Conference Room 1920 SE Hulsizer Rd. Ankeny, Iowa	December 8, 2009 9:30 a.m.
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**UTILITIES DIVISION[199]**

Electric interconnection of distributed generation facilities, amend 15.8, 15.10, 15.11(4); adopt ch 45 IAB 10/7/09 <b>ARC 8201B</b>	Board Hearing Room 350 Maple St. Des Moines, Iowa	December 10, 2009 10 a.m.
High-volume access service, 22.1(3), 22.14(2), 22.20(5) IAB 10/7/09 <b>ARC 8227B</b>	Board Hearing Room 350 Maple St. Des Moines, Iowa	December 8, 2009 9 a.m.

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

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

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

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

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]  
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]  
    Agricultural Development Authority[25]  
    Soil Conservation Division[27]  
ATTORNEY GENERAL[61]  
AUDITOR OF STATE[81]  
BEEF INDUSTRY COUNCIL, IOWA[101]  
BLIND, DEPARTMENT FOR THE[111]  
CAPITAL INVESTMENT BOARD, IOWA[123]  
CITIZENS’ AIDE[141]  
CIVIL RIGHTS COMMISSION[161]  
COMMERCE DEPARTMENT[181]  
    Alcoholic Beverages Division[185]  
    Banking Division[187]  
    Credit Union Division[189]  
    Insurance Division[191]  
    Professional Licensing and Regulation Bureau[193]  
        Accountancy Examining Board[193A]  
        Architectural Examining Board[193B]  
        Engineering and Land Surveying Examining Board[193C]  
        Landscape Architectural Examining Board[193D]  
        Real Estate Commission[193E]  
        Real Estate Appraiser Examining Board[193F]  
        Interior Design Examining Board[193G]  
    Savings and Loan Division[197]  
    Utilities Division[199]  
CORRECTIONS DEPARTMENT[201]  
    Parole Board[205]  
CULTURAL AFFAIRS DEPARTMENT[221]  
    Arts Division[222]  
    Historical Division[223]  
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]  
    City Development Board[263]  
IOWA FINANCE AUTHORITY[265]  
EDUCATION DEPARTMENT[281]  
    Educational Examiners Board[282]  
    College Student Aid Commission[283]  
    Higher Education Loan Authority[284]  
    Iowa Advance Funding Authority[285]  
    Libraries and Information Services Division[286]  
    Public Broadcasting Division[288]  
    School Budget Review Committee[289]  
EGG COUNCIL, IOWA[301]  
ELDER AFFAIRS DEPARTMENT[321]  
EMPOWERMENT BOARD, IOWA[349]  
ENERGY INDEPENDENCE, OFFICE OF[350]  
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]  
EXECUTIVE COUNCIL[361]  
FAIR BOARD[371]  
HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]  
Criminal and Juvenile Justice Planning Division[428]  
Deaf Services Division[429]  
Persons With Disabilities Division[431]  
Latino Affairs Division[433]  
Status of African-Americans, Division on the[434]  
Status of Women Division[435]  
Status of Iowans of Asian and Pacific Islander Heritage[436]  
HUMAN SERVICES DEPARTMENT[441]  
INSPECTIONS AND APPEALS DEPARTMENT[481]  
Employment Appeal Board[486]  
Foster Care Review Board[489]  
Racing and Gaming Commission[491]  
State Public Defender[493]  
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
LOTTERY AUTHORITY, IOWA[531]  
MANAGEMENT DEPARTMENT[541]  
Appeal Board, State[543]  
City Finance Committee[545]  
County Finance Committee[547]  
NATURAL RESOURCES DEPARTMENT[561]  
Energy and Geological Resources Division[565]  
Environmental Protection Commission[567]  
Natural Resource Commission[571]  
Preserves, State Advisory Board for[575]  
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]  
PUBLIC DEFENSE DEPARTMENT[601]  
Homeland Security and Emergency Management Division[605]  
Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
Professional Licensure Division[645]  
Dental Board[650]  
Medicine Board[653]  
Nursing Board[655]  
Pharmacy Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
Archaeologist[685]  
REVENUE DEPARTMENT[701]  
SECRETARY OF STATE[721]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
Railway Finance Authority[765]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]  
VETERINARY MEDICINE BOARD[811]  
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
Labor Services Division[875]  
Workers' Compensation Division[876]  
Workforce Development Board and Workforce Development Center Administration Division[877]

**ARC 8312B**

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 455B.173, 455B.105(11) and 455B.299, the Environmental Protection Commission hereby proposes to amend Chapter 90, “Scope of Title—Definitions—Forms,” Chapter 91, “Criteria for Rating and Ranking Projects for the Water Pollution Control State Revolving Fund,” Chapter 92, “Clean Water State Revolving Fund,” and Chapter 93, “Nonpoint Source Pollution Control Set-Aside Programs,” Iowa Administrative Code.

The purpose of the proposed amendments is to update the rules for the Clean Water State Revolving Fund to reflect new definitions and current program practices, and to better define project eligibility and prioritization. The most extensive changes are to the Livestock Water Quality Facilities program. The goal of the proposed amendments is to ensure that loan funds are targeted to water quality improvement.

The proposed changes in Chapters 90 through 93 include the following:

**Chapter 90**

1. Update definitions of eligible projects to reflect new EPA Clean Watersheds Needs categories.
2. Add a definition of “sponsored projects” pursuant to Senate File 339, legislation passed in 2009 Iowa Acts that changed municipal finance law.
3. Remove financial terms. Financial functions are the responsibility of the Iowa Finance Authority.
4. Add a definition of “new AFO” for purposes of loan eligibility.

**Chapter 91**

1. Integrate point source and nonpoint source prioritization. Prioritization will be based on classification and designated use of receiving waters, relative impact of various project types, and project purpose.
2. Remove project readiness criteria that are covered by bypass procedures in Chapter 92 and compliance status criteria.
3. Allow nonpoint source projects to be funded on a first-come, first-funded concept until 90 percent of the set-aside is allocated.

**Chapter 92**

1. Clarify public notice procedures.
2. Remove disbursement schedules and the possibility of environmental impact statements from Intended Use Plan (IUP) components.
3. Remove financial analysis from criteria for fundable list. This is the Iowa Finance Authority’s responsibility and is done through the loan application, not the IUP application.
4. Remove restrictions on funding to projects that previously received construction grants.
5. Reference the Clean Water Act to clarify eligibility of land purchase.
6. Make language on sponsored projects consistent with 2009 Iowa Acts, Senate File 339.
7. Include all assurances stated in the EPA Operating Agreement as required by the Clean Water Act.
8. Delete specific procedures for minority business enterprise (MBE)/women’s business enterprise (WBE) and substitute a reference to new EPA disadvantaged business enterprise (DBE) rules.

**Chapter 93**

1. Onsite Wastewater Systems
  - Change onsite fund to set-aside. The state fund originally established is no longer used.
  - Remove financial underwriting criteria and other financial procedures. These are now covered in the Iowa Finance Authority’s 265—Chapter 26 and in participation agreements with lenders.
2. Livestock Water Quality Facilities

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

- Change pass-through loan to linked deposit.
- Delete location preference.
- Give DNR the authority to deny applications based on enforcement actions.
- Limit funding to avoid subsidization of expansions.
- Refine list of eligible practices.
- Make certain equipment attachments eligible only when an open feedlot is replaced with a dry bedded confinement building and the equipment is integral to the new manure management system.
- Change application procedure. Applications will be submitted to the Soil and Water Conservation Districts rather than to the Department.
  - Adopt Natural Resource Conservation Service technical standards where appropriate.
  - Allow DNR or its agent to place restrictive covenant on land where open lot pens were shut down.
  - Remove financial information.
- 3. Local Water Protection
  - Delete location preference.
  - Adopt Natural Resource Conservation Service technical standards.
  - Limit overbuilding of practices.
- 4. General Nonpoint Source (GNS)
  - Allow participation agreement as well as linked deposit.
  - Define eligibility according to EPA Clean Watershed Needs categories.
  - Change application procedure for GNS projects. Storm water and green infrastructure project applications will be submitted to the Soil and Water Conservation Districts and other GNS project applications will be submitted to the Department.

Any interested person may make written suggestions or comments pertaining to the proposed amendments on or before 4 p.m., Central standard time, on December 15, 2009. Such written materials should be directed to Patti Cale-Finnegan, Water Quality Bureau, Iowa Department of Natural Resources, 401 SW 7th Street, Suite M, Des Moines, Iowa 50309-4611; fax (515)725-0348; or E-mail [patti.cale-finnegan@dnr.iowa.gov](mailto:patti.cale-finnegan@dnr.iowa.gov).

The Water Quality Bureau encourages you, when submitting comments, to utilize the following guidelines. These guidelines aid in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments as an individual or on behalf of a municipality, business, or organization.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language that you think would improve the specific rule(s) and explain why.

Also, public hearings will be held on:

- |                     |            |   |
|---------------------|------------|---|
| • December 8, 2009  | 10:30 a.m. | Marengo Public Library<br>235 East Hilton Street<br>Marengo, Iowa         |
| • December 9, 2009  | 1 p.m.     | Storm Lake Public Library<br>609 Cayuga Street<br>Storm Lake, Iowa        |
| • December 10, 2009 | 10 a.m.    | DNR Water Supply Office<br>401 SW 7th Street, Suite M<br>Des Moines, Iowa |

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

At the hearings, persons may present their views either orally or in writing. Persons attending a hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code sections 17A.3(1)“b,” 455B.105 and 455B.291 to 455B.298 and 2009 Iowa Acts, Senate Files 339 and 432.

The following amendments are proposed.

ITEM 1. Amend the parenthetical implementation statutes for rules **567—90.1(455B,17A)** to **567—90.3(455B,17A)** as follows:  
(455B,17A)

ITEM 2. Rescind the definitions of “Equity fund,” “Lending institution” and “Loan agreement” in rule **567—90.2(455B)**.

ITEM 3. Amend rule **567—90.2(455B)**, definitions of “Eligible project,” “Needs category” and “Project completion,” as follows:

“*Eligible project*” means, in the context of the water pollution control facilities, the acquisition, construction, reconstruction, extension, equipping, improvement, or rehabilitation of any works and facilities useful for the collection, treatment and disposal of sewage and industrial waste in a sanitary manner including treatment works as defined in Section 212 of the Clean Water Act, or the implementation and development of management programs established under Sections 319 and 320 of the Clean Water Act, including construction and undertaking of nonpoint source water pollution control projects and related development activities authorized under those Sections. Only projects classified under one of the following needs categories are eligible for loan assistance: I, II, ~~III~~ III–A, ~~III–B~~, IV–A, IV–B, V, VI, and all subcategories of VII, X and XII. Projects for the primary purpose of speculative growth are considered ineligible.

“*Needs category*” means identified categories of needs which comprise mutually exclusive classes of facilities:

1. Category I—~~Secondary~~ Standard secondary wastewater treatment. This category includes wastewater treatment ~~needs~~ costs necessary to meet the minimum level of treatment ~~required~~ defined by the federal Clean Water Act.

2. Category II—~~More stringent~~ Advanced wastewater treatment. This category includes the wastewater treatment ~~needs~~ costs necessary ~~when more stringent wastewater treatment than secondary (Category I) is required to protect the receiving waters to attain a level of treatment that is more stringent than standard secondary treatment or to produce a significant reduction in nonconventional or toxic pollutants present in the wastewater treated by a facility.~~

3. Category ~~III–A~~ III–A. Infiltration/inflow correction. This category includes ~~rehabilitation of existing sanitary sewers to preclude the entrance of storm water inflow or groundwater infiltration into the sewer~~ costs for correction of sewer system infiltration/inflow problems. Rehabilitation can include sewer or manhole repairs by sealing, lining or replacement and physical removal of inflow sources. Infiltration/inflow correction removes flow from the sewer system by elimination and thereby reduces volumes of wastewater to be treated. Infiltration includes controlling the penetration of water into a sanitary or combined sewer system from the ground through defective pipes or manholes. Inflow includes controlling the penetration of water into the system from drains, storm sewers, and other improper entries. This category also includes costs for preliminary sewer system analysis and detailed sewer system evaluation surveys.

4. Category ~~III–B~~ III–B. Major sewer Sewer system replacement/rehabilitation. This category includes ~~sewer replacement and major rehabilitation of collection or transmission sewers where necessary to the total integrity and performance of the wastewater conveyance and treatment facilities~~ costs for the reinforcement or reconstruction of structurally deteriorating sanitary or combined sewers. The corrective actions must be necessary to maintain the structural integrity of the system.

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

Rehabilitation is considered to be extensive repair of existing sewers (collector and interceptor) beyond the scope of normal maintenance programs, when sewers are collapsing or structurally unsound. ~~Category IIIb does not have infiltration and inflow removal as its basic justification. "Replacement" is defined as the construction of parallel sewer or sewers which perform the function of existing sewers where existing sewers are to be abandoned. "Major rehabilitation" is defined as extensive repair of existing sewers beyond the scope of normal maintenance programs and necessary to maintain structural integrity. Sewer work associated with infiltration/inflow elimination is considered a Category IIIa III-A need. Relief sewers do not fall within this category since they are newly constructed sewers with a function beyond that of existing sewers.~~

5. ~~Category IVa—IV-A. New collectors collector sewers and appurtenances. This category includes sewers which will serve to collect wastewater in existing communities costs of new pipes used to collect and carry wastewater from a sanitary or industrial wastewater source to an interceptor sewer that will convey the wastewater to a treatment facility. The collection system is considered as those public sewers which have a principal purpose of providing service for individual users in existing residential and commercially developed areas to enable collection of wastewater in a centralized system. Pumping stations and force mains and other related appurtenant structures are considered part of the collection system if their primary mechanical function relates to the collection system.~~

6. ~~Category IVb—IV-B. New interceptors interceptor sewers and appurtenances. This category includes sewers which have a principal purpose of transporting wastewater from a collection system to a wastewater treatment site costs for constructing new interceptor sewers and pumping stations to convey wastewater from collection sewer systems to a treatment facility or to another interceptor sewer. Relief sewers are included in this category where additional sewer capacity is required to accommodate all wastewater in a separate sewer system to ensure that it is transported to a wastewater treatment plant for adequate treatment, and to prevent public health hazards within the service area. Relief sewers may include parallel sewers. Pumping stations and force mains and other related appurtenant structures are considered in this category if their primary mechanical function relates to the interceptor's principal purpose. Equalization basins are included in this category.~~

7. ~~Category V—; Correction of combined sewer overflows. This category includes any construction to control the discharge of pollutants from combined storm and sanitary overflows and bypasses, including sewer separation or rehabilitation, detention basins, lagoons or other facilities to control or treat such discharges costs to prevent or control the periodic discharges of mixed storm water and untreated wastewater (combined sewer overflows) that occur when the capacity of a sewer system is exceeded during a wet weather event. This category does not include costs for overflow control allocated to flood control, drainage improvement, or the treatment or control of storm water in separate storm systems.~~

8. ~~Category VI—; Storm water management program. This category includes municipal storm water management programs required pursuant to NPDES permits for discharges from municipal separate storm sewers systems. These management programs include programs or source control measures, or both, structural and nonstructural costs to plan and implement structural and nonstructural measures to control the runoff of water resulting from precipitation (storm water) with the purpose of improving and protecting water quality. This category includes controlling storm water pollution from diffuse sources by reducing pollutants from runoff from commercial and residential areas that are served by the storm sewer, detecting and removing illicit discharges and improper disposal into storm sewers, monitoring pollutants in runoff from industrial facilities that flow into municipal separate storm sewer systems, and reducing pollutants in construction site runoff discharged to municipal separate storm sewers.~~

9. ~~Category VI-A. Storm water conveyance infrastructure. This category includes costs to address the storm water management program activities associated with the planning, design, and construction of conveying storm water via pipes, inlets, roadside ditches, and other similar mechanisms. These costs will be eligible if they are combined with practices described in Category VI-B or VI-C in order to achieve water quality protection or improvement.~~



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

10. Category VI-B. Storm water treatment systems. This category includes costs to address the storm water management program activities associated with the planning, design, and construction of treating storm water with wet ponds, dry ponds, manufactured devices, and other similar means. These costs will be eligible if these activities are implemented in order to achieve water quality protection or improvement.

11. Category VI-C. Green infrastructure. This category includes costs to address the storm water management program activities associated with the planning, design, and construction of low impact development and green infrastructure, such as bioretention, constructed wetlands, permeable pavement, rain gardens, green roofs, cisterns, rain barrels, vegetated swales, and restoration of riparian buffers and flood plains. Projects in this category can be both publicly owned and privately owned.

12. Category VI-D. General storm water management. This category includes costs to address the storm water management program activities associated with implementing a storm water management program, such as Geographic Information Systems and tracking systems, equipment such as street sweepers and vacuum trucks, storm water education program startup costs, and storm water management plan development.

9. ~~13.~~ Category VIIa—VII-A. Nonpoint source (NPS) control: Agricultural cropland sources agriculture (cropland). This category includes ~~nonpoint source~~ costs to address NPS pollution control needs ~~caused by~~ associated with agricultural activities related to croplands such as plowing, pesticide spraying, irrigation, fertilizing, planting, and harvesting.

~~10.~~ 14. Category VIIb—VII-B. Animal sources NPS control: agriculture (animals). This category includes ~~nonpoint source~~ costs that address NPS pollution control needs ~~caused by~~ associated with agricultural activities related to animal production, such as confined animal facilities, open feedlots, and grazing.

~~11.~~ 15. Category VIIc—VII-C. Silviculture NPS control: silviculture. This category includes ~~nonpoint source~~ costs that address NPS pollution control needs ~~caused by~~ associated with forestry activities such as removal of streamside vegetation, road construction and use, timber harvesting, and mechanical preparation for the planting of trees.

~~12.~~ Category VIId—Urban sources. This category includes nonpoint source needs associated with new or existing development in urban or rural settings, such as erosion, sedimentation, and discharge of pollutants (e.g., inadequately treated wastewater, oil, grease, road salts, and toxic chemicals) into water resources from construction sites, roads, bridges, parking lots, and buildings.

~~13.~~ 16. Category VIIe—VII-E. Groundwater NPS control: groundwater protection (unknown sources source). This category includes the needs costs that address groundwater protection ~~nonpoint source~~ NPS pollution control needs such as wellhead and recharge protection activities.

~~14.~~ 17. Category VIIf—VII-F. Marinas NPS control: marinas. This category includes costs that address NPS pollution control needs associated with boating and marinas, such as poorly flushed waterways, boat maintenance activities, discharge of sewage from boats, and the physical alteration of shoreline, wetlands, and aquatic habitat during the construction and operation of marinas.

~~15.~~ 18. Category VIIg—VII-G. Resource NPS control: resource extraction. This category includes costs that address NPS pollution control needs associated with ~~nonpoint source activities~~ from mining and quarrying activities.

~~16.~~ 19. Category VIIh—VII-H. Brownfields NPS control: brownfields. This category includes costs that address NPS pollution control needs ~~that address nonpoint source problems~~ associated with real property, the expansion, redevelopment or reuse of which may be complicated by the presence or potential presence of a hazardous substance, pollutant, or contaminant abandoned industrial sites which might have residual contamination (brownfields).

~~17.~~ 20. Category VIIi—VII-I. Storage NPS control: storage tanks. This category includes the needs costs that address ~~nonpoint source problems caused by~~ NPS pollution control needs associated with tanks designed to hold gasoline, or other petroleum products, or chemicals. The tanks may be located above or below ground level.

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

~~18. 21. Category VIIj—VII-J. Landfills NPS control: landfills. This category includes the needs to address nonpoint source problems caused by costs that address NPS pollution control needs associated with sanitary landfills.~~

~~19. 22. Category VIIIk—VII-K. Hydromodification NPS control: hydromodification. This category includes the needs costs to address nonpoint source problems associated with the degradation of water resources as a result of altering the hydrological characteristics of noncoastal waters, including channelization and channel modification, dam, and streambank and shoreline erosion. Work involving wetland or riparian area protection or restoration is included in this category.~~

~~20. 23. Category X. Recycled water distribution. This category includes costs associated with conveyance of treated wastewater that is being reused (recycled water), including associated rehabilitation/replacement needs.~~

~~20. 24. Category VIII—XII. Individual/decentralized Decentralized sewage treatment. This category includes needs costs associated with the rehabilitation or replacement of individual or community sewage disposal systems and onsite wastewater treatment systems or clustered (community) systems. This category also includes the treatment portion of other decentralized sewage disposal technologies.~~

~~21. Category VIII—Concentrated animal feeding operations (CAFO). This category includes the needs for a combination of unit processes or best management practices designed to address water quality or public health problems caused by agricultural activities related to animal production that are subject to the federal concentrated animal feeding operation regulations.~~

~~22. Category IX—Point source mining. This category addresses the needs for a combination of unit processes or best management practices designed to address water quality or public health problems caused by point source mining and quarrying activities.~~

~~“Project completion” means the date operations of the project are initiated or are capable of being initiated, whichever is earlier means the date the final loan certificate is signed by the recipient.~~

ITEM 4. Adopt the following new definitions of “New AFO,” “NPS,” “POTW” and “Sponsored project” in rule **567—90.2(455B)**:

“*New AFO*” means an animal feeding operation that meets at least one of the following criteria:

1. It was constructed after January 1, 2006.
2. Animal production at the site was resumed after being discontinued for at least 12 months.
3. Production facilities were altered in order to house a different animal species than was produced previously.

“*NPS*” means nonpoint source pollution which does not have a single point of origin and/or is not introduced into a receiving stream from a specific outlet. NPS pollution sources are diffuse and may be a result of runoff, precipitation, atmospheric deposition, drainage, seepage, or hydrological modification.

“*POTW*” means publicly owned treatment works as defined in Section 212 of the Clean Water Act.

“*Sponsored project*” means a water resource restoration project pursuant to 2009 Iowa Acts, Senate File 339, section 7.

ITEM 5. Amend rule 567—90.3(455B) as follows:

**567—90.3(455B) Forms.** The following forms are used to apply for assistance and to provide required documentation. All forms may be obtained from ~~Environmental Services Division State Revolving Fund,~~ Department of Natural Resources, ~~Henry A. Wallace Building, 502 E. Grand~~ 401 SW 7th Street, Suite M, Des Moines, Iowa ~~50319~~ 50309. Forms may also be downloaded from [www.iowasrf.com](http://www.iowasrf.com). Recipients of assistance shall also comply with applicable requirements of the department’s rules.

~~**90.3(1) Point source POTW water pollution control project forms.**~~

~~a. Application package - Form 542-1320.~~

~~b. Reserved.~~

~~**90.3(2) Livestock water quality facilities forms.**~~

~~a. Application form for loan assistance - Form 542-8159.~~

~~b. Reserved.~~

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

~~90.3(3) Local water protection project forms. Rescinded IAB 3/15/06, effective 4/19/06.~~

~~90.3(4) 90.3(2) General nonpoint source project forms.~~

*a. and b. No change.*

~~90.3(5) 90.3(3) Onsite wastewater treatment assistance forms.~~

*a. and b. No change.*

ITEM 6. Amend **567—Chapter 90**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 455B.291 to 455B.298 and 2009 Iowa Acts, Senate File 339.

ITEM 7. Amend rule 567—91.2(455B) as follows:

**567—91.2(455B) Scope of title.** The department has jurisdiction over the surface water and groundwater of the state to prevent, abate and control pollution. As part of that general responsibility, the department and the Iowa finance authority are jointly designated to conduct the administration of the CWSRF loan assistance program to assist in the financing of infrastructure projects pursuant to the Clean Water Act. A project must comply with this chapter and 567—Chapter 92 or 567—Chapter 93 to be eligible for a CWSRF loan. This chapter provides the rating criteria to be used to rank eligible projects for funding. Rating criteria are provided for point source projects publicly owned treatment works (POTW) projects and nonpoint source projects. ~~The nonpoint source projects are divided into three activities:~~

1. ~~Livestock water quality facilities;~~
2. ~~Local water protection projects; and~~
3. ~~General nonpoint source projects.~~

Rating criteria for onsite wastewater systems are not included at this time because nonpoint source projects will be utilized when 90 percent of the set-aside funds have been allocated. Until that time, the loan assistance is based on a first-come, first-funded concept.

ITEM 8. Amend rule 567—91.3(455B) as follows:

**567—91.3(455B) Purpose of water pollution control state revolving fund.** ~~The WPCSRF provides financial assistance to eligible water pollution control works for the design and construction of facilities to protect and improve the state's water quality. The fund reserves a percentage of money each year for administrative purposes. The Iowa department of natural resources (department) administers the program, along with the Iowa finance authority (authority). The director will coordinate with the authority under the terms of an interagency agreement entered into pursuant to Iowa Code chapter 28E. The department establishes priorities for the use of the WPCSRF and publishes them each year in its intended use plan (IUP). The Clean Water Act requires that all uses of CWSRF funds are prioritized.~~

The financial assistance is described in more detail in 567—Chapter 92. This chapter identifies the criteria that are used to rate projects and activities; for both point source POTW and nonpoint source projects and activities sources. This chapter describes how the criteria will be used to calculate a total score for ranking projects. The commission is to set funding targets for point source POTW and nonpoint source activities and to adjust the fundable project list to ensure that the short- and long-term goals of the intended use plan (IUP) are achieved. The public has an opportunity annually, and quarterly as needed, to comment on both the fundable list and the short- and long-term goals of the intended use plan IUP.

ITEM 9. Amend subrule 91.8(1) as follows:

**91.8(1) Point source rating Rating criteria.** ~~The point source rating criteria consider the use classification of the receiving waters, water quality of the receiving waters, compliance status of the discharger, groundwater protection, project benefits type, project purpose, readiness to proceed and a tiebreaker. Priority ranking for the projects shall be based on the total points awarded for all the categories; the greater the total number of points, the higher the ranking. The For POTW projects, the ranking will be done annually at the time the IUP is prepared and will not be updated during the year. For nonpoint source projects, if 90 percent of the set-aside is allocated, the ranking will be done at the time the project application is received. The tiebreaker category will be used when necessary.~~

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

a. *Use classification of receiving waters.* This category addresses the receiving water that is impacted or potentially impacted by the existing situation and that would be improved or protected by the proposed project. Points shall be awarded and shall be cumulative for all designated use classifications of the receiving stream. Points for sludge stabilization, sewers and lift station projects normally will be based on the assigned use of the waters that receive or could receive the effluent discharge.

Use and Classification	Points
<del>Outstanding national resource</del> <u>Iowa waters</u>	<del>50</del> <u>45</u>
High quality waters	40
High quality resource waters	20
Class A1 waters	50
Class A2 waters	45
Class A3 waters	45
Class C waters	40
Class B (CW1) waters	50
Class B (CW2) waters	30
Class B (WW1) & HH waters	30
Class B (WW2) waters	<u>25</u>
Class B (WW3) waters	<u>20</u>
Class B (LW) waters	35
Class B (LR) waters	<u>25</u>

b. *Water quality of receiving waters.* This category addresses the quality of water in the receiving stream and whether or not the water has been designated as impaired for some uses. Bodies of water that are impaired by pollutants are identified as the Section 303(d) list of waters in the integrated report of impaired waters status. The Section 303(d) list of waters also identifies probable pollutant source categories for these impairments. Projects that primarily impact these waters are awarded points if the water body that receives or could receive the wastewater discharge is included on the Section 303(d) list and the probable pollutant source is a point source. Waters are also identified in the Section 305(b) report on their use attainment status. Projects that primarily impact these waters are awarded points depending on the use impairment identified for the water body that receives or could receive the wastewater discharge. If no use impairment is identified indicating the water was not assessed, the partially supporting status points will be awarded. Points will be awarded for both sections A and B of the table below and then totaled for this category.

Indication of water quality	Points
A	
<del>Section 303(d) listed water</del> <u>Integrated Report of impaired waters status</u>	
<del>High rating for total maximum daily load (TMDL) development</del> <u>4a, 4b, 4c, 4d, or 5a</u>	<del>45</del> <u>15</u>
<del>Medium rating for TMDL development</del> <u>5b</u>	<del>35</del> <u>10</u>
<del>Low rating for TMDL development</del> <u>5p</u>	<del>25</del> <u>5</u>
B	
Section 305(b) status	
<u>Aquatics or fish consumption or drinking water</u>	
Fully supporting	<del>10</del> <u>5</u>

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Indication of water quality	Points
Fully supporting/threatened	15
Partially supporting	20 10
Not supporting	30 15
Not assessed	20 7
<u>Recreation</u>	
Fully supporting	5
Partially supporting	10
Not supporting	15
Not assessed	7

*e. Compliance status.* This category addresses the compliance status of the proposed project. To provide an incentive for municipal facilities to maintain compliance, more points are given to projects that are in compliance with their NPDES discharge permit when they apply for a loan. Projects that are not in compliance at the time of application, have bypasses, have received administrative orders from the department or have been referred for legal action are given fewer points than a project in compliance. Unsewered community projects will be considered to be in compliance if they are taking action to eliminate public health problems or water quality problems, or both, prior to formal action by the department.

Compliance Status	Points
Has been referred to Iowa attorney general for discharge violation	30
Received administrative order from DNR for discharge violations	25
Compliance schedule in NPDES permit—existing discharge requirements are not being met	20
Compliance schedule in NPDES permit—new discharge requirements are being imposed	40
Bypassing has been reported in previous 12 months	15
Discharge has met all NPDES permit requirements for 24 months (at time of application)	50
Unsewered community and has initiated project on its own	50
Unsewered community and has received an administrative order from DNR	25

*c. Protection of groundwater resources.* This category considers the use of the aquifer affected by the project.

Groundwater Category	Points
Wellhead protection area for public water supply	40
Unconfined aquifer that serves as a drinking water source	20
Other groundwater protection	10

*d. Project benefit type.* This In this category, incorporates several factors including points are provided based on the type of project and the relative level of the impact on public health and the environment. Points will be awarded only for the primary benefit project type.

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

Project Benefits Type	Points
Protection of public health; corrective measures for problems that pose a clear and direct impact on human health. Examples are sewer backups into basements and sewer overflows impacting populated areas.	40
Protection of the environment; corrective measures for problems that pose a clear and direct impact on water quality and the environment. Examples are effluent violations and combined sewer overflows.	30
Prevention of the development of problems that will have an impact on public health and the environment. Examples are upgrading a treatment facility for anticipated growth and replacement of a lift station beyond design life.	20
Category I. Secondary wastewater treatment	40
Category II. Advanced wastewater treatment	50
Category III–A. Infiltration/inflow correction	30
Category III–B. Sewer replacement/rehabilitation	30
Category IV–A. New collector sewers and appurtenances	10
Category IV–B. New interceptor sewers and appurtenances	20
Category V. Combined sewer overflow correction	40
Category VI. Storm water conveyance treatment systems and green infrastructure	30
Category VII–A. Agriculture (cropland)	30
Category VII–B. Agriculture (animals)	50
Category VII–C. Silviculture	10
Category VII–E. Groundwater protection (unknown sources)	20
Category VII–F. Marinas	10
Category VII–G. Resource extraction	10
Category VII–H. Brownfields	30
Category VII–I. Storage tanks	20
Category VII–J. Landfills	30
Category VII–K. Hydromodification	40
Category X. Recycled water distribution	10
Category XII. Decentralized sewage treatment	40
Refinance of existing projects that meet CWSRF eligibility criteria	5

*e. Readiness to proceed.* This category addresses overall readiness to proceed with project construction. Points can be received for reaching multiple milestones.

Project Status	Points
The project is following the permit application process outlined in department guidance.	20
The applicant has prepared the environmental information document including clearances from other agencies and has submitted the materials to the department.	10
The department and the applicant have agreed on the project schedule and design loading criteria.	10

*e. Project purpose.* In this category, points are awarded based on the purpose and expected outcome of the project. Points will be awarded only for the primary purpose.

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<u>Project Purpose</u>	<u>Points</u>
<u>Allows facility to meet new water quality standards</u>	<u>50</u>
<u>Reduces the loading of a parameter that has been identified as an impairment to the receiving water or watershed as identified through the total maximum daily load (TMDL) process</u>	<u>40</u>
<u>Provides regional consolidation in wastewater treatment or system management</u>	<u>30</u>
<u>Brings facility into compliance with a National Pollution Discharge Elimination System (NPDES) permit or other administrative or judicial enforcement action as may be required by the department or U.S. Environmental Protection Agency (EPA)</u>	<u>25</u>
<u>Eliminates or remediates a source of groundwater pollution</u>	<u>20</u>
<u>Meets existing or reasonable future needs of the community in order to maintain compliance with an NPDES permit</u>	<u>15</u>
<u>Provides operational reliability improvements, apart from projects which address compliance and enforcement</u>	<u>10</u>

f. *Total points.* Total points are calculated using the following formula:  
 Total Points = Use Classification + Water Quality (A) + ~~Water Quality (B)~~ + ~~Compliance Status~~ or Groundwater Protection + ~~Project Benefit Type~~ + Readiness Project Purpose

g. *Tiebreaker.* Two or more projects may receive the same total points on the fundable list. If sufficient state revolving loan funds are not available to fund the projects, ties will be broken by determining which project has the highest score in each category in the following order:

- ~~Water Quality Use Classification of Receiving Streams (A)~~ Highest
  - ~~Water Quality of Receiving Streams (B) (a+b)~~
  - ~~Use and Classification Groundwater Protection~~
  - ~~Project Benefits Type~~
  - ~~Compliance Status Project Purpose~~ Lowest
  - ~~Readiness to Proceed~~ Lowest
- 

ITEM 10. Rescind rule 567—91.9(455B) and adopt the following **new** rule in lieu thereof:

**567—91.9(455B) Nontraditional projects.** Nontraditional projects are those in which the primary purpose of the project is other than to improve or protect water quality. Applications may be submitted for nontraditional projects. The applications will be scored using the rating criteria. The traditional projects will be given first priority. If sufficient funds remain in the general nonpoint source set-aside, the nontraditional projects will be listed on the fundable list in priority order after all of the fundable traditional projects are listed.

ITEM 11. Rescind and reserve rules **567—91.10(455B)** and **567—91.11(455B)**.

ITEM 12. Amend subrule 92.4(1) as follows:

**92.4(1) Administration.** The department, in conjunction with the authority, has been delegated the responsibility of administering the CWSRF program and the DWSRF program described in 567—Chapter 44. The director will may coordinate with the authority under the terms of an interagency agreement entered into pursuant to Iowa Code chapter 28E.

The department may enter into agreements with other private, public or quasi-public agencies to assist with the implementation of the CWSRF program.

ITEM 13. Amend subrule 92.4(7) as follows:

**92.4(7) Federal funding coordination.** Projects may use CWSRF funds to complete the financing projects partially funded by other federal programs such as Environmental Quality Incentives Program

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

and Community Development Block Grants. ~~Projects that have received a federal construction grant under provisions of the Clean Water Act are not eligible to receive a loan for the nonfederal share of the project.~~

ITEM 14. Amend paragraphs **92.6(1)“b”** and **“c”** as follows:

*b. Notification.* A public hearing process is part of the IUP adoption process to provide opportunity for public participation. Notice is published in a newspaper of general circulation prior to the public hearing, ~~and an announcement is released to television and radio stations.~~ A general notice is also made to all applicants and interested agencies and organizations. The notice explains the purpose of the IUP and how additional information may be obtained. All materials relating to the IUP will be posted at [www.iowasrf.com](http://www.iowasrf.com).

*c. Comments.* Comments regarding the proposed IUP will be accepted during the notice period, at the public hearing and in writing for five business days following the public hearing. After evaluation of all pertinent comments, the IUP will be revised, if necessary, and recommended for approval by the environmental protection commission. Subsequent approval by the EPC will establish the IUP to be used for loan assistance.

ITEM 15. Amend subrule 92.6(2) as follows:

**92.6(2) Contents.** The IUP will identify the anticipated uses of loan funds available for that fiscal year and will include the following:

*a. State project priority list.* The state project priority list contains the projects and set-asides eligible for CWSRF loans. The state project priority list will include, for ~~point source~~ POTW projects, the name of the eligible applicant, any applicable NPDES permit number and the projected amount of loan assistance. For nonpoint source set-asides, the IUP will include the name of the program and amount set aside.

*b. Fundable list.* The fundable list includes projects scheduled for loans from funds available during the fiscal year. Projects will be considered in priority order for placement on the fundable list. Subsequent segments of a project which has been awarded financial assistance for Category I and Category II needs will be placed on the fundable list ahead of other new projects whose schedules also would allow funding during the fiscal year. The fundable lists of ~~point source~~ POTW projects and nonpoint source set-asides shall be listed in priority order and shall include ~~a schedule of estimated disbursement of funds, preliminary identification of point source projects that may undergo an environmental impact statement, and~~ the need category(ies) of the projects. The department will consider the following in developing the list of fundable projects for the intended use plan:

- (1) How the project conforms to the short- and long-term goals of the CWSRF;
- (2) The priority rating of the ~~point source~~ POTW project;
- (3) Whether a ~~point source~~ POTW project will be ready to proceed on a schedule consistent with time requirements for outlay of funds;
- (4) Whether the proposed project addresses the need upon which the eligible entity's priority is based;
- ~~(5) The eligible entity's financial capability to service the loan, to provide operation and maintenance, to provide replacement reserves, and, if required, to provide debt service reserves;~~
- ~~(6) The eligible entity's statement of willingness to accept all loan terms and conditions;~~
- ~~(7) (5) The funds available, department priorities and the administrative capacity of the department; and~~
- ~~(8) (6) The applicant's conformance to process guidelines provided by the department.~~

*c. Contingency list.* A contingency list will be included so that ~~point source~~ POTW projects on the contingency list could become fundable should a fundable project not proceed in a timely manner.

*d. and e.* No change.

*f. Assurances.* The IUP will include assurances and specific proposals on how the state intends to meet requirements of the ~~following sections of the Clean Water Act:~~ Operating Agreement between the state of Iowa and the U.S. EPA.

- ~~(1) 602(a) Environmental reviews;~~



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

~~(2) 602(b)(3) The state will agree to enter binding commitments equal to at least 120 percent of each quarterly federal capitalization grant payment within one year after receipt; and~~

~~(3) 602(b)(4) Certify that all funds in the CWSRF will be expended in an expeditious and timely manner.~~

~~g. to i. No change.~~

ITEM 16. Amend subrule 92.6(6) as follows:

**92.6(6) *Special considerations.*** Exemptions to the point source rating criteria may be considered by the department, and funding variances may be granted by the commission for projects that have unique or unusual circumstances but that do not logically fit into the criteria. The commission may grant interest rate reductions or other favorable loan incentives to applicants that sponsor a project that improves impaired waters or restores the physical, chemical or biological integrity of receiving waters impacted by the wastewater treatment facility the quality of the water in the watershed where a city water or wastewater facility is located. Exemptions to the nonpoint source rating criteria may be considered by the department, and funding variances may be granted by the commission for projects that have unique or unusual circumstances which may not logically fit the criteria and are consistent with the short- or long-term goals of the IUP. Examples of projects that may qualify for exemptions and variances are projects targeted to improve impaired waters or projects where the purchase of land or conservation easements by conservation agencies is targeted to improve impaired waters.

ITEM 17. Amend subrule 92.7(1) as follows:

**92.7(1) *Application forms.*** An applicant may request an application package from the department. The applicant shall complete the application for placement on the IUP and shall provide documentation on the project. Forms may be obtained from the Environmental Services Division State Revolving Fund, Iowa Department of Natural Resources, Henry A. Wallace Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034 401 SW 7th Street, Suite M, Des Moines, Iowa 50309. Forms may also be downloaded from www.iowasrf.com.

ITEM 18. Amend paragraph **92.7(2)“a”** as follows:

~~a. Two~~ Three copies of the facility plan. The facility plan shall be certified by a professional engineer licensed to practice in Iowa and shall be in conformance with Chapter 11 of the Iowa Wastewater Facilities Design Standards (567—paragraph 64.2(9) “b”);

ITEM 19. Amend subrule 92.7(6) as follows:

**92.7(6) *Allowable and unallowable costs.*** Allowable costs shall be limited to those eligible costs deemed necessary, reasonable, and directly related to the efficient completion of the project. Unallowable costs include, but are not limited to, the following:

~~a. Cost of the nonfederal share of any project funded by an EPA grant under the provisions of the Clean Water Act;~~

~~b. a.~~ Cost of service lines and in-house plumbing;

~~c. b.~~ Administrative costs of the recipient;

~~d. c.~~ Purchase of vehicles and tools;

~~e. d.~~ Land purchase and easement or rights-of-way costs, except as authorized under the Clean Water Act;

~~f. e.~~ Pretreatment program development costs unless required by federal regulations; and

~~g. f.~~ Operation and maintenance costs.

ITEM 20. Amend paragraph **92.8(1)“b”** as follows:

~~b. Environmental review.~~ Loan recipients shall conduct environmental review of projects using procedures in 40 CFR Part 6, July 1, 2002, as a part of facility planning. The applicant should work with the department as early as possible in the facilities planning process to determine if the project qualifies for a categorical exclusion from 40 CFR Part 6 requirements, or whether a finding of no significant impact ~~or an environmental impact statement~~ is required. In conjunction with the facility planning process as described in 40 CFR 35.2030(c), July 1, 2002, a potential applicant may request formal determination under 40 CFR Part 6. All of 40 CFR Part 6, July 1, 2002, pertaining to Procedures for Implementing

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

the Requirements of the Council on Environmental Quality of the National Environmental Policy Act, is hereby adopted by reference and incorporated herein. However, all references to the U.S. Environmental Protection Agency as performing acts or reviews shall be substituted with references to the department for the purposes of this chapter.

ITEM 21. Amend paragraph **92.8(2)“b”** as follows:

~~b. *Minority business enterprise/women's business enterprise (MBE/WBE) Disadvantaged business enterprise (DBE).*~~ The recipient must comply with requirements of ~~MBE/WBE DBE participation as found in 40 CFR 31.36(e), July 1, 2002 40 CFR Parts 30, 31, 33, 35 and 40, March 26, 2008.~~ The director will negotiate with the EPA regional administrator to determine the overall “fair share” objective for CWSRF loan-assisted projects. The recipient shall take the following affirmative steps to ensure that small, minority, and women’s business enterprises are utilized where possible as sources of supplies, construction, and services:

- ~~(1) Placing qualified small, minority, and women’s business enterprises on solicitation lists;~~
- ~~(2) Ensuring that small, minority, and women’s business enterprises are solicited whenever they are potential sources;~~
- ~~(3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation of small, minority, and women’s business enterprises;~~
- ~~(4) Establishing delivery schedules, where requirements of the work allow, which encourage participation by small, minority, and women’s business enterprises;~~
- ~~(5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the U.S. Department of Commerce; and~~
- ~~(6) Requiring prime contractors to take the affirmative steps listed above when awarding subcontracts.~~

ITEM 22. Amend subrule 93.3(1) as follows:

**93.3(1)** ~~*Onsite wastewater treatment and disposal systems fund set-aside.*~~ The purpose of this fund ~~set-aside~~ is to assist rural homeowners to rehabilitate or improve existing onsite wastewater treatment and disposal systems.

ITEM 23. Amend rule 567—93.4(455B,466) as follows:

**567—93.4(455B,466) Onsite wastewater system assistance program.**

~~**93.4(1)** *Onsite wastewater assistance fund.*~~ The onsite wastewater assistance fund (OSWAF) is a separate fund within the state treasury. The OSWAF is a revolving loan fund used to provide low-interest loans to homeowners for improving and rehabilitating onsite wastewater treatment systems and consists of two accounts: a financing account and an administration account. Funds deposited in the OSWAF consist of state appropriated funds, annual capitalization grants provided under Title VI of the federal Clean Water Act, equity fund moneys, loan repayments, interest accrued on funds, and all other moneys specifically designated for use in the OSWAF. The amount to be set aside for the OSWAF is identified in the annual intended use plan.

~~**93.4(2)** **93.4(1)** *Eligibility and restrictions for participation in the onsite wastewater treatment system assistance program*~~ **Onsite wastewater system assistance program.** Assistance under the onsite wastewater treatment system assistance program shall be in the form of low-interest loans made by participating lending institutions through a linked deposit arrangement with the CWSRF. The following eligibility conditions and restrictions apply to such assistance.

a. and b. No change.

c. *Eligible project costs.* The amount of assistance available shall be limited to the total costs deemed necessary, reasonable, and directly related to the repair, rehabilitation, or replacement of an onsite treatment system needed to meet state or local standards for onsite systems. Eligible costs include all costs directly related to the design, permitting and construction of an onsite wastewater treatment system. Eligible costs include the removal of existing structures, such as septic tanks, earth moving or any land purchases directly related to proper wastewater treatment. Eligible costs do not include additional earthwork, reseeding, replanting, or any other aesthetic improvements. Maintenance

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

or monitoring costs are not considered eligible costs. Eligible costs must be incurred within one year of the issuance of the onsite construction permit by the county.

*d. Applicant eligibility.* Assistance is limited to applicants who meet the applicable provisions of 567—Chapter 69 and all other local provisions for the siting and construction of onsite wastewater treatment and disposal systems and who demonstrate to the satisfaction of the participating lending institution that the applicants can repay the loan.

*e.* No change.

*f. Property eligibility.* As a qualification of eligibility for the loan program, the department may set a limit on the assessed valuation of the dwelling or building served by the onsite wastewater system needing renovation.

**93.4(3) Participating lending institutions.** Any lending institution as defined in rule 90.2(455B) is eligible to participate in the program by signing an agreement with the department or its financial agent. The agreement will contain the responsibilities of the department to the participating lending institution and vice versa as well as relevant loan conditions and restrictions. The department will provide the format of the agreement. The department or its financial agent will maintain for public record a list of participating lending institutions.

*a. Responsibilities of the department to participating lending institutions.* For participating lending institutions, the department or its financial agent will:

(1) Provide materials such as pamphlets, brochures, loan application forms and other relevant materials necessary to inform applicants about the program and to assist lenders in completing the loan process.

(2) Ensure the timely transfer of funds in accordance with the terms and conditions set forth in the agreement between the department and the lending institution.

*b. Responsibilities of participating lending institutions to the department or its financial agent.* The responsibilities of participating lending institutions include:

(1) Making a determination of whether a loan can be secured.

(2) Rendering a judgment on the applicant's ability to repay the loan.

(3) Approving or denying the loan application. The lending institution may approve a loan agreement when it is determined that the application complies with the requirements of this chapter. The loan agreement between the applicant and the lending institution shall be a binding obligation under Iowa law and shall include loan terms and conditions for the loan period. The state and the department are not liable to an eligible lending institution in any manner for payment of the principal or interest on the loan to an eligible borrower.

(4) Notifying the department or its financial agent of a loan to reserve funds for the onsite system improvements funded by the loan.

(5) Notifying the department or its financial agent when the onsite system improvements funded by the loan are completed and inspected. The department or its financial agent will then make a linked deposit equal to the amount of the loan in the form of a certificate of deposit to the lending institution. The lending institution will then service the loan with the linked deposit.

(6) Notifying the department, after a reasonable attempt has been made to collect delinquent payments, when a loan has been in default for 90 days.

**93.4(4) Onsite wastewater assistance fund financial agent.** To assist the department in administering the onsite wastewater treatment system assistance program, the department may appoint a financial agent responsible for managing the funds in the OSWAF. The responsibilities of the financial agent shall be provided in an agreement between the department and the agent. The responsibilities of the financial agent may include:

*a.* Developing a management plan for the OSWAF. The management plan shall determine how the fund will be managed to provide the lowest interest loans while maintaining financial security and ensuring the perpetuity of the fund. Included in the management plan shall be the methods and terms for transfer of funds from the OSWAF to participating lending institutions and repayment of funds thereto.

*b.* Reserving loan funds equal to the amount of the loan as each loan is approved by participating lending institutions.

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

- ~~e.—Distributing funds to lending institutions as stipulated in agreements with lending institutions.~~
- ~~d.—Acting as liaison between the department and the lending institutions.~~
- ~~e.—Maintaining for public record a list of participating lending institutions.~~
- ~~f.—Reporting financial information pertaining to the OSWAF.~~

**93.4(5) 93.4(2) Applying for assistance.** Prior to applying for a loan from a participating lending institution, an eligible individual or entity must receive approval of the proposed improvements from the county in which the onsite wastewater treatment system is located. Application for project approval shall be made on forms provided by the department or its agent. Forms may also be downloaded from [www.iowasrf.com](http://www.iowasrf.com).

~~a. County requirements for individual applicants. Applicants requesting county County approval forms shall submit forms provided by the county which include:~~

~~(1) to (3) No change.~~

~~b. County requirements for cluster system applicants. Applicants seeking financial assistance County applications for cluster systems using onsite technology must include with their application to the county:~~

~~(1) to (4) No change.~~

~~c.—County review. The county shall review applications to determine if the proposed work meets the applicable provisions of 567—Chapter 69 and all other relevant local provisions for the siting and construction of onsite wastewater treatment and distribution systems. For proposed projects that meet relevant criteria, the county shall issue a permit or certificate. The county permit or certificate shall be accompanied by a cost estimate and proposed construction schedule. A county may deny an application for reasons of noncompliance with applicable state and local criteria. Written notification of the denial shall be provided to the applicant and shall state the reason(s) that the application was denied.~~

~~d.—Lender requirements for applicants. The applicant for a loan shall submit to a participating lending institution an application form as prescribed by the department of natural resources or deemed acceptable by the department's financial agent. Also, the applicant shall include a copy of the county permit or certificate approving the proposed project. The applicant is obligated to provide any other specific information the lender may deem necessary.~~

~~e.—Loan application processing and disbursement of funds. The process for awarding and managing loans shall be in full accordance with the terms established by the department or its financial agent(s) and the provisions of this chapter.~~

~~(1) Loan approval or disapproval. Upon receipt of a completed loan application form with relevant information as described in 93.4(5) "d," the participating lending institution shall either approve or deny the loan within ten working days. The lending institution shall notify the applicant of loan conditions and limitations at the time of initial application. Before acting on the loan application, the lending institution shall ensure that adequate OSWAF funds are available. If the loan is approved, the lending institution shall notify the loan applicant in writing that the loan has been approved and notify the department's financial agent within two working days of approval of the loan application in order to reserve funds in that amount to ensure that adequate funds are available at the time of disbursement. If the loan is denied, the lending institution shall notify the loan applicant in writing, clearly stating the reasons for denial. Reasons for denial may include that funds are not available or that the applicant presents an unacceptable level of loan risk.~~

~~(2) Disbursement of funds.—Upon completion of the onsite wastewater treatment system improvements, the loan applicant shall furnish the lender with copies of all bills relating to the costs of the improvements which were preapproved on the loan application as specified in 93.4(2) "c," and certification from the county that the improvements were accomplished in accordance with the approved plans and meet relevant state and local requirements for onsite wastewater treatment systems. The loan shall be subject to the conditions and limitations provided in 93.4(5) "f." If actual costs are less than the amount requested on the loan application, then the actual loan amount will equal those costs. The lending institution is authorized to execute a loan for a principal of up to 10 percent above the amount of the loan application if costs exceed the application amount. In this case, the loan applicant shall provide the lending institution with a written explanation for any cost overruns.~~

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

*f. — Loan conditions and limitations.*

(1) ~~Loan amount and period.~~ The minimum loan granted under this program shall be \$2,000. The loan period shall not exceed ten years. Loans shall be made contingent on the availability of funds from the OSWAF.

(2) ~~Number of loans.~~ There will be no limit to the number of loans an applicant may receive. Each approved application will be handled as a new loan.

(3) ~~Loan execution.~~ The loan agreements to be executed by the applicant and the lending institution shall be a binding obligation under Iowa law, include conditions and terms to be effective for the loan period, and be accompanied by evidence of satisfactory security, legality, and enforceability.

(4) ~~Eligible costs.~~ All costs directly related to the design, permitting, construction, and financing of the onsite wastewater treatment system are eligible for loans. Eligible costs include the removal of existing structures, such as abandoned septic tanks, earth moving or any land purchases directly related to proper wastewater treatment. Eligible costs do not include additional earthwork, reseeding, replanting, or any other aesthetic improvements. Maintenance or monitoring costs will not be allowed as part of the loan. Eligible costs must be incurred within one year of the issuance of the septic construction permit.

(5) ~~Recipient record keeping.~~ The loan recipient shall maintain adequate records that document all costs associated with the project. The loan recipient shall agree to provide access to these records to the department, the state auditor, the EPA SRF project manager, and the Office of the Inspector General at the Environmental Protection Agency. The loan recipient shall retain all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

(6) ~~Site access.~~ The loan recipient shall agree to provide the department and the administrative authority access to the construction site to verify that the loan was used for the purpose intended and that the constructed works meet applicable state and local environmental requirements and ordinances for onsite wastewater treatment systems. The loan recipient also shall agree to provide access to the onsite system for periodic monitoring by the department and administrative authority, at times mutually agreed upon with the system owner, for the duration of the loan.

(7) ~~Loan termination.~~ The department or its financial agent(s) shall have the right to terminate any loan when terms of the agreement have been violated.

(8) ~~Repayment.~~ Loans shall be repaid in accordance with the terms and conditions of the executed loan agreement. Repayment of the loan must begin no later than 30 days after the date specified in the selected repayment schedule.

(9) ~~Interest.~~ The loan interest rate shall not exceed 3 percent per year. The actual interest rate charged shall be in accordance with the participating lending institution's agreement with the department or its financial agent.

(10) ~~Prepayment.~~ Prepayment of the principal in whole or in part shall be allowed without penalty.

(11) ~~Property transfer.~~ In the event of a property transfer from the original landowner who secured the loan to another person or entity during the repayment period specified in the loan agreement, the balance of the loan shall be due in full.

(12) ~~Loan delinquency.~~ Failure of the loan recipient to repay the loan in accordance with the schedule contained in the loan agreement will result in the loan's being declared in default. For a loan delinquent more than 90 days, the interest rate shall accelerate immediately to the current legal usury limit, shall be applied to the entire unpaid principal, and shall be prorated for the period for which the installment is delinquent.

93.4(3) County review and approval. The county shall review applications to determine if the proposed work meets the applicable provisions of 567—Chapter 69 and all other relevant local provisions for the siting and construction of onsite wastewater treatment and distribution systems. For proposed projects that meet relevant criteria, the county shall issue a permit or certificate. The county permit or certificate shall be accompanied by a cost estimate and proposed construction schedule. A county may deny an application for reasons of noncompliance with applicable state and local criteria. Written notification of the denial shall be provided to the applicant and shall state the reason(s) that the application was denied.

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93.4(4) Eligible costs. All costs directly related to the design, permitting, construction, and financing of the onsite wastewater treatment system are eligible for loans. Eligible costs include the removal of existing structures, such as abandoned septic tanks, earth moving or any land purchases directly related to proper wastewater treatment.

93.4(5) Ineligible costs. Costs for additional earthwork, reseeding, replanting, or any other aesthetic improvements are not eligible. Maintenance or monitoring costs will not be allowed as part of the loan.

93.4(6) Rectification. Failure of an onsite wastewater treatment system to conform to approved plans and specifications or failure of a loan recipient to comply with the requirements of 567—Chapter 69 constitutes grounds for the administrative authority to withhold authorization of loan disbursements to the loan recipient. The loan recipient is responsible for ensuring that the identified problem is rectified. Once the deficiency is corrected, the loan funds can be released.

93.4(6) Recipient record keeping. The loan recipient shall maintain adequate records that document all costs associated with the project. The loan recipient shall agree to provide access to these records to the department, the state auditor, the EPA SRF project manager, and the Office of the Inspector General at the Environmental Protection Agency. The loan recipient shall retain all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.

~~93.4(7) Disputes with the administrative authority.~~ A person or entity that disagrees with the withholding of loan funds may request a formal review of the action. The person or entity must submit a request for review in writing to the director within 30 days of the date of notification action.

93.4(7) Site access. The loan recipient shall agree to provide the department and the administrative authority access to the construction site to verify that the loan was used for the purpose intended and that the constructed works meet applicable state and local environmental requirements and ordinances for onsite wastewater treatment systems. The loan recipient also shall agree to provide access to the onsite system for periodic monitoring by the department and administrative authority, at times mutually agreed upon with the system owner, for the duration of the loan.

93.4(8) and 93.4(9) No change.

ITEM 24. Amend rule 567—93.5(455B) as follows:

**567—93.5(455B) Livestock water quality facilities requirements.**

93.5(1) Livestock water quality facilities assistance. Assistance ~~under the CWSRF~~ shall be in the form of low-interest loans made by participating lending institutions ~~or in other manners as specified in an agreement with a pass-through loan recipient through a linked deposit arrangement with the CWSRF.~~ The following eligibility conditions and restrictions for participation apply to such assistance.

~~a.—Location preferences.~~ Livestock water quality facilities located in watersheds with Section 303(d) waters or waters determined to be impaired in the Section 305(b) report will be given a higher priority for funding. See 567—91.9(455B).

b. a. Eligible project costs. All costs directly related to the design, permitting, construction, and financing of the water pollution control facilities are eligible. The amount of assistance available shall be limited to the total costs deemed necessary, reasonable and directly related to the facilities required to provide water pollution control as required by the department or to prevent, minimize or eliminate water pollution.

e. b. Applicant eligibility. Assistance is limited to livestock producers operating animal feeding operations that are eligible to receive assistance from the state revolving fund according to current federal laws and regulations that are under 1,000 animal unit capacity as defined in Iowa Code section 459.102, and that are not required to have an NPDES permit.

~~NOTE: Current federal laws and rules as of February 2007 do not allow assistance for concentrated animal feeding operations required to have a National Pollutant Discharge Elimination System permit or assistance for animal feeding operations that will become concentrated animal feeding operations required to have a National Pollutant Discharge Elimination System permit as a result of the project.~~

Loans will be made only to livestock producers that are operators of record ~~and~~ or have legal control of the property containing the animal feeding operation for the duration of the loan. The department has the discretion to deny applications for producers if the department has issued an administrative order to

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

the producer pursuant to Iowa Code section 455B.175, if the department notifies the producer in writing of intent to recommend referral or the commission refers the action to the attorney general pursuant to Iowa Code section 455B.175, or if the attorney general has commenced legal proceedings against the producer pursuant to Iowa Code section 455B.112.

*d. c. Project eligibility Eligible projects.* The water pollution control facilities considered eligible for assistance include: lagoons; waste treatment facilities and equipment, including but not limited to land on which waste facilities will be constructed; waste storage or holding structures; composting facilities and equipment; pipes, pumps, and agitation equipment used to move and manage manure; fencing around lagoons and other waste storage structures; water systems used to flush water in waste treatment systems; irrigation systems used for applying liquid wastes to the land; tank wagons, manure spreaders, tractor blades used for scraping waste and other waste collection and processing equipment (including tank trucks, loaders, skid loaders, and waste irrigation equipment); portions of feeding floors and loafing areas used for waste collection and storage; vegetative filters, filter strips, water and sediment control basins, contour buffer strips and diversions used to reduce pollution potential from livestock facilities or land disposal areas; fencing and cross fencing along with any associated watering facilities used as part of managed grazing systems; and other similar structures, equipment or water pollution abatement activities as may be found in manure management plans that fit the requirements of 567—65.17(459), in nutrient management plans, or in comprehensive nutrient management plans as defined by the USDA Natural Resources Conservation Service, provided that portions of the foregoing (except water systems used for flush water in waste treatment systems and composters) located within a poultry house, milk parlor or hog confinement facility (such as a slatted floor) shall be excluded. Assistance for development of manure management plans, nutrient management plans, and comprehensive nutrient management plans is eligible. Assistance may be available for the above-mentioned practices when a replacement animal feeding operation will eliminate an existing animal feeding operation in order to prevent a potential water quality impairment, mitigate a documented impairment, or eliminate a potential or documented pollutant source from a watershed. Assistance may be available for confinement feeding operation structures, including roofed manure storage facilities, in which manure is stored exclusively in a dry form if: manure storage structures, solids settling basins, composting facilities and equipment, lagoons (including fencing), portions of feeding floors or loafing areas used for waste collection, water and sediment control basins, vegetative filters or buffers, surface water diversion structures, agitation or transfer pumps, dry bedded confinement feeding operation buildings or structures pursuant to 2009 Iowa Acts, Senate File 432, when all or part of an open feedlot is replaced, and other practices shown to improve or protect water quality. Replacement animal feeding operations may be eligible where an existing animal feeding operation is eliminated to prevent a water quality impairment or mitigate a documented impairment. Engineering or technical service fees associated with the aforementioned practices are also eligible. A one-time purchase of attachments integral to the manure management system, such as blades, buckets, choppers, or spreaders, may be eligible at the time that an open feedlot is replaced with a dry bedded confinement building.

(1) An existing open feedlot operation is completely replaced by confinement feeding operation structures which store manure exclusively in dry form; or

(2) An existing animal feeding operation is expanded by the addition of confinement feeding operation structures which store manure exclusively in dry form, and manure controls meeting the requirements of 567—Chapter 65 are installed or documented for the existing animal feeding operation.

*d. Funding formula.* Loans for water quality projects for facilities being expanded by an increase in the animal unit capacity shall be funded according to the following formula:

Existing animal unit capacity/new animal unit capacity × total eligible project cost × 1.5 = maximum linked deposit amount

Example: 450 AUC / 900 AUC × \$500,000 × 1.5 = \$375,000

Example: 300 AUC / 600 AUC × \$300,000 × 1.5 = \$225,000

Example: 50 AUC / 900 AUC × \$500,000 × 1.5 = \$41,666

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If existing areas in open feedlots are kept open where some pens are replaced and the operation is expanded through the addition of a dry bedded confinement feeding operation building, the remaining open lot areas must comply with 567—65.101(459A).

**93.5(2)** *Applying for assistance.* Application for project approval shall be made on forms provided by the department or its agent. Forms may also be downloaded from [www.iowasrf.com](http://www.iowasrf.com).

**93.5(3)** *State Project review and approval.* Prior to receiving assistance, a livestock producer the applicant shall submit to the department a description of facilities, equipment or preparation or updating of manure management, nutrient management or comprehensive nutrient management plans to be financed and documentation of project approval as determined by the department and detailed on the project application an application to the local soil and water conservation district. The district will evaluate the application, provide an estimated cost, and certify that the practice is eligible and compatible with state water quality goals. All practices must comply with 567—Chapter 65 and shall be constructed to applicable USDA Natural Resource Conservation Service (NRCS) standards. NRCS staff or another technical service provider shall attest that the practice will be constructed to these specifications and standards.

**93.5(4)** *Duration of the project.* The project is to be maintained, kept in place or operated as proposed for the life of the loan. If an open lot is closed and replaced with an eligible replacement facility, the department or department's agent shall place a restrictive covenant that prohibits the operation of an open feedlot at the site being replaced for the life of the loan. The site or portion of the site that may not house animals shall be defined by the local soil and water conservation district.

**93.5(5)** *Manure management plan required.* The livestock producer shall have a manure management plan that fits the requirements of 567—65.17(459), a nutrient management plan as defined in 567—65.112(459A), or a comprehensive nutrient management plan as defined by the USDA Natural Resources Conservation Service NRCS to be eligible for the loan or, as part of the loan, develop a manure management plan, nutrient management plan, or comprehensive nutrient management plan.

*a.* Costs for development of a manure management plan, nutrient management plan, or comprehensive nutrient management plan are eligible costs.

*b.* Costs for updating a manure management plan, nutrient management plan, or comprehensive nutrient management plan are eligible costs if required for the implementation of a water quality project financed through the livestock water quality facilities program.

**93.5(6)** *Eligible costs.* All costs directly related to the design, permitting, construction and financing of the water pollution control facilities are eligible costs. Costs for development of a manure management plan, nutrient management plan or comprehensive nutrient management plan are eligible costs. Costs for updating a manure management plan, nutrient management plan, or comprehensive nutrient management plan are eligible costs if required for the implementation of a water quality project financed through the livestock water quality facilities program.

**93.5(7)** **93.5(6)** *Ineligible costs.* Costs for development of a new animal feeding operations are not eligible costs AFO as defined in 567—90.2(455B) are ineligible. Other ineligible costs include but are not limited to: Costs costs for water pollution control facilities, including design, permitting, construction or financing, that allow for the animal feeding operation to expand and become a concentrated animal feeding operation are not eligible costs. Costs; costs for the purchase of land to be used for application of wastewater or manure are not eligible costs; costs for operation and maintenance are not eligible costs. Refinancing; and costs for refinancing of water pollution control facilities constructed prior to the implementation of this program is not an eligible cost approval by the department or the department's agent.

**93.5(8)** **93.5(7)** *Recipient record keeping.* The loan recipient shall maintain adequate records that document all costs associated with the project. The loan recipient shall agree to provide access to these records to the department, the state auditor, the EPA SRF project manager, and the Office of the Inspector General at the Environmental Protection Agency. The loan recipient shall retain all project records and documents for inspection and audit purposes for a period of three years from the date of the final loan payment.



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

~~93.5(9)~~ **93.5(8)** *Site access.* The livestock producer shall agree to provide the department and the department's agent access to the construction site to verify that the loan was used for the purpose intended and that the construction work meets the applicable state and federal requirements for animal feeding operations. The livestock producer also shall agree to provide the department and the department's agent periodic access to the animal feeding operation, pursuant to biosecurity requirements in 567—paragraph 65.113(9)“b,” for the duration of the loan to ensure that the constructed facility is being operated and maintained as designed.

~~93.5(10)~~ *Interest rate and fees.* ~~The loan interest rate and loan fees shall be established annually in the clean water state revolving fund intended use plan. The loan interest rate is not to exceed the prevalent interest rate. The establishment of loan fees will take into account the administration cost of the livestock water quality facilities set aside.~~

ITEM 25. Amend paragraphs **93.6(1)“a”** to **“d”** as follows:

~~a.—~~ *Location preferences.* ~~Local water protection projects to be carried out in watersheds with Section 303(d) waters, waters determined to be impaired in the Section 305(b) report, or watersheds with approved management plans or total maximum daily load implementation plans are to be given a higher priority for funding. See 567—91.10(455B).~~

~~b. a.~~ *Eligible project costs.* The amount of assistance available shall be limited to the total costs deemed necessary, reasonable and directly related to the practices required to provide water quality improvements ~~or protection as identified in an approved watershed management plan or in a total maximum daily load implementation plan prepared by the department.~~

~~e. b.~~ *Applicant eligibility.* Assistance is available to any person who owns or has legal control over land that needs local water protection projects installed to control runoff of sediments, nutrients, pesticides or other nonpoint source pollutants into waters of the state. Loans will be made only to persons who are owners of record or persons who have legal control of the property where the local water protection projects are to be installed. ~~Assistance is limited to livestock producers operating animal feeding operations that are eligible to receive assistance from the state revolving fund according to current federal laws and regulations.~~

~~NOTE: Current federal laws and rules as of February 2007 do not allow assistance for concentrated animal feeding operations required to have a National Pollutant Discharge Elimination System permit or assistance for animal feeding operations that will become concentrated animal feeding operations required to have a National Pollutant Discharge Elimination System permit as a result of the project.~~

~~d. c.~~ *Eligible practices.* The local water protection practices that are considered eligible include, but are not limited to, ~~composting facility,~~ contour buffer strips, diversion, fence, field border, field windbreak, filter strip strips (with trees, shrubs), filter (waste treatment), grade stabilization structure, grassed waterway, pasture and hayland planting, planned grazing system, pond, riparian forest and vegetative buffer buffers, sediment basin, terrace, underground outlet with secondary water quality treatment, waste management system, ~~waste storage facility, waste treatment lagoon,~~ water and sediment control basin, stream bank stabilization and resoration, and other practices that are shown to improve or protect water quality.

ITEM 26. Amend subrule 93.6(2) as follows:

**93.6(2)** *Applying for assistance.* Application for project approval shall be made on forms provided by the department or its agent. Forms may also be downloaded from [www.iowasrf.com](http://www.iowasrf.com).

ITEM 27. Amend subrule 93.6(3) as follows:

**93.6(3)** *Local Project review and approval.* Prior to receiving assistance, the applicant shall submit an application to the local soil and water conservation district. The local soil and water conservation district will evaluate the application, provide an estimated cost, and certify that the practice is compatible with state water quality goals. All practices shall be constructed to meet NRCS standards and specifications. NRCS or another technical service provider shall attest that the practice will be constructed to these specifications and standards.

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ITEM 28. Amend subrules 93.6(5) and 93.6(6) as follows:

**93.6(5) Eligible costs.** All costs directly related to the implementation of local water protection projects approved in the memorandum of project approval are eligible costs. ~~A local water protection project for an animal feeding operation for which the loan amount is \$50,000 or less is eligible for this set-aside on the condition that the applicant has a manure management plan approved by the department.~~

**93.6(6) Ineligible costs.** Costs Ineligible costs include costs for overbuilding a practice beyond what is required to maintain or improve water quality and costs for the purchase of land are not eligible costs.

ITEM 29. Amend subrules 93.7(1) to 93.7(3) as follows:

**93.7(1) General nonpoint source assistance.** Assistance under the CWSRF general nonpoint source (GNS) set-aside shall be in the form of low-interest loans made directly or by participating lending institutions through a linked deposit or participation arrangement with the CWSRF. The following eligibility conditions and restrictions for participation apply to such assistance.

*a.* ~~Location preferences.~~ General nonpoint source water pollution control projects will be rated according to rule 567—91.11(455B).

*b. a.* Eligible project costs. The amount of assistance available shall be limited to the total costs deemed necessary, reasonable and directly related to the facilities or practices required to provide water quality improvements, restoration or protection. Participation in nontraditional projects where the primary purpose is not water quality protection or improvement will be limited to the portion of the project that is directly related to water quality improvement, restoration or protection.

*e. b.* Applicant eligibility. Assistance is available to projects for which facilities are needed to protect, restore or improve water quality from nonpoint source pollution. Only applicants that are owners of record of the property or have long-term control of the property where the project is to be implemented are eligible. In applications where the water pollution control project is a plan or document that will direct water quality protection or improvement efforts, loans will be made to applicants that have the capacity and capability of implementing the plan and repaying the loan.

*d. c.* Project eligibility. Eligible ~~general nonpoint source~~ projects include, but are not limited to, agricultural well sealing, urban sedimentation basins, construction of wetlands and riparian lands, restoration of habitat, stream bank restoration and stabilization, remediation of underground storage tanks, remediation of aboveground storage tanks, urban storm water runoff best management practices and management facilities, sediment traps, wetland flood prevention areas, water conservation and reuse, and development of environmental management systems practices to address nonpoint source pollution control needs associated with storm water treatment and green infrastructure, silviculture, groundwater protection, marinas, resource extraction, brownfield remediation, aboveground and underground storage tanks, sanitary landfills, hydromodification, and watershed planning. Nontraditional nonpoint source projects that may have a water quality protection or improvement component include, but are not limited to, bird sanctuaries and wildlife enhancement projects, ~~brownfield remediation, environmental insurance for brownfield remediation,~~ vegetative plants, street sweepers and leaf removal equipment, ~~closure of municipal landfills, salt storage sheds,~~ sediment removal and other lake resoration practices, wetland mitigation bank and education programs.

**93.7(2) Applying for assistance.** Applications for storm water and green infrastructure projects shall be submitted to local soil and water conservation districts. Applications for assistance from the GNS set-aside for other GNS projects shall be submitted to the department at Environmental Services State Revolving Fund, Iowa Department of Natural Resources, Henry A. Wallace Building, 502 E. Ninth Street 401 SW 7th Street, Suite M, Des Moines, Iowa 50319-0034 50309. Forms may also be downloaded from [www.iowasrf.com](http://www.iowasrf.com). Application forms will be provided by the department. Applications shall include an explanation of how the water quality will be protected, improved or restored by the proposed project. Applications will be accepted on a continuous basis.

**93.7(3) Rating and ranking Project approval.** ~~Using information included in the application, the department will rate and rank the projects. The department will identify the highest rated projects evaluate eligibility and project design and provide the applicant a memorandum of approval for the proposed water pollution control project. The department will earmark the set-aside funds for~~

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~~the water pollution control projects to be funded. These funds will be available for six months after the IUP is approved in order for the applicant to complete the loan.~~

ITEM 30. Amend **567—Chapter 93**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 455B.291 to 455B.299, 466.8 and 466.9 and 2009 Iowa Acts, Senate File 432.

**ARC 8313B****ENVIRONMENTAL PROTECTION COMMISSION[567]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 455B.304, 455D.6, and 455F.8A, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 123, “Regional Collection Centers and Mobile Unit Collection and Consolidation Centers,” and Chapter 211, “Financial Assistance for the Collection of Household Hazardous Materials and Hazardous Waste From Conditionally Exempt Small Quantity Generators,” Iowa Administrative Code.

The proposed amendments will differentiate between satellite facilities and regional collection centers (RCC). Satellite facilities collect and store household hazardous materials which are then picked up by an RCC. Satellite facilities will not be required to obtain a permit, but will instead need to meet requirements set out in proposed rule 567—123.3(455B,455D,455F) regarding building requirements, staff training, a plan of operations, and an emergency preparedness plan.

Requirements for RCCs will be streamlined by extending the length of the RCC permit from three to five years, removing the requirement for an education program from the permit, reducing the amount of financial assurance required for a new RCC that serves a population of less than 35,000 from \$15,000 to \$5,000, and clarifying that disposal funding assistance an RCC receives in a year cannot exceed the RCC’s total disposal costs for the year.

Any interested person may make written suggestions or comments pertaining to the proposed amendments on or before 4:30 p.m. on December 8, 2009. Such written materials should be directed to Theresa Stiner, Land Quality Bureau, Iowa Department of Natural Resources, 502 East 9th Street, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8895; or E-mail [Theresa.Stiner@dnr.iowa.gov](mailto:Theresa.Stiner@dnr.iowa.gov). Persons wishing to convey their views orally should contact Theresa Stiner at (515)281-8646.

When submitting comments, stakeholders are encouraged by the Department to utilize the following guidelines. These guidelines aid the Department in accurately understanding and creating a record of your input.

1. Include your mailing address and contact information.
2. Please state if you are submitting comments on behalf of a business or organization or as an individual.
3. Cite the specific rule(s) on which you are commenting.
4. Explain your views as clearly as possible by describing any assumptions, data, or technical information you utilized.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative language to improve the specific rule(s) and explain why.

A public hearing will be held on December 8, 2009, from 11 a.m. to 12 noon in the Fourth Floor West Conference Room of the Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be

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asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code chapters 455B, 455D, and 455F.

The following amendments are proposed.

ITEM 1. Adopt the following new definition of “Satellite facility” in rule **567—123.2(455B,455D,455F)**:

“*Satellite facility*” means a secured facility at which collection and storage of household hazardous materials and hazardous materials from CESQGs are accomplished prior to transportation of these wastes to an RCC. A satellite facility has a written contract with an RCC for the removal of collected waste. A satellite facility may be operated by a government agency or a private agency under contract with a government agency as part of a solid waste comprehensive plan. A satellite facility is available for public drop off of household hazardous materials either during regularly scheduled hours or by appointment.

ITEM 2. Renumber rules **567—123.3(455B,455D,455F)** to **567—123.12(455B,455D,455F)** as **567—123.4(455B,455D,455F)** to **567—123.13(455B,455D,455F)**.

ITEM 3. Adopt the following new rule **567—123.3(455B,455D,455F)**:

**567—123.3(455B,455D,455F) Requirements for satellite facilities.** Satellite facilities are exempt from obtaining a sanitary disposal project permit provided the facility complies with this rule.

**123.3(1)** The structures for satellite facilities shall meet the following criteria:

- a. All permanent structures shall meet the requirements of applicable building codes.
- b. The receiving area shall be constructed of an impervious, smooth material that is nonreactive with the waste.
- c. All sorting, bulking, transfer and storage areas shall be constructed of an impervious, smooth material so designed to be easily cleaned, be nonreactive with the waste, have secondary containment, and be protected from exposure to the weather.
- d. The satellite facility site shall be fenced to control access, and a gate shall be installed at the entrance to the site, which shall remain locked when personnel are not on duty.
- e. A sign shall be posted at the entrance gate indicating the name of the facility, emergency contact information, and days and hours of operation or a contact number for scheduling an appointment to drop off household hazardous materials.
- f. Operating hours shall be clearly posted at the entrance to either the receiving area or the storage area. It is also recommended that the operating hours be included in public awareness materials.

**123.3(2)** All satellite facility staff handling hazardous materials shall have received applicable training, including but not limited to the following:

- a. OSHA 24-hour health and safety training and annual 8-hour refresher training as described at 29 CFR 1910.120.
- b. Hazardous materials chemistry.
- c. Personnel and site safety.

**123.3(3)** A satellite facility shall prepare and maintain a plan of operations. The plan shall be kept on site and shall be available for review by the department upon request, and a copy shall be provided to the RCC servicing the satellite. The plan will include, at a minimum, the following:

- a. Standard receiving procedures for household and CESQG wastes.
- b. Procedures for managing unknown materials.
- c. Procedures for handling open or leaking containers.
- d. Procedures for handling large quantities of wastes.
- e. Recycling procedures for usable materials.
- f. Disposal of nonhazardous waste.
- g. Use of personal protection equipment (PPE).

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

*h.* Initial training and continuing education requirements for staff.

**123.3(4)** A satellite facility shall prepare and maintain an emergency preparedness plan. The plan shall be readily usable as a reference manual by facility managers and operators under emergency conditions and shall be available for review by the department upon request. The plan shall include, at a minimum:

- a.* Facility information.
  - (1) A description of the facility.
  - (2) The name and contact information of the responsible official.
  - (3) Project location.
- b.* Plans for responses to weather-related events.
  - (1) Tornadoes.
  - (2) Windstorms.
  - (3) Intense rainstorms.
  - (4) Lightning strikes.
  - (5) Flooding.
- c.* Plans for responses to fires and explosions.
  - (1) Staff training.
  - (2) Fire occurrence procedures.
  - (3) Utilities, if applicable.
  - (4) Evacuation procedures.
- d.* Emergency and release notification and reporting.
  - (1) Federal agencies.
  - (2) State agencies.
  - (3) County and city agencies.
  - (4) News media.
  - (5) Public and private facilities within five miles.
  - (6) Emergency response agencies and contact information.
  - (7) Reporting requirements and forms.
- e.* Waste management procedures in the event of a temporary discontinuation of services other than planned seasonal closures.
  - (1) Details regarding the temporary closing of the site and the schedule for resuming services.
  - (2) An alternate disposal option if necessary.
  - (3) Details indicating how the public will be informed of the closing.
- f.* Emergency aid.
  - (1) Responder contacts.
  - (2) Medical services.
- g.* Employee orientation.
- h.* Training completion and record keeping.
- i.* Reference tables, figures and maps.
  - (1) Telephone list.
  - (2) Area map showing roads and evacuation routes and alternative access routes.
  - (3) Area map showing location of hospitals.
  - (4) Emergency checklist.

ITEM 4. Amend renumbered subrule 123.4(2) as follows:

**123.4(2)** *RCC and MUCCC permit exemption.* If an RCC or MUCCC is located at a permitted ~~recycling or composting facility~~ or sanitary disposal project, the RCC or MUCCC shall not be required to have its own permit; instead, the RCC or MUCCC activities may be amended into the host facility's permit.

ITEM 5. Amend renumbered subrule 123.4(9) as follows:

**123.4(9)** *Duration and renewal of permits.* A permit shall be issued and may be renewed for a period of ~~three~~ five years, unless otherwise authorized by the department. If the permit applicant is a private

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

agency under contract with a local government, the permit shall not extend past the end date of the contract.

ITEM 6. Amend renumbered subrule 123.5(1) as follows:

**123.5(1)** An applicant for a regional collection center permit must submit the following information to the department:

- a.* and *b.* No change.
- c.* A map or aerial photograph locating the boundaries of the site and identifying:
  - (1) No change.
  - (2) Zoning and land use within ~~one-half mile~~ 750 feet.
  - (3) Homes and other buildings within ~~one-half mile~~ 750 feet.
  - (4) No change.
- d.* to *g.* No change.
- h.* Site plans detailing how the facility will comply with ~~rule 123.6(455B,455D,455F)~~ rule 567—123.7(455B,455D,455F).
- i.* Schematic plans of facilities detailing how the facility will comply with ~~rule 123.7(455B,455D,455F)~~ rule 567—123.8(455B,455D,455F).
- j.* No change.
- k.* Documentation of staff qualifications pursuant to ~~rule 123.8(455B,455D,455F)~~ rule 567—123.9(455B,455D,455F).
- l.* A plan of operations detailing how the facility will comply with ~~subrule 123.9(1)~~ subrule 123.10(1).
- ~~*m.* An education plan detailing how the facility will comply with subrule 123.9(2).~~
- ~~*n. m.* Proof of the applicant's ownership of the RCC site or legal entitlement to use the site for the disposal of solid waste for the term of the permit for which application is made.~~
- ~~*o. n.* A closure plan detailing how the facility will comply with subrule 123.9(3) subrule 123.10(2).~~
- ~~*p. o.* An emergency response and remedial action plan (ERRAP) detailing how the facility will comply with rule 123.10(455B,455D,455F) rule 567—123.11(455B,455D,455F).~~

ITEM 7. Amend renumbered subrule 123.6(1) as follows:

**123.6(1)** An applicant for a mobile unit collection and consolidation center permit must submit the following information to the department:

- a.* to *g.* No change.
- h.* Site plans detailing how the facility will comply with ~~rule 123.6(455B,455D,455F)~~ rule 567—123.7(455B,455D,455F).
- i.* Schematic plans of facilities detailing how the facility will comply with ~~rule 123.7(455B,455D,455F)~~ rule 567—123.8(455B,455D,455F).
- j.* No change.
- k.* Documentation of staff qualifications pursuant to ~~rule 123.8(455B,455D,455F)~~ rule 567—123.9(455B,455D,455F).
- l.* A plan of operations detailing how the facility will comply with ~~subrule 123.9(1)~~ subrule 123.10(1).
- ~~*m.* An education plan detailing how the facility will comply with subrule 123.9(2).~~
- ~~*n. m.* Proof of the applicant's ownership of the consolidation center for CESQG and HHM site or legal entitlement to use the site for the term of the permit for which application is made.~~
- ~~*o. n.* Agreements from the owners of the sites where the mobile collections for CESQG and HHM will take place.~~
- ~~*p. o.* A closure plan detailing how the facility will comply with subrule 123.9(3) subrule 123.10(2).~~
- ~~*q. p.* An emergency response and remedial action plan (ERRAP) detailing how the facility will comply with rule 123.10(455B,455D,455F) rule 567—123.11(455B,455D,455F).~~

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

ITEM 8. Amend renumbered rule 567—123.9(455B,455D,455F) as follows:

**567—123.9(455B,455D,455F) Staff qualifications.** All RCC and MUCCC staff handling hazardous materials shall have received applicable training, including but not limited to the following:

1. OSHA 24-hour health and safety training and annual 8-hour refresher training as described ~~by~~ at 29 CFR 1910.120.

2. to 5. No change.

6. U.S. Department of Transportation ~~8-hour~~ hazardous materials training for the operation of a mobile unit for hazardous materials collection.

ITEM 9. Rescind renumbered subrule **123.10(2)**.

ITEM 10. Renumber renumbered subrule **123.10(3)** as **123.10(2)**.

ITEM 11. Amend renumbered rule **567—123.13(455B,455D,455F)**, introductory paragraph, as follows:

**567—123.13(455B,455D,455F) Financial assurance requirements for regional collection centers and mobile unit collection and consolidation centers.** Unless a facility is exempt from this rule pursuant to ~~subrule 123.12(4)~~ subrule 123.13(1), permitted RCCs and MUCCCs must obtain and submit a financial assurance instrument to the department for the storage of household hazardous materials in accordance with this rule. The financial assurance instrument shall provide monetary funds to properly dispose of household hazardous wastes, universal wastes, hazardous waste from conditionally exempt small quantity generators, and any other solid wastes that may remain at a site due to the owner's or operator's failure to properly close the site within 30 days of permit suspension, termination, revocation, or expiration.

ITEM 12. Amend renumbered subrule 123.13(3) as follows:

**123.13(3) Proof of compliance.** Proof of the establishment of the financial assurance instrument and compliance with this rule, including a current closure cost estimate, shall be submitted to the department ~~by July 1, 2008, or~~ at the time of application for a permit for a new RCC or MUCCC. The owner or operator must provide continuous coverage for closure and submit proof of compliance, including an updated closure cost estimate, with each permit renewal thereafter until released from this requirement by the department.

ITEM 13. Amend renumbered subrule 123.13(5) as follows:

**123.13(5)** The estimate submitted to the department must account for at least the following factors determined by the department to be minimal necessary costs for closure pursuant to ~~subrule 123.9(3)~~ subrule 123.10(2):

*a.* The cost estimate submitted to the department shall be an average of the disposal costs charged by the hazardous waste contractor to the RCC or MUCCC as reported on the semiannual reports submitted in accordance with ~~rule 123.11(455B,455D,455F)~~ rule 567—123.12(455B,455D,455F) for the most recent three-year period.

*b.* For new facilities or existing facilities that do not have sufficient data to determine an average disposal cost, the initial cost estimate shall be equal to \$15,000 for facilities serving a population of 35,000 or greater and equal to \$5,000 for facilities serving a population of less than 35,000. ~~The estimate shall be adjusted once sufficient data is available for a three-year period.~~

ITEM 14. Amend renumbered subrule 123.13(6), introductory paragraph, as follows:

**123.13(6) Acceptable financial assurance instruments.** The financial assurance instrument shall be established in an amount equal to the cost estimate prepared in accordance with ~~subrule 123.12(5)~~ subrule 123.13(5) and shall not be canceled, revoked, disbursed, released, or allowed to terminate without the approval of the department. Financial assurance may be provided by cash in the form of a secured trust fund or local government dedicated fund, surety bond, letter of credit, or corporate or local government guarantee as follows:

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

ITEM 15. Amend renumbered subparagraph **123.13(6)“d”(3)** as follows:

(3) The letter of credit must be irrevocable and must be issued for a period of at least one year. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 90 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into a secured trust fund that meets the requirements of paragraph ~~123.12(6)“a.”~~ 123.13(6)“a.” If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the secured trust fund established by the owner or operator. The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. ~~The state shall not be considered a party to this credit transaction.~~

ITEM 16. Amend renumbered subparagraph **123.13(6)“e”(1)** as follows:

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. No change.
2. Establish a fully funded secured trust fund as specified in paragraph ~~123.12(6)“a.”~~ 123.13(6)“a” in the name of the owner or operator (payment guarantee); or
3. No change.

ITEM 17. Amend renumbered subparagraph **123.13(6)“e”(5)** as follows:

(5) Record-keeping and reporting requirements. The guarantor must submit the following records to the department and place a copy in the facility's official files:

1. No change.
2. A letter signed by a certified public accountant and based upon a certified audit that:
  - Lists all the current cost estimates covered by a guarantee including, but not limited to, cost estimates required by ~~subrule 123.12(5)~~ subrule 123.13(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
  - Provides evidence demonstrating that the guarantor meets the conditions of subparagraphs ~~123.12(6)“e”~~ 123.13(6)“e”(2), (3) and (4).
3. No change.

ITEM 18. Amend renumbered subparagraph **123.13(6)“f”(1)** as follows:

(1) The terms of the written guarantee must provide that within 30 days of the owner's or operator's failure to perform closure of a facility covered by the guarantee, the guarantor will:

1. No change.
2. Establish a fully funded secured trust fund as specified in paragraph ~~123.12(6)“a”~~ 123.13(6)“a” in the name of the owner or operator (payment guarantee); or
3. No change.

ITEM 19. Amend renumbered subparagraph **123.13(6)“f”(6)** as follows:

(6) The local government owner or operator must submit to the department the following items:

1. No change.
2. A copy of the guarantor's most recent annual financial audit report indicating compliance with the financial ratios required by numbered paragraph ~~123.12(6)“f”(2)“2,”~~ 123.13(6)“f”(2)“2,” if applicable, and the requirements of subparagraphs ~~123.12(6)“f”~~ 123.13(6)“f”(3) and (4).



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

3. A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by the guarantor, as described in ~~subrule 123.12(5)~~ subrule 123.13(5); and that provides evidence and certifies that the local government meets the conditions of subparagraphs ~~123.12(6)“f”~~ 123.13(6)“f”(2), (3), (4) and (5).

ITEM 20. Amend renumbered paragraph **123.13(7)“d”** as follows:

*d.* The owner or operator shall perform proper closure within 30 days of the permit suspension. For the purpose of this rule, “proper closure” means completion of all items pursuant to ~~subrule 123.9(3)~~ subrule 123.10(2).

ITEM 21. Adopt the following **new** definition of “Satellite facility” in rule **567—211.2(455F)**:

“*Satellite facility*” means a secured facility at which collection and storage of household hazardous materials and hazardous materials from CESQGs are accomplished prior to transportation of these wastes to an RCC. A satellite facility has a written contract with an RCC for the removal of collected waste. A satellite facility may be operated by a government agency or a private agency under contract with a government agency as part of a solid waste comprehensive plan. A satellite facility is available for public drop off of hazardous materials either during regularly scheduled hours or by appointment.

ITEM 22. Amend rule 567—211.5(455F) as follows:

**567—211.5(455F) Eligible costs.** An RCC applicant for an RCC establishment grant may request monetary assistance for the purpose of project development and implementation that includes funds for the following expense categories.

1. Materials and labor for construction, and the purchase cost of structures or mobile units, or both, to be used as an RCC or satellite facility, including but not limited to site excavation for the structure and modifications to control runoff.

2. A ~~three-year~~ one-year education program for households and CESQGs within the RCC service area. Eligible education expenses may include but are not limited to:

- Supplies, including paper and postage.
- The purchase of books, resource materials, slide shows, video materials, and other media for education of the local population or donation to local libraries or schools.

- Fees for public service announcements.

3. Equipment relating directly to the RCC or satellite operation.

4. and 5. No change.

~~6.—Computers and software used for tracking hazardous materials.~~

ITEM 23. Amend rule 567—211.6(455F) as follows:

**567—211.6(455F) Ineligible costs.** ~~RCC applicants~~ Applicants for RCC establishment grants cannot request monetary assistance for the following costs:

1. to 8. No change.

ITEM 24. Amend subrule 211.7(1) as follows:

**211.7(1)** An applicant for an RCC establishment grant shall submit to the department a completed application and a comment form. The comment form shall be completed by the agency responsible for the submission of a solid waste comprehensive plan for the area in which the RCC or satellite facility will be established. ~~The comment form shall be submitted to the department within seven days of the application deadline or points may be deducted by the department during the application review process.~~

ITEM 25. Amend subrule 211.7(2) as follows:

**211.7(2)** The department shall coordinate the evaluation of proposals, and applicants will be awarded financial assistance based on selection criteria contained in the application form. Prior to receiving financial assistance from the department, applicants must either obtain a regional collection center permit, ~~or~~ amend the SDP permit of the host facility to include regional collection center activities, or provide documentation of a contractual arrangement with a permitted RCC for removal of the waste to be collected.

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

ITEM 26. Amend subrule 211.9(3) as follows:

**211.9(3)** The fall payments will be based on the report due September 1 and on available funding. An RCC or MUCCC will receive a percentage of the available funding in an amount proportional to the amount of HHM the RCC or MUCCC disposed of through a hazardous waste contractor, as reported on the hazardous materials collection semiannual report form, compared to the total amount of HHM disposed of by all RCCs and MUCCCs. The fall payment shall not exceed total disposal costs for the reporting period.

The spring payments will be based on the total pounds reported for the calendar year and on available funding. An RCC or MUCCC will receive a percentage of the available funding for the calendar year minus the amount received for the fall payment, in an amount proportional to the amount of HHM the RCC or MUCCC disposed of through a hazardous waste contractor, as reported on the hazardous materials semiannual report form for the calendar year, compared to the total amount of HHM disposed of by all RCCs and MUCCCs. The spring payment and fall payments combined shall not exceed an RCC's or MUCCC's total disposal costs for the calendar year.

**ARC 8311B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, “Conditions of Eligibility,” Iowa Administrative Code.

The proposed amendments would:

- Clarify that medical assistance is available for a child for whom Iowa or another state has negotiated an agreement for adoption assistance, regardless of whether that agreement includes a maintenance payment.
- Allow for direct deposit of warrants issued under the Health Insurance Premium Payment (HIPP) program to reimburse the cost of premiums that cannot be paid directly to the insurance carrier.
- Eliminate the requirement for mailing a change report form with every HIPP warrant.
- Update form numbers.

The changes regarding adoption assistance are made to comply with the requirements of the Interstate Compact for Adoption Medical Assistance (ICAMA). Assistance agreements may be negotiated for medical assistance only.

The changes to the HIPP rules will increase efficiency and accuracy of delivery of HIPP reimbursement and generate administrative savings. Participation in direct deposit will be voluntary for the member.

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

Any interested person may make written comments on the proposed amendments on or before December 8, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code sections 249A.3 and 249A.4.

The following amendments are proposed.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend subrule 75.1(10), introductory paragraph, as follows:

**75.1(10)** *Individuals under age 21 living in a licensed foster care facility or in a private home pursuant to a subsidized adoption arrangement for whom the department has financial responsibility in whole or in part.* When Iowa is responsible for foster care payment for a child pursuant to Iowa Code section 234.35 and rule 441—156.20(234) or has negotiated an adoption assistance agreement to pay an adoption subsidy for a child pursuant to rule 441—201.5(600), medical assistance shall be available to the child if:

ITEM 2. Amend paragraphs **75.1(16)“c”** and **“d”** as follows:

c. Another state ~~is currently paying~~ has an adoption subsidy assistance agreement in effect for the child.

d. The state paying with the adoption subsidy assistance agreement:

(1) and (2) No change.

ITEM 3. Amend paragraphs **75.2(1)“a”** and **“b”** as follows:

a. Persons who have been approved by the Social Security Administration for ~~supplemental security income~~ Supplemental Security Income shall complete Form 470-2304, ~~470-2304(S)~~, 470-0364, ~~470-0364(M)~~, 470-0364(MS), or 470-0364(S), SSI Medicaid Information, and return it to the department.

b. Persons eligible for Part B of the Medicare program shall make assignment to the department on Form ~~470-2304, 470-2304(S)~~, 470-0364, 470-0364(M), 470-0364(MS), or 470-0364(S), SSI Medicaid Information.

ITEM 4. Adopt the following new paragraph **75.21(9)“e”**:

e. Reimbursements may also be paid by direct deposit to the member's own account in a financial institution or by means of electronic benefits transfer.

ITEM 5. Amend paragraph **75.21(11)“e”** as follows:

e. The policyholder shall report changes that may affect the availability or cost-effectiveness of the policy within ten calendar days from the date of the change. Changes may be reported by telephone, in writing, or in person. ~~The department sends a HIPP Change Report, Form 470-3007, with all premium payments.~~

**ARC 8279B**

## HUMAN SERVICES DEPARTMENT[441]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 514I.5, the Department of Human Services proposes to amend Chapter 86, “Healthy and Well Kids in Iowa (HAWK-I) Program,” Iowa Administrative Code.

The proposed amendments would enable children to establish or regain eligibility for HAWK-I when eligibility has been denied or canceled due to failure to provide required information or a completed review form. In both situations, eligibility would be granted if the necessary information or the completed review form is provided no later than 14 calendar days from the date of the notice of denial or the effective date of cancellation, and if the Department determines that eligibility exists.

These amendments will allow families to resolve the reason for the denial or cancellation rather than having to start all over again with a new application. Having to reapply may discourage families of otherwise eligible children from obtaining needed assistance. These changes are expected to result in the

## HUMAN SERVICES DEPARTMENT[441](cont'd)

issuance of more timely benefits, fewer gaps in benefit eligibility, and less repeated work for eligibility staff. The changes should also reduce the number of appeals of denials and cancellations.

The amendments also exempt reasonable income-producing costs from all unearned income to align policies with other health and financial support programs of the Department.

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

Any interested person may make written comments on the proposed amendments on or before December 8, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code chapter 514I.

The following amendments are proposed.

ITEM 1. Amend rule **441—86.1(514I)**, definition of “Unearned income,” as follows:

“*Unearned income*” means cash income of all parents, spouses, and children under the age of 19 who are living together in accordance with subrule 86.2(3) that is not gained by labor or service. The available unearned income shall be the amount remaining after the withholding of taxes (Federal Insurance Contribution Act, state and federal income taxes) and any reasonable income-producing costs. Examples of unearned income include, but are not limited to:

1. to 4. No change.

ITEM 2. Amend paragraph **86.3(7)“b”** as follows:

*b.* Failure to supply the information or verification or refusal to authorize the third-party administrator to secure the information shall serve as a basis for rejection of the application or cancellation of coverage. If the requested information or authorization is received within 14 calendar days of the notice of decision on an application or within 14 calendar days of the effective date of cancellation for enrollees, the information or authorization shall be acted upon as though it had been provided timely. If the fourteenth calendar day falls on a weekend or state holiday, the applicant or enrollee shall have until the next business day to provide the information.

ITEM 3. Amend subrule 86.9(2) as follows:

**86.9(2)** *Failure to provide information.* The child shall not be enrolled for the next 12-month period if the family fails to provide information and verification of income or otherwise fails to cooperate in the annual review process. If the completed review form and any information necessary to establish continued eligibility is received within 14 calendar days of the end of an enrollment period, the review form and information shall be acted upon as though it had been received timely. If the fourteenth calendar day falls on a weekend or state holiday, the enrollee shall have until the next business day to provide the review form and any information necessary to establish continued eligibility.

**ARC 8301B**

## **LABOR SERVICES DIVISION[875]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 88A.3, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 61, “Administration of Iowa Code Chapter 88A,” and

## LABOR SERVICES DIVISION[875](cont'd)

Chapter 62, "Safety Rules for Amusement Rides, Amusement Devices, and Concession Booths," Iowa Administrative Code.

These proposed amendments would adopt a new definition of "amusement device" that excludes inflatable rides from the jurisdiction of Iowa Code chapter 88A, and would remove one reference to inflatable rides from the rules.

The principal reason for proposing these amendments is to reduce expenses of the Division of Labor Services. The Labor Commissioner has carefully weighed options for reducing the expenses of the Division of Labor Services and has determined that ending regulation of inflatable rides is the option that is least disruptive to the public. Due to the impossibility of uniform enforcement and the high cost for travel, the Division has, for some time, been considering joining the large number of states that do not regulate inflatable amusement rides. Compared to other functions performed by the Iowa Division of Labor Services, inspection of inflatable rides generates less revenue; requires more costly travel; and has less impact on public health, safety, and welfare.

If requested in accordance with Iowa Code section 17A.4(1)"b" by the close of business on December 9, 2009, a public hearing will be held on December 10, 2009, at 9 a.m. in the Stanley Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and submit documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than December 10, 2009, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

No variance procedures are included in these rules because variance procedures are set forth in 875—Chapter 1.

These amendments are intended to implement Iowa Code chapter 88A.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of "Amusement device" in subrule **61.1(1)**:

"*Amusement device*" means any equipment or piece of equipment, appliance or combination thereof designed or intended to entertain or amuse a person. "Amusement device" shall not include a device that:

1. Is made of flexible fabric;
2. Is inflated by air flow that is created by one or more blowers; and
3. Relies upon air pressure to maintain its shape.

ITEM 2. Amend subrule 62.2(9) as follows:

**62.2(9) Master switch.** Each electrically operated amusement device shall be provided with a fused disconnect switch or circuit breaker placed within unobstructed reach of the ride operator. This subrule shall not apply to blowers for inflatable rides or to devices designed to be controlled directly by the public.

**ARC 8278B**

## **PROFESSIONAL LICENSURE DIVISION[645]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic hereby gives Notice of Intended Action to amend Chapter 45, "Discipline for Chiropractic Physicians," Iowa Administrative Code.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

The proposed amendment to subrule 45.2(11) changes the word “felony” to “crime” to be consistent with Iowa Code chapter 147 requirements.

Any interested person may make written comments on the proposed amendment no later than December 8, 2009, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on December 8, 2009, from 9:30 to 10 a.m. in Fifth Floor Board Room 526 at the above address, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 151 and 272C.

The following amendment is proposed.

Amend subrule 45.2(11) as follows:

**45.2(11)** Conviction of a ~~felony~~ crime related to the profession or occupation of the licensee or the conviction of any ~~felony~~ crime that would affect the licensee’s ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

**ARC 8277B**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Massage Therapy hereby gives Notice of Intended Action to amend Chapter 134, “Discipline for Massage Therapists,” Iowa Administrative Code.

The proposed amendment to subrule 134.2(11) changes the word “felony” to “crime” to be consistent with Iowa Code chapter 147 requirements.

Any interested person may make written comments on the proposed amendment no later than December 8, 2009, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on December 8, 2009, from 9 to 9:30 a.m. in Fifth Floor Board Room 526 at the above address, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 152C and 272C.

The following amendment is proposed.

Amend subrule 134.2(11) as follows:

**134.2(11)** Conviction of a ~~felony~~ crime related to the profession or occupation of the licensee or the conviction of any ~~felony~~ crime that would affect the licensee’s ability to practice within the profession which includes, but is not limited to, a felonious act which is so contrary to honesty, justice or good morals and so reprehensible as to violate the public confidence and trust imposed upon the licensee. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

**ARC 8282B****PROFESSIONAL LICENSURE DIVISION[645]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistants hereby gives Notice of Intended Action to amend Chapter 329, “Discipline for Physician Assistants,” Iowa Administrative Code.

The proposed amendment to subrule 329.2(11) changes the word “felony” to “crime” to be consistent with Iowa Code chapter 147 requirements.

Any interested person may make written comments on the proposed amendment no later than December 8, 2009, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on December 8, 2009, from 10 to 10:30 a.m. in Fifth Floor Board Room 526 at the above address, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 148C and 272C.

The following amendment is proposed.

Amend subrule 329.2(11) as follows:

**329.2(11)** Conviction of a ~~felony~~ crime related to the profession or occupation of the licensee or the conviction of any ~~felony~~ crime that would affect the licensee’s ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

**ARC 8291B****REAL ESTATE COMMISSION[193E]****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 543B.9 and 543B.18, the Real Estate Commission hereby gives Notice of Intended Action to amend Chapter 7, “Offices and Management,” Iowa Administrative Code.

The proposed amendment to paragraph 7.13(4)“a” would add item 22 to the list of permitted activities for unlicensed support personnel under the direct supervision of a licensee. The addition would permit unlicensed support personnel to independently host an open house for tours attended by licensed brokers and salespersons only.

The proposed amendment to paragraph 7.13(4)“b” would add the phrase “attended by the public” to the end of item 2 of the list of prohibited activities, thus allowing for unlicensed support personnel to host open houses for licensed brokers and salespersons only.

A public hearing will be held on December 8, 2009, at 9:30 a.m. in the Professional Licensing Conference Room, Second Floor, 1920 SE Hulsizer Road, Ankeny, Iowa, at which time persons may

## REAL ESTATE COMMISSION[193E](cont'd)

present their views on the proposed amendments either orally or in writing. At the hearing, persons who wish to speak will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

Consideration will be given to all written suggestions or comments received before the end of the business day on December 8, 2009. Comments should be addressed to David Batts, Executive Officer, Iowa Real Estate Commission, 1920 SE Hulsizer Road, Ankeny, Iowa 50021; or faxed to (515)281-7411. E-mail may be sent to [David.Batts@iowa.gov](mailto:David.Batts@iowa.gov).

These amendments are intended to implement Iowa Code section 543B.1.

The following amendments are proposed.

ITEM 1. Amend paragraph 7.13(4)“a” by adopting new item 22 to the list of permitted activities as follows:

(22) Independently host open houses for tours attended by licensed brokers and salespersons only.

ITEM 2. Amend paragraph 7.13(4)“b,” item 2, as follows:

(2) Independently hosting open houses, kiosks, home show booths, or fairs attended by the public;

**ARC 8306B**

## 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 chapter 17A, and sections 421.14, 422.68, and 423A.6, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 17, “Exempt Sales”; Chapter 18, “Taxable and Exempt Sales Determined by Method of Transaction or Usage”; Chapter 103, “State-Imposed and Locally Imposed Hotel and Motel Taxes—Administration”; Chapter 105, “Locally Imposed Hotel and Motel Tax”; Chapter 235, “Rebate of Iowa Sales Tax Paid”; and Chapter 241, “Excise Taxes Not Governed by the Streamlined Sales and Use Tax Agreement,” Iowa Administrative Code.

Item 1 amends rule 701—17.1(422,423) to reflect the fact that sales by an organization which provides athletic activities to youth are now exempt from tax.

Items 2, 5, 7, and 10 amend implementation sentences.

Item 3 rescinds and reserves rule 701—18.40(422,423) because of a change to the law relating to the rental of nonsleeping rooms.

Item 4 amends subrule 103.1(1) to explain that taxable “lodging” does not include rental of rooms for other than sleeping or resting.

Item 6 amends subrule 105.3(1) to indicate that exemptions from sales and use tax no longer apply to the hotel and motel tax and that, beginning July 1, 2009, the sales price of the renting of sleeping rooms is subject to both the state-imposed hotel and motel tax and the locally imposed hotel and motel tax.

Item 8 amends subrule 235.1(1) to state that certain existing definitions set out in the subrule are changed as of July 1, 2009, and to add a paragraph to set out the new definitions which are applicable on and after July 1, 2009.

Item 9 amends subrules 235.1(4) and 235.1(5) to reflect the fact that a new definition of “change of control” is applicable to the auto racetrack facility rebate program.

Item 11 amends rule 701—241.3(423A), definition of “lodging,” to reflect the fact that taxable “lodging” does not include rental of rooms for other than sleeping or resting.

Item 12 amends rule 701—241.4(423A) to state that the rental of a mobile home or manufactured housing which is tangible personal property is treated as the rental of lodging rather than the rental of tangible personal property.



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

Item 13 amends rule 701—241.5(423A) to explain the circumstances under which a renter can and cannot claim the exemption from hotel and motel tax which results from 31 days' consecutive stay at the same location.

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

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 21, 2009, to the Policy Section, Taxpayer Services and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 8, 2009. Such written comments should be directed to the Policy Section, Taxpayer Services and Policy 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, Taxpayer Services and Policy 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 December 8, 2009.

These amendments are intended to implement 2009 Iowa Acts, Senate File 322, section 7, and 2009 Iowa Acts, Senate File 478, sections 137, 138, 139, 211, 212, 218, and 220.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 17.1(7):

**17.1(7)** Effective May 22, 2009, and retroactive to July 1, 1998, an organization which otherwise meets the requirements of this rule and is created for the sole or primary purpose of providing athletic activities to youth is created for an educational purpose. Sales made by a qualified organization are exempt from the collection of sales tax. An organization is providing athletic activities to youth if the persons for which it provides those activities are age 18 or under. The organization must be solely organized or its primary purpose must be related to providing athletic activities for youth. An "activity" is any exertion or experience which involves some movement of the human body and gives enjoyment or recreation. An "athletic activity" is any activity which requires physical strength, skill, speed, or training in its performance. The following activities are nonexclusive examples of athletic activity: baseball, football, basketball, bowling, softball, volleyball, soccer, golf, tennis, racquetball, swimming, wrestling, and track and field.

Purchases made by a youth sports organization for its own use are not exempt from the sales or use tax.

ITEM 2. Amend rule **701—17.1(422,423)**, implementation sentence, as follows:

This rule is intended to implement ~~2001 Iowa Acts, House File 736, section 2, and Iowa Code sections 422.45(5), 422.45(8), and 423.1, and subsection 423.3(78) as amended by 2009 Iowa Acts, Senate File 478.~~

ITEM 3. Rescind and reserve rule **701—18.40(422,423)**.

ITEM 4. Amend subrule **103.1(1)**, definition of "Lodging," as follows:

"Lodging" means rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, or manufactured or mobile home which is tangible personal property, or in a tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent,

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

whether with or without meals. The word “lodging” does not refer to the rental of rooms for purposes other than sleeping or resting, including but not limited to rental of rooms for meetings, conferences, weddings, or banquets.

ITEM 5. Amend rule **701—103.1(423A)**, implementation sentence, as follows:

This rule is intended to implement 2005 Iowa Code Supplement sections 423A.3 and 423A.4 Iowa Code section 423A.2 as amended by 2009 Iowa Acts, Senate File 478, and sections 423A.3, 423A.4, and 423A.6.

ITEM 6. Amend subrule 105.3(1) as follows:

**105.3(1)** The tax shall not apply: (a) when lodging is furnished to a person if that person rents any rooms or other lodging for more than 31 consecutive days, (b) to the renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in the state, (c) to contracts made directly with the federal government, or (d) to the renting of a room to the guest of a religious institution upon real property exempt from tax as the property of a religious institution, if the reason for renting the room is to provide a place for a religious retreat or function and not a place for transient guests generally. For the period beginning July 1, 2008, and ending June 30, 2009, the sales price of any transaction exempted from state sales tax by Iowa Code section 423.3 was exempted from hotel and motel tax. Beginning July 1, 2009, the sales price of the renting of sleeping rooms is subject to both the state-imposed hotel and motel tax and the locally imposed hotel and motel tax.

ITEM 7. Amend rule **701—105.3(423A)**, implementation sentence, as follows:

This rule is intended to implement 2005 Iowa Code Supplement section 423A.4 as amended by 2009 Iowa Acts, Senate File 478.

ITEM 8. Amend subrule 235.1(1) as follows:

**235.1(1) Definitions.**

*a.* For the purpose of this program, prior to July 1, 2009, the following definitions apply:

“Automobile racetrack facility” means a sanctioned automobile racetrack facility located as part of a racetrack and entertainment complex, including any museum attached to or included in the racetrack facility, but excluding any restaurant, and which facility is located, on a maximum of 232 acres, in a city with a population of at least 14,500 but not more than 16,500 residents, which city is located in a county with a population of at least 35,000, but not more than 40,000 residents, and where the construction on the racetrack facility commenced not later than one year following July 1, 2005, and the cost of the construction upon completion was at least \$35 million.

“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 automobile racetrack facility such that at least 60 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.

2. The original owners of the legal entity that is the owner or operator of the automobile racetrack facility 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.

“Iowa corporation” means a corporation incorporated under the laws of Iowa where at least 60 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 60 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 an automobile racetrack facility and is primarily a promoter of motor vehicle races.

“Population” means the population based upon the 2000 certified federal census.

*b.* For the purposes of this program, on and after July 1, 2009, the following definitions apply:

“Automobile racetrack facility” means a sanctioned automobile racetrack facility located as part of a racetrack and entertainment complex, including any museum attached to or included in the racetrack facility, but excluding any restaurant, and which facility is located, on a maximum of 232 acres, in a city

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

with a population of at least 14,500 but not more than 16,500 residents, which city is located in a county with a population of at least 35,000, but not more than 40,000 residents, and where the construction on the racetrack facility commenced not later than one year following July 1, 2005, and the cost of the construction upon completion was at least \$35 million.

“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 automobile racetrack facility such that less than 25 percent of the equity interests in the legal entity is owned by individuals who are residents of Iowa, an Iowa corporation, or combination of both.

2. The original owners of the legal entity that is the owner or operator of the automobile racetrack facility shall collectively cease to own at least 25 percent of the voting equity interests of such legal entity.

“Iowa corporation” means a corporation incorporated under the laws of Iowa where at least 25 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 25 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 an automobile racetrack facility and is primarily a promoter of motor vehicle races.

“Population” means the population based upon the 2000 certified federal census.

ITEM 9. Amend subrules 235.1(4) and 235.1(5) as follows:

**235.1(4) Limitations.** The automobile racetrack facility rebate program applies only to transactions which occur on or after January 1, 2006, but before January 1, 2016, and for which sales tax was collected. Only the state sales tax is subject to rebate. The rebate is limited to 5 percent. Local option taxes paid and collected are not subject to rebate. Rebates of sales taxes to an automobile racetrack facility are not authorized for transactions which occur on or after the date of the sale or other transfer, whether voluntary or involuntary, of the automobile racetrack facility to a party other than the original owner of the facility or upon a change of control of such facility.

**235.1(5) Termination of rebate program.** The rebate program for automobile racetrack facilities is a pilot program which terminates on the earliest of the following dates:

- a. June 30, 2016; or
- b. Thirty days following the date on which \$12,500,000 in total rebates have been provided; or
- c. Thirty days following the date of the sale or other transfer, whether voluntary or involuntary, of the automobile racetrack facility to a party other than the original owner of the facility or upon a change of control of such facility.

ITEM 10. Amend rule **701—235.1(423)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code Supplement section 423.4(5) and 2005 Iowa Acts, chapter 110 as amended by 2009 Iowa Acts, Senate File 478.

ITEM 11. Amend rule **701—241.3(423A)**, definition of “Lodging” as follows:

“Lodging” means rooms, apartments, or sleeping quarters in a hotel, motel, inn, public lodging house, rooming house, or manufactured or mobile home which is tangible personal property, or in a tourist court, or in any place where sleeping accommodations are furnished to transient guests for rent, whether with or without meals. The word “lodging” does not refer to the rental of rooms for purposes other than sleeping or resting, including but not limited to rental of rooms for meetings, conferences, weddings, or banquets.

ITEM 12. Amend rule 701—241.4(423A) as follows:

**701—241.4(423A) Imposition of tax.** A tax of 5 percent is imposed upon the sales price for the rental of any lodging if the rental occurs in this state. The tax shall be collected by any lessor of lodging from the user of that lodging. The lessor shall add the tax to the sales price of the lodging, and the state-imposed tax, when collected, shall be stated as a distinct item, separate and apart from the sales price of the lodging and the local tax imposed, if any, under Iowa Code section 423A.4. The rental of a mobile home

REVENUE DEPARTMENT[701](cont'd)

or manufactured housing which is tangible personal property is treated as the rental of lodging rather than tangible personal property.

ITEM 13. Amend rule 701—241.5(423A) as follows:

**701—241.5(423A) Exemptions.** The tax described in this division shall not apply: (a) when lodging is furnished to a person if that person rents any rooms or facility for more than 31 consecutive days, (b) to the renting of sleeping rooms in dormitories and in memorial unions at all universities and colleges located in the state, (c) to contracts made directly with the federal government, or (d) to the renting of lodging to the guest of a religious institution upon real property exempt from tax as the property of a religious institution, if the reason for renting the room is to provide a place for a religious retreat or function and not a place for transient guests generally.

Concerning the exemption for rental for more than 31 consecutive days, the rooms must be rented by the same person for a period of more than 31 consecutive days. The renter must contract to rent for a period of 31 days or more. The renter may not accumulate these 31 days by contracting for two or more rental transactions. The incremental manner in which the retailer bills its customers does not influence the accumulation of the days required to claim the exemption.

## ARC 8293B

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

## Adopted and Filed

Pursuant to the authority of Iowa Code section 177A.6, the Iowa Department of Agriculture and Land Stewardship hereby amends Chapter 46, "Crop Pests," Iowa Administrative Code.

The amendment adds several insect pests and diseases to the listings found in rule 21—46.15(177A). The additions to the list are based on known infestations in other states and countries that pose a pest risk to Iowa because of interstate and international trade. Additionally, soybean rust has been removed from the list because the pathogen is now present in North America and may infect crops on an annual basis. Regulatory actions to safeguard against soybean rust cannot be effective.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8022B** on July 29, 2009.

No changes have been made to the Noticed document, and no comments were received from the public.

This amendment is intended to implement Iowa Code section 177A.5.

This amendment will become effective December 23, 2009.

The following amendment is adopted.

Amend rule 21—46.15(177A) as follows:

**21—46.15(177A) Insect pests and diseases.** To comply with Iowa Code section 177A.5, there is are listed below the insect pests and diseases which the state entomologist finds should be prevented from being introduced into or disseminated within Iowa, in order to safeguard the plants and plant products likely to become infested or infected with such insect pests and diseases.

## Insect pests:

Asian gypsy moth (*Lymantria dispar dispar* (Linnaeus))

Asian longhorned beetle (*Anoplophora glabripennis*)

Blue alfalfa aphid (*Acyrtosiphon kondoi*)

Emerald ash borer (*Agilus planipennis*)

European woodwasp (*Sirex noctilio*)

Gypsy (European) moth (*Lymantria dispar*)

Gypsy moth (European X Asian) (*Lymantria dispar x hybrid*)

Khapra beetle (*Trogoderma granarium*)

Rosy (pink) gypsy moth (*Lymantria mathura*)

Viburnum leaf beetle (*Pyrrhalta viburni*)

Walnut twig beetle (*Pityophthorus juglandis*)

## Diseases:

Black stem rust of wheat (*Puccinia graminis*)

Corn late wilt or black bundle disease of corn (*Harpophora* (*Cephalosporium*) *maydis*)

Oat cyst nematode (*Bidara avenae*)

Golden nematode (*Globodera rostochiensis*)

Corn cyst nematode (*Heterodera zae*)

Columbia root-knot nematode (*Meloidogyne chitwoodii* *chitwoodi*)

Mexican corn cyst (*Punctodera chalcoensis*)

Soybean rust (*Phakopsora pachyrhizi*)

Head smut of corn (*Sphacelotheca reiliana*)

Sudden oak death (*Phytophthora ramorum*)

Thousand cankers disease of black walnut (*Geosmithia*, sp.)

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

White potato cyst nematode (*Globodera pallida*)

[Filed 10/27/09, effective 12/23/09]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.

**ARC 8308B****AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

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

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

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7867B** on June 17, 2009.

The description of honey was refined from the Noticed document by changing "locally grown, raw honey" to "locally produced, unpasteurized, pure honey."

No comments were received from the public.

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

These amendments will become effective December 23, 2009.

The following amendments are adopted.

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

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

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

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

[Filed 10/28/09, effective 12/23/09]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.

**ARC 8292B****AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 189.2(2) and 215.24, the Department of Agriculture and Land Stewardship hereby amends Chapter 85, "Weights and Measures," Iowa Administrative Code.

The amendment updates the reference to the handbooks used for specifications and regulations for commercial weighing and measuring devices and for packaging and labeling and method of sale.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8092B** on September 9, 2009.

No changes have been made to the Noticed document, and no comments were received from the public.

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

This amendment is intended to implement Iowa Code sections 189.9, 189.13, 189.17, 215.14, 215.18 and 215.23.

This amendment will become effective December 23, 2009.

The following amendment is adopted.

Amend rule 21—85.39(189,215) as follows:

**21—85.39(189,215) Weights and measures.** The specifications, tolerances and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Institute of Standards and Technology and published in National Institute of Standards and Technology Handbook 44 amended or revised as of July 1, ~~2007~~ 16, 2009, shall be the specifications, tolerances and regulations for commercial weighing and measuring devices in the state of Iowa, except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship and not rescinded.

The National Institute of Standards and Technology (NIST) Handbooks 130 and 133: Weights and Measures Law, Packaging and Labeling, Method of Sale, Type Evaluation and Checking the Net Contents of Packaged Goods, and all supplements, as promulgated by the National Institute of Standards and Technology amended or revised as of July 1, ~~2007~~ 16, 2009, are adopted in their entirety by this reference.

This rule is intended to implement Iowa Code sections 189.9, 189.13, 189.17, 215.14, 215.18 and 215.23.

[Filed 10/27/09, effective 12/23/09]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.

**ARC 8287B****ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 1, "Iowa Ethics and Campaign Disclosure Board," Iowa Administrative Code.

The amendment clarifies that the election of Board officers occurs on an annual basis at the first in-person meeting after April 30.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 29, 2009, as **ARC 8000B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on October 21, 2009.

This amendment is intended to implement Iowa Code section 68B.32(3).

This amendment will become effective on December 23, 2009.

The following amendment is adopted.

Amend subrule 1.1(2) as follows:

**1.1(2) Election of officers.** On an annual basis at the board's first in-person meeting after April 30, the members shall elect a chair and vice chair, and members may be reelected or elected to a different office.

[Filed 10/26/09, effective 12/23/09]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.

**ARC 8290B**

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]**

**Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

These amendments bring the rules on the date and time of filing campaign disclosure statements and reports into conformity with the statute mandating the date and time of such statements and reports when electronically filed.

Pursuant to Iowa Code section 17A.4(3), the Board finds that notice and public participation prior to the adoption of these amendments are impracticable, as it is desirable to have the Board's rules reflect current statutory requirements.

These amendments are intended to implement Iowa Code section 68A.401(1) as amended by 2009 Iowa Acts, Senate File 51, and section 68A.402 as amended by 2009 Iowa Acts, Senate File 49, section 4.

These amendments will become effective on December 23, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule 4.1(3) as follows:

**4.1(3) Time of filing.** A statement of organization shall be filed with the board within ten days after the financial filing threshold in subrule 4.1(1) has been exceeded. A statement must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or before the report due date. Faxed or electronically filed statements must be submitted on or before 11:59 p.m. of the tenth day after the organization of the committee is required. A committee that is mandated by statute to electronically file a statement of organization shall file the statement with the board on or before 4:30 p.m. on the due date. If the tenth day falls on a Saturday, Sunday, or holiday on which the board office is closed, the filing deadline is extended to the next working day when the board office is open.

ITEM 2. Amend rule 351—4.10(68A,68B) as follows:

**351—4.10(68A,68B) Time of filing.** A report must be physically received by the board or, if mailed, shall bear a United States Postal Service postmark dated on or before the report due date. Faxed, E-mailed, or electronically filed reports must be submitted on or before 11:59 p.m. of the report due date. However, as provided in Iowa Code Supplement section 68A.402 as amended by ~~2008 Iowa Acts, Senate File 2400, sections 24 and 28,~~ 2009 Iowa Acts, Senate File 49, section 4, any report that is required to be filed five days or less prior to an election must be physically received by the board prior to 4:30 p.m. on the report due date. A report that is mandated by statute to be electronically filed shall be filed with the board on or before 4:30 p.m. on the due date. If the due date falls on a Saturday, Sunday, or holiday on which the board office is closed, the due date is extended to the first working day when the board office is open.

This rule is intended to implement Iowa Code Supplement section 68A.401(1) as amended by 2009 Iowa Acts, Senate File 51, and section 68A.402 as amended by ~~2008 Iowa Acts, Senate File 2400, sections 24 and 28~~ 2009 Iowa Acts, Senate File 49, section 4.



## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

ITEM 3. Rescind rule 351—4.58(68B) and adopt the following **new** rule in lieu thereof:

**351—4.58(68B) Late-filed campaign disclosure reports.** A campaign disclosure report is deemed filed late if it is not received by the board on or before the date and time the report is mandated to be filed pursuant to statute or board rule.

This rule is intended to implement Iowa Code section 68B.32A(8).

[Filed Without Notice 10/26/09, effective 12/23/09]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.

**ARC 8289B**

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]**

**Adopted and Filed Without Notice**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendment brings the rule on the identification of type of ballot issue committee into conformity with the statute and other rules on the filing of a statement of organization.

Pursuant to Iowa Code section 17A.4(3), the Board finds that notice and public participation prior to the adoption of this amendment are impracticable, as it is desirable to have the Board's rules reflect current statutory requirements.

This amendment is intended to implement Iowa Code section 68A.201.

This amendment will become effective on December 23, 2009.

The following amendment is adopted.

Amend subrule 4.3(1) as follows:

**4.3(1) Committee purpose.** An organized campaign committee shall identify the purpose of the committee on the statement of organization. The purpose shall be indicated in part by designating the committee as one of the following types of committees:

Type 1 - A candidate's committee for a statewide or legislative candidate or a judge standing for retention. This type of committee is referred to as a state candidate's committee.

Type 2 - A political committee that expressly advocates for or against candidates at the state level ~~or expressly advocates for or against a statewide ballot issue.~~ This type of committee is referred to as a statewide PAC.

Type 3 - A state statutory political committee. This type of committee is referred to as a state party.

Type 4 - A county statutory political committee. This type of committee is referred to as a county central committee.

Type 5 - A candidate's committee for a candidate seeking county office. This type of committee is referred to as a county candidate's committee.

Type 6 - A candidate's committee for a candidate seeking city office. This type of committee is referred to as a city candidate's committee.

Type 7 - A candidate's committee for a candidate seeking school board or other political subdivision office except for a county or city office. This type of committee is referred to as a school board or other political subdivision candidate's committee.

Type 8 - A political committee that expressly advocates for or against candidates for county office. This type of committee is referred to as a county PAC.

Type 9 - A political committee that expressly advocates for or against candidates for city office. This type of committee is referred to as a city PAC.

Type 10 - A political committee that expressly advocates for or against candidates for school board or other political subdivision except for county or city candidates. This type of committee is referred to as a school board or other political subdivision PAC.

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

Type 11 - A political committee that expressly advocates for the passage or defeat of a ballot issue, franchise election, or referendum conducted for a county, city, school, or other political subdivision ballot question. This type of committee is referred to as a ~~local~~ ballot issue committee. This type of committee also includes a political committee that expressly advocates for or against a statewide ballot issue (constitutional amendment) or a political committee that expressly advocates for or against ballot issue questions in multiple cities or counties.

[Filed Without Notice 10/26/09, effective 12/23/09]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.

**ARC 8286B**

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendment clarifies that a federal or out-of-state committee is not required to file a Verified Statement of Registration (VSR) when purchasing an item at fair market value from an Iowa committee.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 29, 2009, as **ARC 7999B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on October 21, 2009.

This amendment is intended to implement Iowa Code section 68A.201(5).

This amendment will become effective on December 23, 2009.

The following amendment is adopted.

Amend rule 351—4.32(68A), introductory paragraph, as follows:

**351—4.32(68A) Contributions from political committees not organized in Iowa.** Iowa committees may receive contributions from committees outside Iowa, and committees outside Iowa may contribute to Iowa committees provided the out-of-state committee complies with either subrule 4.32(1) or subrule 4.32(2). For purposes of this rule, "out-of-state committee" means a committee that is registered with the campaign enforcement agency of another state or is registered with the Federal Election Commission. For purposes of this rule, "contribution" does not include an item purchased at fair market value from an Iowa committee.

[Filed 10/26/09, effective 12/23/09]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.

**ARC 8288B**

**ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 7, "Personal Financial Disclosure," Iowa Administrative Code.

Iowa Code section 68B.35(3) requires the Board to adopt rules for the time and manner of filing personal financial disclosure statements (Form PFD) by officials and employees of the executive branch. The amendments require a Form PFD to be filed with the Board electronically via the Board's Web site.

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 29, 2009, as **ARC 8001B**. No oral or written comments on the amendments were received. The amendments are identical to those published under Notice.

The Board adopted these amendments on October 21, 2009.

These amendments are intended to implement Iowa Code section 68B.32A(5) and section 68B.35 as amended by 2009 Iowa Acts, Senate File 52, section 5.

These amendments will become effective on December 23, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule 7.1(2) as follows:

**7.1(2) *Place of filing.*** Form PFD shall be filed with the board at ~~510 East 12th Street, Suite 1A, Des Moines, Iowa 50319.~~ The form may also be filed by fax at (515)281-4073 or electronically using the board's Web site at [www.iowa.gov/ethics](http://www.iowa.gov/ethics).

ITEM 2. Amend subrule 7.1(4) as follows:

**7.1(4) *Physical Electronic receipt.*** The board must ~~physically~~ receive electronically a filed Form PFD ~~on or before by 11:59 p.m. on April 30 of each year. If mailed, the form must bear a United States Postal Service postmark dated on or before April 30. Faxed or electronically filed forms must be submitted on or before 11:59 p.m. on the required due date.~~ If the due date falls on a weekend or holiday, the filing deadline shall be extended to the first working day following the deadline.

ITEM 3. Amend subrule 7.3(3) as follows:

**7.3(3) *Statewide candidates.*** A person who is a candidate for statewide office shall electronically file Form PFD with the board ~~on or before by 11:59 p.m. on April 30 of the year the candidate appears on the ballot. If the due date falls on a weekend or holiday, the filing deadline shall be extended to the first working day following the deadline.~~ Once nomination papers or an affidavit of candidacy is filed, the board shall notify the person of the requirement to file Form PFD. The notification shall be sent by first-class mail or E-mail and shall include ~~a blank form or information on how to obtain a blank form for filing~~ file Form PFD electronically.

ITEM 4. Amend subrule 7.3(4) as follows:

**7.3(4) *Statewide candidates in a special election.*** A candidate for statewide office in a special election shall electronically file Form PFD with the board ~~within seven ten~~ days after the certification of the candidate's name as the nominee under Iowa Code section 43.88. Notification to a statewide candidate in a special election shall be sent by first-class mail or E-mail and shall include information on how to file Form PFD electronically.

ITEM 5. Amend subrule 7.3(5) as follows:

**7.3(5) *Distribution of forms link.*** The board shall provide each agency with ~~blank forms for distribution to the designated persons and shall make blank forms available via the board's Web site at [www.iowa.gov/ethics](http://www.iowa.gov/ethics).~~ The board shall provide each agency with the link on the board's Web site at [www.iowa.gov/ethics](http://www.iowa.gov/ethics) where forms ~~may~~ shall be filed electronically. ~~The board shall also make blank forms available via the board's Web site.~~

[Filed 10/26/09, effective 12/23/09]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.

**ARC 8314B****HOMELAND SECURITY AND EMERGENCY  
MANAGEMENT DIVISION[605]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 17A.3 and 34A.22, the Homeland Security and Emergency Management Division hereby amends Chapter 10, "Enhanced 911 Telephone Systems," Iowa Administrative Code.

The Homeland Security and Emergency Management Division amends the rules that deal with E911 Service Board membership. These amendments provide clarification as to who is entitled to voting or nonvoting membership, set forth reporting requirements on Board membership, and specify actions to be taken when Board membership does not meet the requirements of the rule.

Additionally, the Division amends a definition to provide clarification on eligible recurring costs.

Finally, the Division updates the mailing address for the Division that is found at various points in the rules.

These amendments have been developed in cooperation with the E911 Communications Council.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 23, 2009, as **ARC 8184B**. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 34A.

These amendments will become effective on December 23, 2009.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [10.2, 10.3(1), 10.4(2), 10.7(2), 10.8(6), 10.11] is being omitted. These amendments are identical to those published under Notice as **ARC 8184B**, IAB 9/23/09.

[Filed 10/28/09, effective 12/23/09]

[Published 11/18/09]

[For replacement pages for IAC, see IAC Supplement 11/18/09.]

**ARC 8281B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 514I.5, the Department of Human Services amends Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

These amendments implement a one-month delay in HAWK-I benefits when health insurance for the child has ended during the month of application for a child whose family's countable income equals or exceeds 200 percent of the federal poverty level. The amendments specify conditions when the delay does not apply, including situations when the reason the insurance ended was out of the family's control.

The intent of this provision is to provide a disincentive for families who drop health insurance coverage for their children and then apply for aid. The Centers for Medicare and Medicaid Services has informed the Department that a strategy to avoid this phenomenon (called "crowd out") must be implemented as a condition of approval for the HAWK-I State Plan amendment to expand income eligibility to families whose countable limit is up to 300 percent of the federal poverty level.

An amendment to subrule 86.2(4) was Adopted and Filed Emergency and was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8127B**. Notice of Intended Action to solicit comment on that amendment was published in the Iowa Administrative Bulletin on the same date as **ARC 8128B**. The Department received no comments on the Notice of Intended Action. However, the Department has received clarification from the Centers for Medicare and Medicaid Services that has led to shortening the "look-back" period from six months to one month.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

In order to clarify the difference between the effect of health insurance on a child's eligibility for HAWK-I benefits and the effect on the beginning date of HAWK-I coverage, the Department has moved most of the language previously adopted in paragraph 86.2(4)"b" to subrule 86.5(1), which addresses the effective date of coverage for initial applicants. Paragraph 86.2(4)"b" now reads as follows:

"b. A child whose health insurance ends in the month of application shall be considered uninsured for purposes of HAWK-I eligibility. However, a one-month waiting period may be imposed pursuant to subrule 86.5(1) for a child who is subject to a monthly premium pursuant to paragraph 86.8(2)"c."

In addition, the following technical amendments have been added to clarify the effective date of eligibility:

- Legal references have been updated in subrule 86.5(2),
- New subrule 86.5(3) has been added to explain the annual renewal process, and
- New subrule 86.5(4) has been created to address children who are added to HAWK-I coverage in an existing enrollment period established for other children in the family.

These amendments provide for waiver of the waiting period in several specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The HAWK-I Board adopted these amendments on October 19, 2009.

These amendments are intended to implement Iowa Code chapter 514I.

These amendments will become effective on December 23, 2009.

The following amendments are adopted.

ITEM 1. Rescind paragraph **86.2(4)"b"** and adopt the following **new** paragraph in lieu thereof:

*b.* A child whose health insurance ends in the month of application shall be considered uninsured for purposes of HAWK-I eligibility. However, a one-month waiting period may be imposed pursuant to subrule 86.5(1) for a child who is subject to a monthly premium pursuant to paragraph 86.8(2)"c."

ITEM 2. Amend rule 441—86.5(514I) as follows:

**441—86.5(514I) Effective date of coverage.**

**86.5(1) Initial application.** Coverage for children who are determined eligible for the HAWK-I program on the basis of an initial application for either HAWK-I or Medicaid shall be effective the first day of the month following the month in which the application is filed, regardless of the day of the month the application is filed, or when a plan becomes available in the applicant's county of residence. However, a one-month waiting period shall be imposed for a child who is subject to a monthly premium pursuant to paragraph 86.8(2)"c" when the child's health insurance coverage ended in the month of application. EXCEPTIONS: A waiting period shall not be imposed if any of the following conditions apply:

- a.* The child is moving from Medicaid to HAWK-I.
- b.* The child has a medical condition that, without medical care, would cause serious disability, loss of function, or death.
- c.* The cost of health insurance coverage for the child exceeds 5 percent of the family's gross income. The cost of health insurance for the child shall be the difference between the premium for coverage with and without the child.
- d.* The health insurance was provided through an individual plan.
- e.* The child's health insurance coverage was lost due to:
  - (1) Domestic violence.
  - (2) Divorce or death of a parent.
  - (3) An involuntary loss of employment that qualified the parent for dependent coverage, including but not limited to layoff, business closure, reduction in hours, or termination.
  - (4) A job change to a new employer that does not offer the parent dependent coverage or that requires a waiting period before children can be enrolled in dependent coverage.
  - (5) Utilization of the maximum lifetime coverage amount.
  - (6) Expiration of coverage under COBRA.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(7) Discontinuation of dependent coverage by the parent's employer.

(8) A reason beyond the control of the parent, such as a serious illness of the parent, fire, flood, or natural disaster.

**86.5(2) Referrals from Medicaid.**

*a. Cancellation of Medicaid.* Coverage for children who are determined eligible for the HAWK-I program on the basis of a referral from Medicaid due to cancellation of Medicaid benefits shall be effective the first day of the month after Medicaid eligibility is lost, regardless of the date of the referral, in order to ensure that there is no break in coverage. However, when such a child does not meet the provisions of subrule paragraph 86.2(4); "a," coverage shall be effective the first day of the month following the month in which health insurance coverage is lost.

*b. Denial of Medicaid.* Coverage for children who are determined eligible for the HAWK-I program on the basis of a referral from Medicaid due to denial of Medicaid benefits shall be effective no earlier than the first day of the month following the month in which the Medicaid application was received in accordance with 441—subrule 76.1(2). However, when such a child does not meet the provisions of subrule paragraph 86.2(4); "a," coverage shall be effective the first day of the month following the month in which health insurance coverage is lost.

**86.5(3) Annual renewals.** Coverage for children who are determined eligible for the HAWK-I program on the basis of an annual renewal shall be effective the first day of the month following the month in which the previous enrollment period ended.

**86.5(4) Children added to an existing HAWK-I enrollment period.** Coverage for children who are determined eligible for the HAWK-I program on the basis of a request from the family to add the child to an existing enrollment period shall be effective the first day of the month following the month in which the request was made. However, if the child does not meet the provisions of paragraph 86.2(4) "a," coverage shall be effective the first day of the month following the month in which health insurance coverage is lost unless the child is subject to a one-month waiting period in accordance with paragraph 86.2(4) "b."

[Filed 10/19/09, effective 12/23/09]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.

**ARC 8280B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 514I.5, the Department of Human Services amends Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

These amendments require that, as a condition of eligibility for HAWK-I, applicants and enrollees shall:

- Attest to and provide acceptable proof of their citizenship status and identity; and
- Provide a social security number.

Public Law 111-3, the Children's Health Insurance Program Reauthorization Act of 2009 (CHIPRA), requires the state to verify the citizenship status and identity of all children applying for or enrolling in the HAWK-I program. One method permitted for verifying citizenship status is conducting a match with Social Security Administration data. A social security number is not currently required for HAWK-I eligibility but will be necessary to conduct a match with Social Security Administration data.

Verification of citizenship and identity and provision of a social security number have been required in the Medicaid program for a number of years. These amendments are parallel to the Medicaid requirements. These amendments do not change the classifications of noncitizen children who are eligible to enroll in the program (e.g., lawful permanent residents, refugees).

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Other than an exception for people who refuse to obtain social security numbers due to sincere religious beliefs, these amendments do not provide for waivers in specified situations, because the Department does not have the authority to waive federal requirements.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8110B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those published under Notice of Intended Action.

The HAWK-I Board adopted these amendments on October 19, 2009.

These amendments are intended to implement Iowa Code chapter 514I and Public Law 111-3.

These amendments shall become effective on January 1, 2010.

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 [86.2(7), 86.2(12)] is being omitted. These amendments are identical to those published under Notice as **ARC 8110B**, IAB 9/9/09.

[Filed 10/19/09, effective 1/1/10]

[Published 11/18/09]

[For replacement pages for IAC, see IAC Supplement 11/18/09.]

**ARC 8294B****INSPECTIONS AND APPEALS DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 235E.5, the Department of Inspections and Appeals hereby adopts new Chapter 52, "Dependent Adult Abuse in Facilities and Programs," Iowa Administrative Code.

Chapter 52 relates to civil findings of dependent adult abuse in health care facilities and programs. Specifically, the rules provide definitions, specify who must report and the reporting procedures, and set forth the process for evaluating reports and gathering evidence.

As required by statute, the proposed rules were developed in consultation and cooperation with the Dependent Adult Protective Advisory Council, industry representatives, professional groups, and consumer groups. A draft of the rules was provided to interested groups for review. The groups were given an opportunity to provide informal comments, and each group that provided comments was given an opportunity to meet with the Department and discuss the comments. The Department revised the proposed rules after reviewing the comments and meeting with interested groups before publication under Notice of Intended Action.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7828B** on June 3, 2009.

Most comments on the proposed chapter were related to the definitions of "gross negligence" and "staff member." Some comments were supportive of the Department's proposed definitions and others suggested changes. Several commenters recommended changes to the definitions, many of which have been incorporated herein.

The following changes have been made as a result of comments:

- The definition of "caretaker" was amended to clarify that a person may be considered a "caretaker" after the employment relationship has ended for the purpose of considering an allegation of exploitation. This change limits the Department's proposed definition, as was suggested by several commenters, to an allegation of exploitation only when the caretaker-dependent adult fiduciary relationship is extended.
- The definition of "gross negligence" was amended to directly quote Iowa case law.
- The definition of "misappropriates" was amended by changing the word "includes" to "means" as was suggested by several industry and professional groups.
- The definition of "neglect of a dependent adult" was amended by removing a sentence that created confusion.

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

- The definition of “unreasonable confinement” was amended by deleting the words “for the purposes of controlling behavior.”
  - The definition of “willful misconduct” was amended to incorporate comments from an industry group.
  - Subrule 52.2(1), paragraph “a,” was amended to specifically exclude certain individuals from dependent adult abuse training requirements.
  - Subrule 52.2(2), paragraphs “a” and “b,” were amended to clarify that the report to the Department must be made within 24 hours or the next business day to make the reporting requirement consistent with other health facility reporting requirements as was requested by an industry group.
  - Subrule 52.5(6) was added to allow new individuals who must attend dependent adult abuse training one year to complete the training.
  - Rule 481—52.6(235E) was amended to clarify that the separation of the victim and alleged abuser must be maintained until the conclusion of the Department’s investigation, as was suggested by multiple commenters.
  - Subrule 52.7(1) was amended to clarify that records and items cannot be obtained if they are protected by some other legal privilege.
  - Subrule 52.7(2) was amended to clarify that the attorney is at the alleged abuser’s expense and the request for attorney may not unreasonably delay the investigation.
  - Subrule 52.7(4) was amended to clarify the provision.
- These rules are intended to implement Iowa Code chapter 235E.  
 These rules will become effective January 1, 2010.  
 The following amendment is adopted.

Adopt the following **new** 481—Chapter 52:

CHAPTER 52  
 DEPENDENT ADULT ABUSE IN FACILITIES AND PROGRAMS

**481—52.1(235E) Definitions.** For purposes of this chapter, the following definitions apply:

“*Assault of a dependent adult*” means the commission of any act which is generally intended to cause pain or injury to a dependent adult, or which is generally intended to result in physical contact which would be considered by a reasonable person to be insulting or offensive or any act which is intended to place another in fear of immediate physical contact which will be painful, injurious, insulting, or offensive, coupled with the apparent ability to execute the act.

“*Caretaker*” means a person who is a staff member of a facility or program who provides care, protection, or services to a dependent adult voluntarily, by contract, through employment, or by order of the court. For the purpose of an allegation of exploitation, if the caretaker-dependent adult relationship started when a staff member was employed in the facility, the staff member may be considered a caretaker after employment is terminated.

“*Confidentiality*” means the withholding of information from any manner of communication, public or private.

“*Court*” means the district court.

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

“*Dependent adult*” means a person 18 years of age or older whose ability to perform the normal activities of daily living or to provide for the person’s own care or protection is impaired, either temporarily or permanently.

“*Dependent adult abuse*” means any of the following as a result of the willful misconduct or gross negligence or reckless act or omission of a caretaker, taking into account the totality of the circumstances: physical injury, unreasonable confinement, unreasonable punishment, assault, sexual offense, sexual exploitation, exploitation, or neglect. “Dependent adult abuse” does not include any of the following:



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

1. Circumstances in which the dependent adult declines medical treatment if the dependent adult holds a belief or is an adherent of a religion whose tenets and practices call for reliance on spiritual means in place of reliance on medical treatment.

2. Circumstances in which the dependent adult's caretaker, acting in accordance with the dependent adult's stated or implied consent, declines medical treatment or care.

3. The withholding or withdrawing of health care from a dependent adult who is terminally ill in the opinion of a licensed physician, when the withholding or withdrawing of health care is done at the request of the dependent adult or at the request of the dependent adult's next of kin, attorney in fact, or guardian pursuant to the applicable procedures under Iowa Code chapter 125, 144A, 144B, 222, 229, or 633.

*"Exploitation"* means a caretaker who knowingly obtains, uses, endeavors to obtain to use, or who misappropriates, a dependent adult's funds, assets, medications, or property with the intent to temporarily or permanently deprive a dependent adult of the use, benefit, or possession of the funds, assets, medication, or property for the benefit of someone other than the dependent adult.

*"Facility"* means a health care facility as defined in Iowa Code section 135C.1 or a hospital as defined in Iowa Code section 135B.1.

*"Gross negligence"* means an act or omission that signifies more than ordinary inadvertence or inattention, but less than conscious indifference to consequences; and, in other words, means an extreme departure from the ordinary standard of care.

*"Immediately,"* for purposes of mandatory reporters' reporting of suspected dependent adult abuse, means within 24 hours.

*"Inspector"* means a surveyor, monitor or investigator with the department or any department designee.

*"Intimate relationship"* means a significant romantic involvement between two persons that need not include sexual involvement, but does not include a casual social relationship or association in a business or professional capacity. In determining whether persons are in an intimate relationship, the following nonexclusive list of factors may be considered:

1. The duration of the relationship,
2. The frequency of interaction,
3. Whether the relationship has been terminated, and
4. The nature of the relationship, characterized by either person's expectation of sexual or romantic involvement.

*"Misappropriates"* means taking unfair advantage of or wrongfully or dishonestly exercising control over property.

*"Neglect of a dependent adult"* means the deprivation of the minimum food, shelter, clothing, supervision, physical or mental health care, or other care necessary to maintain a dependent adult's life or physical or mental health.

*"Person"* means person as defined in Iowa Code section 4.1.

*"Physical injury"* means a physical injury, or injury which is at a variance with the history given of the injury, which involves a breach of skill or care or learning ordinarily exercised by a caretaker in similar circumstances. "Physical injury" includes damage to any bodily tissue to the extent that the tissue must undergo a healing process in order to be restored to a sound and healthy condition, damage to any bodily tissue to the extent that the tissue cannot be restored to a sound and healthy condition, or damage to any bodily tissue which results in the death of the person who has sustained the damage.

*"Program"* means an elder group home as defined in Iowa Code section 231B.1, an assisted living program certified under Iowa Code section 231C.3, or an adult day services program as defined in Iowa Code section 231D.1.

*"Recklessly"* means that a person acts or fails to act with respect to a material element of a public offense, when the person is aware of and consciously disregards a substantial and unjustifiable risk that the material element exists or will result from the act or omission. The risk must be of such a nature and degree that disregard of the risk constitutes a gross deviation from the standard conduct that a reasonable person would observe in the situation.

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

“*Registry*” means the central registry for dependent adult abuse information established in Iowa Code section 235B.5.

“*Report*” means a verbal or written statement, made to the department, which alleges that dependent adult abuse has occurred.

“*Resident*” means a resident of a health care facility as defined in Iowa Code chapter 135C, a patient in a hospital as defined in Iowa Code chapter 135B, a tenant of an assisted living program as defined in Iowa Code chapter 231C, a tenant in an elder group home as defined in Iowa Code chapter 231B, or a participant in an adult day services program as defined in Iowa Code chapter 231D.

“*Sexual exploitation*” means any consensual or nonconsensual sexual conduct with a dependent adult by a caretaker whether within a facility or program or at a location outside of a facility or program. “Sexual exploitation” includes but is not limited to:

1. Kissing;
2. Touching of the clothed or unclothed breast, groin, buttock, anus, pubes, or genitals;
3. A sex act as defined in Iowa Code section 702.17;
4. The transmission, display or taking of electronic images of the unclothed breast, groin, buttock, anus, pubes, or genitals of a dependent adult by a caretaker for a purpose not related to treatment, care, monitoring, assessment or diagnosis or as part of an ongoing investigation.

“Sexual exploitation” does not include touching which is part of a necessary examination, treatment, or care by a caretaker acting within the scope of the practice or employment of the caretaker; the exchange of a brief touch or hug between the dependent adult and a caretaker for the purpose of reassurance, comfort, or casual friendship; or touching between spouses or domestic partners in an intimate relationship.

“*Sexual offense*” means the commission of a sexual offense under Iowa Code chapter 709 or Iowa Code section 726.2 with or against a dependent adult.

“*Staff member*” means an individual who provides direct or indirect treatment or services to residents in a facility or program. Direct treatment or services include those provided through person-to-person contact. Indirect treatment or services include those provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance. Specifically excluded from the definition of “staff member” are individuals such as part-time volunteers, building contractors, repair workers or others who are in a facility or program for a very limited purpose, are not in the facility or program on a regular basis, or do not provide any treatment or services to the residents of the facility or program.

“*Unreasonable confinement*” means confinement that includes but is not limited to the use of restraints, either physical or chemical, for the convenience of staff. “Unreasonable confinement” does not include the use of confinement and restraints if the methods are employed in conformance with state and federal standards governing confinement and restraint or as authorized by a physician or physician extender.

“*Unreasonable punishment*” means a willful act or statement intended by the caretaker to punish, agitate, confuse, frighten, or cause emotional distress to the dependent adult. Such willful act or statement includes but is not limited to intimidating behavior, threats, harassment, deceptive acts, or false or misleading statements.

“*Willful misconduct*” means an intentional act of unreasonable character committed with disregard for a known or obvious risk that is so great as to make it highly probable that harm will follow.

**481—52.2(235E) Persons who must report dependent adult abuse and the reporting procedure for those persons.**

**52.2(1)** Persons who must report dependent adult abuse. The following persons shall report suspected dependent adult abuse in accordance with subrule 52.2(2) below.

*a.* A staff member. Specifically excluded from the definition of “staff member” only for purposes of the requirements set forth in this subrule are individuals who have no contact or de minimis contact with residents in a facility or program.

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

*b.* An employee of a facility or program who, in the course of employment, examines, attends, counsels, or treats a dependent adult in a facility or program and reasonably believes the dependent adult has suffered dependent adult abuse.

**52.2(2)** Reporting suspected dependent adult abuse in facilities or programs.

*a.* If a staff member or employee is required to make a report pursuant to this rule, the staff member or employee shall immediately notify the person in charge or the person's designated agent who shall then notify the department within 24 hours of such notification or the next business day.

*b.* If the person in charge is the alleged dependent adult abuser, the staff member shall directly report the abuse to the department within 24 hours or the next business day.

*c.* Nothing in this subrule prevents a mandatory reporter or any other person from notifying the department directly of any suspected abuse.

*d.* The employer or supervisor of a person who is required to or may make a report pursuant to this rule shall not apply a policy, work rule, or other requirement that interferes with the person making a report of dependent adult abuse or that results in the failure of another person to make the report.

*e.* When the person making the report has reason to believe that immediate protection for the dependent adult is advisable, that person should also immediately make an oral report to an appropriate law enforcement agency.

*f.* A report of suspected dependent adult abuse shall contain as much of the following information as the person making the report is able to furnish:

- (1) The date and time of the incident;
- (2) The name, date of birth and diagnoses of the dependent adult;
- (3) Whether the dependent adult sustained an injury and, if yes, whether photographs of the injury were taken;
- (4) The nature and extent of the dependent adult abuse, including evidence of previous dependent adult abuse allegations;
- (5) A list of the staff members working at the time of the incident, including each staff member's full name, title, date of birth, address and telephone number;
- (6) The alleged perpetrator's full name, title, date of birth, social security number, address and telephone number;
- (7) Other information which the person making the report believes might be helpful in establishing the cause of the abuse or the identity of the person or persons responsible for the abuse or helpful in providing assistance to the dependent adult; and
- (8) The name, address and telephone number of the person making the report.

**52.2(3)** A report shall be accepted whether or not it contains all of the information requested. When the report is made to any agency other than the department, that agency shall promptly refer the report to the department.

**52.2(4)** A person required to report abuse who knowingly and willfully fails to do so within 24 hours may be subject to criminal penalties and civil liability as provided for by statute.

**52.2(5)** Interference with a person required to report.

*a.* It is unlawful for any person or employer to discharge, suspend, or otherwise discipline a person for any of the following:

- (1) For reporting suspected dependent adult abuse;
- (2) For cooperating with or assisting the department in evaluating or investigating a case of dependent adult abuse; or
- (3) For participating in judicial proceedings relating to dependent adult abuse.

*b.* A person or employer found in violation of this subrule is guilty of a simple misdemeanor.

**52.2(6)** Staff members who are employed by a facility or program on January 1, 2010, and who were not previously required to attend dependent adult abuse training shall be required to have attended the training no later than December 31, 2010.

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

**481—52.3(235E) Reports and registry of dependent adult abuse.**

**52.3(1) Receipt and evaluation of reports.** The department shall receive and evaluate reports of dependent adult abuse in facilities and programs. The department shall inform the department of human services of such evaluations and dispositions for inclusion in the central registry for dependent adult abuse information pursuant to Iowa Code section 235B.5.

**52.3(2) Reports sent to the department or the department of human services.** Any person who believes that a dependent adult has suffered dependent adult abuse may report the suspected dependent adult abuse to the department. The department shall transfer any reports received of dependent adult abuse in the community to the department of human services. The department of human services shall transfer any reports received of dependent adult abuse in facilities or programs to the department.

**52.3(3) Reports of abuse that is minor, isolated, and unlikely to reoccur.**

*a. Minor, isolated, and unlikely to reoccur—first instance.* A report of dependent adult abuse that meets the definition of “dependent adult abuse” as defined in Iowa Code section 235E.1(5) “a”(1)(a) or (d) which the department determines is minor, isolated, and unlikely to reoccur shall be collected and maintained by the department of human services for a five-year period, shall not be included in the central registry, and shall not be considered founded dependent adult abuse.

*b. Minor, isolated, and unlikely to reoccur—subsequent instance(s).* A subsequent report of dependent adult abuse that meets the definition of “dependent adult abuse” as defined in Iowa Code section 235E.1(5) “a”(1)(a) or (d), that occurs within the five-year period, and that is committed by the same caretaker may also be considered minor, isolated, and unlikely to reoccur, depending on the totality of circumstances.

*c. Retention of reports.* All initial and subsequent reports are collected and maintained by the department of human services until a five-year period has expired, so long as no additional reports have been filed.

**481—52.4(235E) Financial institution employees and reporting suspected financial exploitation.** An employee of a financial institution may report suspected financial exploitation of a dependent adult to the department.

**481—52.5(235E) Evaluation of report.** Upon receipt of a report as defined in rule 481—52.1(235E), the department shall conduct an intake sufficient to determine whether the allegation constitutes dependent adult abuse as defined in rule 481—52.1(235E).

**481—52.6(235E) Separation of victim and alleged abuser.** Upon receiving a claim of dependent adult abuse of a dependent adult in a facility or program, the facility or program shall separate the victim and the alleged abuser immediately and shall maintain that separation until the department’s abuse investigation is completed and the abuse determination is made.

NOTE: Facilities that participate in the federal Medicare or Medicaid program may be subject to additional federal requirements regarding separation.

**481—52.7(235E) Interviews, examination of evidence, and investigation of dependent adult abuse allegations.**

**52.7(1) Entering and examining evidence at a facility or program.** An inspector of the department may enter any facility or program without a warrant and may examine all records and items pertaining to residents, employees, former employees, and the alleged dependent adult abuser and any other records and items necessary to ensure the integrity of the investigation unless the record or item is protected by some other legal privilege.

**52.7(2) Interviews.**

*a.* An inspector of the department may contact or interview any resident, employee, former employee, or any other person who might have knowledge about the alleged dependent adult abuse.

*b.* An alleged dependent adult abuser may request to have an attorney present at the alleged dependent adult abuser’s expense at any time during the interview, but the request may not unreasonably

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

delay the investigation. An employee organization representative or union representative may observe an investigative interview conducted by the department of an alleged dependent adult abuser if all of the following conditions are met:

- (1) The alleged dependent adult abuser is part of a bargaining unit or employee organization that is party to a collective bargaining agreement under Iowa Code chapter 20 or any other applicable state or federal law.
- (2) The alleged dependent adult abuser requests the presence of a union representative or employee organization representative.
- (3) The representative maintains the confidentiality of all information from the interview subject to the penalties provided in Iowa Code section 235B.12 if such confidentiality is breached.
- (4) The purpose of the interview is a civil administrative dependent adult abuse investigation under applicable law.

**52.7(3) *Photographs of victim, vicinity and related matters.*** An inspector may take or cause to be taken photographs of the dependent adult abuse victim and the vicinity involved. The department shall obtain consent from the dependent adult abuse victim or guardian or other person with a power of attorney over the dependent adult abuse victim prior to taking photographs of the dependent adult abuse victim.

**52.7(4) *Evaluating information.*** An inspector shall consider the information as reported, other known or discovered information, and any information gathered as a result of the inspector's contact with collateral sources, including prior abuse allegations and disciplinary actions.

**481—52.8(235E) Notification to subsequent employers.** The department shall notify a facility or program that subsequently employs an alleged or founded dependent adult abuser.

These rules are intended to implement Iowa Code chapter 235E.

[Filed 10/27/09, effective 1/1/10]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.

**ARC 8309B**

## **INSURANCE DIVISION[191]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 505.8 and 522B.16B and 18 U.S.C. Section 1033, the Insurance Division hereby adopts new Chapter 13, "Consent for Prohibited Persons to Engage in the Business of Insurance," Iowa Administrative Code.

18 U.S.C. Section 1033 (the "Act") provides, in part, that no person who has been convicted of a felony involving dishonesty or breach of trust or an offense under the Act shall engage in the business of insurance without having first obtained the consent of the Insurance Commissioner of the person's resident state. Chapter 13 sets out the requirements, procedures and fees relating to how such persons may obtain the required consent of the Iowa Insurance Commissioner.

The new chapter will become effective December 23, 2009, and insurance companies, producers, and individuals shall comply with the rules beginning January 1, 2010.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8144B**. A public hearing was held on October 1, 2009, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa. Comments were received, and some changes to the proposed new chapter were made as follows:

A request was made to remove the reference to independent contractors in the definition of "business of insurance" in rule 191—13.2(505,522B). That change was made.

The Insurance Division determined it would be more consistent with federal law to use the definition of "insurer" contained in the Act rather than the definition as published in the Notice. That change was made.

## INSURANCE DIVISION[191](cont'd)

A request was made to either delete paragraph 13.5(2)“m” or clarify whether the fact that the conviction occurred in a foreign jurisdiction would have a positive or negative impact on a decision to grant or deny an application. The Insurance Division believes such a conviction could have either impact, depending on the jurisdiction, but the fact that the conviction is from a foreign jurisdiction should still be taken into account. That change was not made.

A request was made to clarify the extent of the job duties for which a person would have to receive a consent to work in the business of insurance. The Insurance Division declined to interpret federal law and has used the language of the federal law as the basis for these rules. That change was not made.

A request was made to add a provision whereby an insurer would be held harmless if the insurer was unable to determine that an employee was a prohibited person. The Insurance Division declined to do so because the federal law does not do so. That change was not made.

These rules are intended to implement Iowa Code chapter 505, Iowa Code section 522B.16B and 18 U.S.C. Section 1033.

These rules will become effective December 23, 2009.

The following amendment is adopted.

Adopt the following new 191—Chapter 13:

CHAPTER 13  
CONSENT FOR PROHIBITED PERSONS  
TO ENGAGE IN THE BUSINESS OF INSURANCE

**191—13.1(505,522B) Purpose and authority.** The purpose of these rules is to implement the provisions of 18 U.S.C. Section 1033 and Iowa Code section 522B.16B. The Iowa insurance commissioner has jurisdiction under 18 U.S.C. Section 1033 to grant requests for consent to engage in the business of insurance. Insurance companies, producers, and individuals shall comply with these rules beginning January 1, 2010.

**191—13.2(505,522B) Definitions.** For the purpose of this chapter, the following definitions shall apply:

“*Act*” means the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, H.R. 3355; 18 U.S.C. Sections 1033 and 1034.

“*Applicant*” means any person subject to the provisions of 18 U.S.C. Sections 1033 and 1034 who files an application for consent to engage in the business of insurance.

“*Breach of trust*” means any criminal act or an element of a criminal act by an applicant, including but not limited to an act that constitutes or involves misuse, misapplication or misappropriation of the following:

1. Anything of value held as a fiduciary, where “fiduciary” includes, but is not limited to, a trustee, administrator, executor, conservator, receiver, guardian, agent, employee, partner, officer, director or public servant; or

2. Anything of value of any public, private or charitable organization.

“*Business of insurance*” means the writing of insurance or the reinsuring of risks by an insurer, including all acts necessary or incidental to such writing or reinsuring and the activity of persons who are or who act as officers, directors, agents, or employees of insurers, producers or any other persons authorized to act on behalf of such persons.

“*Commissioner*” means the Iowa insurance commissioner or the commissioner’s designee.

“*Consent*” means the written consent issued by the commissioner for a prohibited person to engage in the business of insurance in Iowa.

“*Dishonesty*” means any criminal act which includes, but is not limited to, any offense constituting or involving perjury, bribery, forgery, counterfeiting, false or misleading oral or written statements, deception, fraud, schemes or artifices to deceive or defraud, material misrepresentations or the failure to disclose material facts.

“*Division*” means the Iowa insurance division.

“*Felony*” means the following:

## INSURANCE DIVISION[191](cont'd)

1. A federal crime for which the maximum authorized punishment exceeds one year of imprisonment; or

2. A crime in any state or country that is identified as a felony in that state or country or, if not identified as a felony in that other state or country, any offense for which the maximum authorized punishment exceeds one year of incarceration.

“*Insurer*” means any entity the business activity of which is the writing of insurance or the reinsuring of risks, and includes any person who acts as, or is, an officer, director, agent, producer, or employee of that business.

“*License*” means any license, registration, certificate of authority or other permit or approval issued or granted by the commissioner.

“*Prohibited person*” means any person who is a resident of Iowa and who has been convicted of any felony crime involving dishonesty or breach of trust in a state or federal jurisdiction or who has been convicted of any violation of the Act.

“*Request for consent*” means a completed application, submitted by a prohibited person, that requests the commissioner’s consent to allow that prohibited person to engage in or transact, or to continue to engage in or transact, the business of insurance in Iowa.

“*State,*” for the purposes of this chapter, includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Northern Mariana Islands, the Virgin Islands, American Samoa and the Trust Territory of the Pacific Islands.

**191—13.3(505,522B) Requirement for prohibited persons to obtain consent.**

**13.3(1)** A prohibited person shall not engage in or transact the business of insurance in the state of Iowa without the consent of the commissioner of insurance of the person’s resident state.

**13.3(2)** A prohibited person who is a resident of Iowa must receive a consent from the commissioner before the division will consider any application or request for a license, certification, certificate of authority, or other permit or approval issued or granted by the division related to engaging in or transacting the business of insurance in Iowa.

**13.3(3)** A prohibited person engaging in or transacting the business of insurance in Iowa without the consent of the insurance commissioner of the person’s resident state is in violation of these rules, is subject to the penalties of this chapter, and risks federal criminal and civil sanctions and penalties.

**191—13.4(505,522B) Applications for consent.** The prohibited person must file with the division an application for consent as set forth in this rule.

**13.4(1)** Except as provided in subrule 13.4(2), a prohibited person who is, or seeks to be, employed in any capacity in the business of insurance in Iowa shall complete and file an application for consent using the “Short Form Application for Written Consent to Engage in the Business of Insurance Pursuant to 18 U.S.C. § 1033 and 1034.” The form is available on the division’s Web site at [www.iid.state.ia.us](http://www.iid.state.ia.us) or is available by request from the division.

**13.4(2)** The commissioner may at any time request additional information from an applicant to support a pending application for consent. Failure to provide such information is grounds for denial of the application.

**13.4(3)** An application must include:

*a.* Two 2" x 2" recent passport-type photographs attached to the upper right-hand corner of the first page of the application for consent.

*b.* A certified copy of the applicant’s criminal history record both from the applicant’s state of residence and from the state in which the felony was committed if different from the state of residence. A Record Check Request form may be obtained from the Iowa division of criminal investigation at: [www.state.ia.us/government/dps/dci/crimhist.htm](http://www.state.ia.us/government/dps/dci/crimhist.htm).

*c.* A certified copy of court documents that demonstrate completion and performance of all conditions imposed by the court.

## INSURANCE DIVISION[191](cont'd)

*d.* An affidavit from the immediate supervisor or potential immediate supervisor for the entity that employs the applicant or that seeks to employ the applicant stating in detail the duties and responsibilities which the applicant will perform and for which the applicant seeks consent.

*e.* Any other relevant documents or information that the prohibited person would like to have considered.

**13.4(4)** Upon the occurrence of any event that would change any answer on the application, an amendment must be promptly filed. Failure to file an amendment may result in denial of the request for consent or the immediate suspension or revocation of a previously granted consent.

**191—13.5(505,522B) Consideration of applications for consent.**

**13.5(1)** The commissioner shall have the sole discretion to grant or deny an application for consent to engage in or transact the business of insurance.

**13.5(2)** Each decision of whether or not to grant consent to engage in or transact the business of insurance to a prohibited person will be handled on a case-by-case basis. Factors to be considered include, but are not limited to, the following:

- a.* The nature and severity of the crime;
- b.* The length of time since the conviction;
- c.* The injury or loss caused by the prohibited person;
- d.* Whether the conviction is related to the business of insurance;
- e.* Whether the prohibited person received a pardon from the authority that convicted the person and whether the pardon was granted due to the innocence of the person;
- f.* Whether the prohibited person completed parole or probation;
- g.* Whether a breach of trust or dishonesty was involved;
- h.* The nature and strength of character reference letters;
- i.* The person's business and personal records before and after the conviction;
- j.* Whether and to what extent the person has made material false statements in an application, renewal or other documents filed with the commissioner;
- k.* Whether and to what extent the person has made material false statements in applications or other documents filed with other agencies of this state or of other states or with federal agencies;
- l.* Whether the prohibited person's conviction was expunged;
- m.* Whether or not the person received the conviction in a foreign country; and
- n.* Any additional relevant factors.

**191—13.6(505,522B) Review of application by the division.**

**13.6(1)** A completed application shall be reviewed by the commissioner, and the following shall be considered:

- a.* The information submitted by the applicant;
- b.* The factors set forth in subrule 13.5(2); and
- c.* Any mitigating or aggravating circumstances.

**13.6(2)** At the commissioner's discretion, the commissioner may convene a hearing to receive evidence and testimony about the application.

**13.6(3)** If the commissioner determines that the applicant does not seem to constitute a significant threat to the public, the commissioner shall issue the consent and specify its scope.

**13.6(4)** If the commissioner determines that the applicant does seem to constitute a significant threat to the public, the commissioner shall deny the application. Notice of the denial shall be sent to the applicant via certified mail to the address on record with the division, return receipt requested. The prohibited person shall have 30 days to request a hearing with the commissioner.

**13.6(5)** The application and materials supplied with the application or at the request of the division and any information obtained by the division during the course of its review shall be considered information submitted to the insurance division or obtained by the insurance division in the course of an investigation for purposes of Iowa Code section 505.8(8), and the commissioner shall keep such



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information confidential. A consent issued by the commissioner shall be deemed a public record for purposes of Iowa Code chapter 22; however, Iowa Code section 505.8(9) also shall apply.

**191—13.7(505,522B) Consent effective for specified positions and responsibilities only.** A consent issued by the commissioner shall be effective only so long as the prohibited person remains in the same or similar job position with the same or similar responsibilities to which the person attested in the initial request for consent. A material change in job responsibilities requires the prohibited person to file an amended request for consent.

**191—13.8(505,522B) Change in circumstances.**

**13.8(1) Failure to disclose.** In the event that the division determines that the prohibited person receiving the consent made materially false or misleading statements, or failed to disclose material information in the application for consent, the consent shall be suspended or revoked. The prohibited person shall have 30 days to request a hearing with the commissioner.

**13.8(2) New felony.**

*a.* A prohibited person who previously received consent from the commissioner to participate in the business of insurance shall immediately notify the division if that person is subsequently convicted of an offense under the Act, or of any felony offense involving dishonesty or breach of trust.

*b.* The entry of a new conviction shall automatically terminate the prior consent.

*c.* When the division becomes aware of the new conviction, it will inform the prohibited person in writing, via certified mail to the address on record with the division, return receipt requested, that the consent previously issued has been revoked.

*d.* The prohibited person may seek a new consent from the commissioner pursuant to the Act and to this chapter after reporting the new conviction.

**13.8(3) Violation of terms of consent.** If the commissioner determines that a prohibited person has violated the terms of a consent, the commissioner shall immediately terminate the consent. The prohibited person shall have 30 days to request a hearing with the commissioner.

**13.8(4) Suspension of insurance producer license.** The commissioner may summarily suspend the insurance producer license of a prohibited person for any of the actions described in subrule 13.8(1), 13.8(2) or 13.8(3) if the person has been issued a license by the division. A hearing shall be scheduled in accordance with Iowa Code chapter 17A to determine whether the person's license should be revoked.

**191—13.9(505,522B) Burden of proof.** The burden of proof of persuasion and of the production of evidence at a hearing regarding a request for consent is on the prohibited person. The person shall have to demonstrate by clear and convincing evidence that the person is not a threat to the public interest and public safety.

**191—13.10(505,522B) Violations and penalties.** A prohibited person who engages in the business of insurance without the consent of the commissioner or otherwise in violation of this chapter shall be deemed to be in violation of Iowa Code section 522B.2 and shall be subject to the penalties provided in Iowa Code section 522B.17.

These rules are intended to implement Iowa Code chapter 505, Iowa Code section 522B.16B and 18 U.S.C. Section 1033.

[Filed 10/28/09, effective 12/23/09]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.

**ARC 8310B****INSURANCE DIVISION[191]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 505.8 and 510.9, the Insurance Division hereby rescinds Chapter 58, "Third-Party Administrators," Iowa Administrative Code, and adopts a new chapter with the same title.

Chapter 58 implements Iowa Code chapter 510, which, in part, relates to the regulation of third-party administrators. The new chapter is based on a proposed model regulation of the National Association of Insurance Commissioners. The new chapter will become effective December 23, 2009, and insurers and third-party administrators operating in Iowa must comply with the rules beginning January 1, 2010.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8140B**. A public hearing was held on October 1, 2009, at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments were received and some changes to the proposed new chapter were made, as follows:

A request was made to add references to Iowa Code chapters 514 and 514B to the definition of "insurer" in rule 191—58.2(510). That change was made.

A request was made to delete subparagraphs (2) through (6) and (8) through (10) from paragraph 58.3(1)"a" because they contain language similar to Iowa Code subsection 510.11(2). That change was made. The remaining subparagraphs were renumbered as necessary.

A request was made to remove the requirement that an insurer acknowledge its responsibility for the acts of a third-party administrator in paragraph 58.3(1)"c." That change was made. Although a request was made to eliminate the requirement in that same paragraph to make records of the third-party administrator available to the Insurance Division, that change was not made because the insurer can include that requirement in its agreement with the third-party administrator, and the Insurance Division would have no other means of obtaining such records since those third-party administrators are not required to be registered.

A request was made to delete the terms "collateral and reimbursement procedures" and "for securing reinsurance, if any" from the items of service of a third-party administrator found in subrule 58.6(1) because these terms are not included in the definition of "third-party administrator" in Iowa Code subsection 510.11(2). That change was made. As a result, the definition of "collateral" also was deleted.

A request was made to move the second full sentence of subrule 58.6(1) to rule 191—58.7(510), since the sentence relates to the written agreement that is the subject of rule 191—58.7(510). That change was made, and that sentence is now the last sentence in subrule 58.7(1).

A request was made to decrease the burden on the insurer of reviewing the operations of a third-party administrator in subrule 58.6(3) to annually instead of semiannually and not to require the review to be on site. Also, if a third-party administrator had an independent party conduct a review of the third-party administrator's operations that met the reasonable standard of the subrule and provided that review to the insurer, a request was made to allow that review to substitute for the insurer's review for purposes of meeting the requirement of the subrule. All of those changes were made.

A request was made to clarify the "administrative functions" found in subrules 58.6(4) and 58.7(3). Those changes were made.

A request was made for more specificity regarding the services for which a third-party administrator may be compensated. Changes were made to 191—58.8(510) to provide this specificity.

A request was made to extend the deadline for filing an annual report in subrule 58.11(1) from March 1 to July 1. That change was made.

A request was made to clarify the accounting standard for annual reports. A standard was added to paragraph 58.11(1)"b."

A request was made to add an extension provision to rule 191—58.11(510). That change was made through the addition of subrule 58.11(3).

These rules are intended to implement Iowa Code chapters 505 and 510.

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These rules will become effective December 23, 2009.

The following amendment is adopted.

Rescind 191—Chapter 58 and adopt the following new chapter in lieu thereof:

CHAPTER 58  
THIRD-PARTY ADMINISTRATORS

**191—58.1(510) Purpose.** The purpose of this chapter is to administer the provisions of Iowa Code chapter 510 relating to the regulation of third-party administrators.

**191—58.2(510) Definitions.** The terms defined in Iowa Code section 510.11 shall have the same meaning for the purposes of this chapter. In addition, for purposes of this chapter:

“*Affiliate*” or “*affiliates*” means an entity or person who directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, a specified entity or person. For purposes of this definition, “control” (including the terms “controls” or “controlled by”) means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities of any other person. This presumption may be rebutted by a showing made in the manner provided by Iowa Code section 505.23 and Iowa Code chapter 521A that control does not exist in fact. The commissioner may determine, after furnishing notice and opportunity to be heard to all persons in interest and after making specific findings of fact to support the determination, that control exists in fact notwithstanding the absence of a presumption to that effect.

“*Commissioner*” means the commissioner of insurance for the state of Iowa.

“*Division*” means the Iowa insurance division.

“*Home state*” means the United States state or territory or the District of Columbia designated by a third-party administrator as its principal regulator, which shall be either its place of incorporation or its principal place of business within the United States. A third-party administrator may designate as its home state any United States jurisdiction in which it does business and which has adopted a law governing third-party administrators substantially similar to Iowa Code chapter 510 and this chapter.

“*Insurance producer*” means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

“*Insurer*” means a person engaged in the business of insurance who is regulated under Iowa Code chapter 508, 512B, 514, 514B, 515, or 520.

“*Nonresident third-party administrator*” means a person who is applying for licensure in Iowa, who is licensed in any state other than Iowa, and whose home state is not Iowa.

“*Person*” means any individual, aggregation of individuals, trust, association, partnership, or corporation or an affiliate of any of these.

“*Stop-loss*” or “*stop-loss insurance*” means insurance protecting an employer or other person responsible for an otherwise self-insured health or life benefit plan against higher than expected obligations under the plan.

“*Underwrites*” or “*underwriting*” or “*underwritten*” means, but is not limited to, the acceptance of employer or individual applications for coverage of individuals in accordance with the written rules of the insurer or self-funded plan, or the overall planning and coordinating of a benefits program.

**191—58.3(505,510) Registration required.** A third-party administrator shall not operate as a third-party administrator in Iowa without an approved certificate of registration from the division. A third-party administrator that has a home state other than Iowa must apply for and obtain a nonresident third-party administrator certificate of registration from the division before operating as a third-party administrator in Iowa.

## INSURANCE DIVISION[191](cont'd)

**58.3(1) Exceptions.**

*a.* The following persons doing the following corresponding actions shall not be required to have approved certificates of registration from the division if these are the only actions by the persons that would otherwise cause the persons to be considered third-party administrators:

(1) An employer administering its employee benefit plan or the plan of an affiliated employer under common management and control;

(2) A trust exempt from taxation under Section 507(a) of the Internal Revenue Code and its trustees and employees acting pursuant to such trust, or a custodian and the custodian's agents or employees acting pursuant to a custodian account that meets the requirements of Section 401(f) of the Internal Revenue Code; or

(3) A person licensed as a managing general agent in this state when acting within the scope of activities conveyed under such a license.

*b.* An insurer that underwrites, collects charges, collateral or premiums from, or adjusts or settles claims for other than its policyholders, subscribers and certificate holders is not required to be licensed as a third-party administrator and shall be exempt from rule 191—58.3(505,510), except that the insurer shall comply with paragraphs 58.3(1) "c," "e" and "f" and rules 191—58.6(505,510) and 191—58.7(505,510), if applicable.

*c.* A person shall not be required to have an approved certificate of registration from the division if that person is affiliated with a licensed insurer and that person only acts as a third-party administrator for the direct and assumed insurance business of the affiliated insurer, provided that the insurer shall provide all of the third-party administrator's books and records to the insurance commissioner upon request.

*d.* A person shall not be required to have an approved certificate of registration from the division if that person only acts as a third-party administrator for a group plan based in another state that has fewer than 100 insureds under the plan residing in Iowa.

*e.* A person who is not required to be registered as a third-party administrator under Iowa Code chapter 510 or this chapter and who directly or indirectly underwrites, collects charges or premiums from, or adjusts or settles claims on residents of this state, only in connection with life, annuity or health coverage provided by a self-funded plan other than a governmental or church plan, shall file a statement with the commissioner triennially, verifying the person's status as described herein. An example of such a statement may be found on the division's Web site, [www.iid.state.ia.us](http://www.iid.state.ia.us).

*f.* An administrator operating solely as a single-employer trust or Taft-Hartley labor union trust as defined under ERISA shall be required to file a statement triennially, verifying the administrator's status as described herein. An example of such a statement may be found on the division's Web site, [www.iid.state.ia.us](http://www.iid.state.ia.us).

**58.3(2) Application.**

*a.* All third-party administrators wishing to do business in Iowa shall electronically file a completed application and any required attachments in the form prescribed by the division. The application shall be accompanied by a filing fee as stated in rule 191—58.18(510).

*b.* Application for resident third-party administrator certificate of registration.

(1) All applications shall include evidence of the existence of a surety bond issued by an insurance company licensed to do business in the state of Iowa. The bond must be in an amount equivalent to 10 percent of the third-party administrator's average daily client account balance during the preceding calendar year. In no case shall the bond be less than \$50,000 or more than \$1,000,000. The surety bond shall be in the form prescribed by the commissioner. The bond shall be payable to the Iowa Insurance Division to ensure the financial protection of the third-party administrator's customers, subject to the dollar limitation of the surety bond.

(2) An application by a third-party administrator that is a corporation, association or benefit society shall be accompanied by a certified copy of the articles of incorporation or association or a certification of good standing from the Iowa secretary of state.

*c.* Application for nonresident third-party administrator certificate of registration.

## INSURANCE DIVISION[191](cont'd)

(1) A third-party administrator whose home state is not Iowa shall file with the division, in a manner acceptable to the division, a completed application and a certification from the home state that verifies that the applicant is in good standing in the home state.

(2) In lieu of requiring a third-party administrator to file a certification, the division may verify the nonresident third-party administrator's home state status through an electronic database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

(3) A third-party administrator shall not be eligible for a nonresident third-party administrator certificate of registration under paragraph 58.3(2) "c" if the third-party administrator does not hold a certificate of registration as a resident in a home state that has adopted a law governing third-party administrators substantially similar to Iowa Code chapter 510 and this chapter. A third-party administrator may designate a state other than the resident state as its home state. If a third-party administrator is not eligible under paragraph 58.3(2) "c," it must meet the application requirements for a resident third-party administrator.

*d.* The division may refuse to issue a certificate of registration to an applicant as provided in Iowa Code section 510.21, or may refuse to issue a certificate of registration if the division determines that any of the grounds set forth in rule 191—58.16(510) exist with respect to the third-party administrator.

*e.* If an application is approved, the division will electronically deliver to the third-party administrator a certificate of registration.

**58.3(3) Validity.** A certificate of registration issued under Iowa Code chapter 510 and this rule shall remain valid, unless surrendered by the third-party administrator, or suspended, revoked, or not renewed by the commissioner, for as long as the third-party administrator continues to renew the certificate of registration timely, continues in business in this state, and remains in compliance with Iowa Code chapter 510 and this chapter.

**191—58.4(510) Third-party administrator duties.**

**58.4(1)** A third-party administrator registered or applying for a certificate of registration or renewal under Iowa Code section 510.21 and this chapter shall:

*a.* Make available for inspection on request by the commissioner copies of all contracts with insurers or other persons utilizing the services of the third-party administrator.

*b.* As often as reasonably required by the commissioner, produce its accounts, records and files for examination and make its officers available to give information with respect to its affairs.

*c.* Immediately notify the commissioner of any material change in its ownership, control, or other fact or circumstance affecting its qualification for a certificate of registration in this state.

*d.* Notify the commissioner in writing of any change in the information required to be filed under these rules including, but not limited to, a change of address or name, not later than 30 days after the change.

**58.4(2)** The commissioner may terminate a third-party administrator's certificate of registration, following notice and an opportunity for a hearing, for failure to comply with this rule.

**191—58.5(510) Renewal procedure.** A third-party administrator that wants to maintain its certificate of registration in Iowa shall file a completed request for renewal no later than 60 days before the expiration date on the certificate of registration.

**58.5(1)** The division shall provide notice to the third-party administrator of the upcoming renewal date.

**58.5(2)** The renewal form shall be filed in a manner as prescribed by the division. The renewal form shall be accompanied by the fee specified in rule 191—58.18(510).

**58.5(3)** Renewal requests filed after the 60-day period specified must include the late fee specified in rule 191—58.18(510).

**58.5(4)** A third-party administrator that allows the certificate of registration to lapse and does not renew within one year from the expiration date must apply for a new certificate of registration.

INSURANCE DIVISION[191](cont'd)

**191—58.6(505,510) Responsibilities of the insurer.**

**58.6(1)** If an insurer utilizes the services of a third-party administrator, the insurer shall be responsible for determining the benefits, premium rates, underwriting criteria, and claims payment procedures applicable to the coverage.

**58.6(2)** An insurer must supervise its contracted third-party administrators to ensure that its programs are administered in a competent and appropriate manner.

**58.6(3)** In cases where a third-party administrator administers benefits for more than 100 certificate holders, subscribers, claimants or policyholders on behalf of an insurer, the insurer shall, at least annually, conduct a reasonable review of the operations of the third-party administrator. If a third-party administrator has an independent party conduct a review of the third-party administrator's operations and has provided that review to the insurer, and the insurer has determined that the review was reasonable for purposes of this subrule, the review may, at the discretion of the division, meet the requirement of this subrule.

**58.6(4)** The requirements of rule 191—58.6(505,510) also apply to any insurer that contracts with a person exempt from licensure, pursuant to the exceptions set forth in subrule 58.3(1), to act as a third-party administrator.

**191—58.7(505,510) Written agreement.**

**58.7(1)** The written agreement required by Iowa Code section 510.12 shall include a statement of duties that the third-party administrator is expected to perform on behalf of the insurer and the lines, classes or types of insurance for which the third-party administrator is to be authorized to administer. The agreement shall make provision with respect to underwriting, claims handling and other standards pertaining to the business underwritten by the insurer. The rules pertaining to these matters shall be provided, in writing, by the insurer to the third-party administrator, pursuant to Iowa Code section 510.12 and rule 191—58.7(505,510).

**58.7(2)** The insurer or third-party administrator may, with written notice, terminate the written agreement for cause as provided in the agreement. The insurer may suspend the underwriting authority of the third-party administrator during the pendency of any dispute regarding the cause for termination of the written agreement. The insurer shall fulfill any lawful obligations with respect to policies affected by the written agreement, regardless of any dispute between the insurer and the third-party administrator.

**58.7(3)** The requirements of this rule shall also apply to any insurer that contracts with a person exempt from licensure, pursuant to the exceptions set forth in subrule 58.3(1), to act as a third-party administrator, unless that person and the insurer are the same.

**191—58.8(510) Compensation to the third-party administrator.** A third-party administrator and an insurer shall not enter into an agreement or understanding that makes the amount of the third-party administrator's commissions, fees, or charges contingent upon savings effected in the adjustment, settlement and payment of losses covered by the insurer's obligations. Third-party administrators are not prohibited from receiving performance-based compensation for providing to the insurer cost control services, including hospital auditing or other auditing services, subrogation services, contractual discounting services, or claim negotiation with providers.

**191—58.9(510) Disclosure of charges and fees.** The third-party administrator shall disclose to the insurer all charges, fees and commissions received from all services in connection with the provision of administrative services for the insurer, including any fees or commissions paid by insurers providing reinsurance. Additional charges may not be made for services to the extent the insurer has paid for those services.

**191—58.10(510) Delivery of materials to covered individuals.** Any policies, certificates, booklets, termination notices or other written communications delivered by the insurer to the third-party

## INSURANCE DIVISION[191](cont'd)

administrator for delivery to insured parties or covered individuals shall be delivered by the third-party administrator promptly after receipt of delivery instructions from the insurer.

**191—58.11(510) Annual report and fee.**

**58.11(1)** Each registered third-party administrator shall file by July 1 an annual report in a form and manner as prescribed by the commissioner. The report shall:

- a. Be verified by at least two officers of the third-party administrator;
- b. Include audited financial statements prepared by an independent certified public accountant using generally accepted accounting principles;
- c. Be prepared on a consolidated basis; and
- d. Include a columnar consolidating or combining worksheet that shall be filed with the report and include the following:

- (1) Amounts shown on the consolidated audited financial report shall be shown on the worksheet;
- (2) Amounts for each entity shall be stated separately; and
- (3) Explanations of consolidating and eliminating entries shall be included.

**58.11(2)** A third-party administrator that makes a late filing shall pay a late fee as stated in rule 191—58.18(510).

**58.11(3)** Extensions of the July 1 filing date may be granted by the commissioner for 30-day periods upon showing by the insurer and its independent certified public accountant the reasons for requesting such extension and determination by the commissioner of good cause for an extension. The request for extension must be submitted in writing not less than ten days prior to the due date in sufficient detail to permit the commissioner to make an informed decision with respect to the requested extension.

**191—58.12(510) Change of information.**

**58.12(1)** A third-party administrator shall notify the commissioner within 30 days of any change in the information required to be filed under these rules including, but not limited to, a change of original application content. Reports of changes shall be filed electronically at [tpregistration@iid.iowa.gov](mailto:tpregistration@iid.iowa.gov). Failure to timely file changes is grounds for suspension of a certificate of registration and imposition of a \$100 civil penalty.

**58.12(2)** A third-party administrator may not do business under any name other than the name on the original application unless the third-party administrator notifies the commissioner prior to using the assumed name. The notice shall include a detailed explanation of the manner in which the name will be used.

**58.12(3)** A third-party administrator who ceases doing business in Iowa may either allow its certificate of registration to expire or file a request to withdraw its certificate of registration. A request for withdrawal must include information demonstrating that the third-party administrator will no longer be acting in Iowa as a third-party administrator.

**191—58.13(510) Inquiry by commissioner.** A third-party administrator shall promptly respond in writing to inquiries from the commissioner. A third-party administrator's actions are deemed untimely under this rule if the third-party administrator fails to respond to an inquiry from the commissioner within 30 days of the receipt of the inquiry, unless good cause exists for delay and the commissioner has given the third-party administrator a time extension in writing.

**191—58.14(510) Complaints.** A third-party administrator shall keep all complaints on file for a period of five years. Complaint information shall be made available to the division by the third-party administrator at any time upon the commissioner's request.

**191—58.15(510) Periodic examination.** The commissioner reserves the right to examine a third-party administrator or require the most recent audited financial statements from the third-party administrator and such other interim evidence as the commissioner deems appropriate.

**58.15(1)** Reasonable costs of the examination or audited financial statements shall be paid by the third-party administrator.

## INSURANCE DIVISION[191](cont'd)

**58.15(2)** Examination shall include, but not be limited to: financial condition, premium collection, claims processing, and marketing practices.

**58.15(3)** If one or more of the following factors are present, the commissioner may require and determine an amount of additional security:

- a. Insufficient liquid assets or retained earnings;
- b. A deteriorating financial condition, as evidenced through an examination by the commissioner or any other insurance commissioner;
- c. Any other relevant considerations.

**191—58.16(510) Grounds for denial, nonrenewal, suspension or revocation of certificate of registration.**

**58.16(1)** The commissioner may, at the commissioner's discretion and without advance notice or hearing, immediately suspend the certificate of registration of a third-party administrator if the commissioner finds that one or more of the following circumstances exist:

- a. The third-party administrator is insolvent or impaired;
- b. A proceeding for receivership, conservatorship, rehabilitation or other delinquency proceeding regarding the third-party administrator has been commenced in any state; or
- c. The financial condition or business practices of the third-party administrator otherwise pose an imminent threat to the public health, safety or welfare of the residents of this state.

**58.16(2)** The commissioner shall deny, suspend, revoke, or not renew a third-party administrator's certificate of registration if the commissioner finds that the third-party administrator:

- a. Is in unsound financial condition;
- b. Is using such methods or practices in the conduct of its business so as to render its further transaction of business in this state hazardous or injurious to insured persons or the public; or
- c. Has failed to pay any judgment rendered against it in this state within 60 days after the judgment has become final.

**58.16(3)** The commissioner may deny, suspend, revoke, or not renew a third-party administrator's certificate of registration if the commissioner finds that the third-party administrator:

- a. Has violated or failed to comply with any lawful rule or order of the commissioner or any provision of the insurance laws of this state;
- b. Has a financial condition that has deteriorated to the degree that it may adversely affect the third-party administrator's ability to operate as a third-party administrator;
- c. Has filed an application or any necessary forms with the division that contain fraudulent information or omissions;
- d. Has misappropriated, converted, illegally withheld, or refused to pay over upon proper demand any moneys that belong to a person otherwise entitled to the moneys and that have been entrusted to the third-party administrator in its fiduciary capacities;
- e. Has provided insufficient explanation, as determined by the commissioner, of the circumstances surrounding evidence that an owner, principal, officer, partner, manager, director, stockholder, trustee, employee of the third-party administrator or the third-party administrator itself:

(1) Has had an insurance license or an application for an insurance license in any state denied, suspended, revoked, or not renewed;

(2) Has been the subject of an investigation, fine, penalty, order, withdrawal or informal settlement with any state insurance department;

(3) Has been the subject of a criminal investigation, summons, arrest, indictment or questioning;

(4) Has been charged, tried, convicted of, or pled guilty or no contest to any felony or misdemeanor;

f. Has been found by the commissioner not to be competent, trustworthy, financially responsible or of good personal and business reputation;

g. Has refused to be examined or to produce its accounts, records and files for examination, or that any of the following individuals responsible for the conduct of the affairs of the third-party administrator has refused to give information with respect to its affairs or has refused to perform any other legal obligation as to an examination, when required by the commissioner: members of the board of directors,



## INSURANCE DIVISION[191](cont'd)

board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly 10 percent or more of the voting stock, voting securities or voting interest of the third-party administrator; or any other person who exercises control or influence over the affairs of the third-party administrator;

*h.* Has, without just cause, refused to pay proper claims or perform services arising under its contracts, caused covered individuals to accept less than the amount due them, or caused covered individuals to employ attorneys or bring suit against the third-party administrator to secure full payment or settlement of such claims;

*i.* At any time fails to meet any qualification for which issuance of the certificate of registration could have been refused had the failure then existed and been known to the commissioner;

*j.* Has, or any of the following individuals responsible for the conduct of the affairs of the third-party administrator has, been convicted of, or has entered a plea of guilty or nolo contendere to, a felony without regard to whether adjudication was withheld: members of the board of directors, board of trustees, executive committee or other governing board or committee; the principal officers in the case of a corporation or the partners or members in the case of a partnership, association or limited liability company; any shareholder or member holding directly or indirectly 10 percent or more of the voting stock, voting securities or voting interest of the third-party administrator; or any other person who exercises control or influence over the affairs of the third-party administrator;

*k.* Is under suspension or revocation in another state;

*l.* Has failed to promptly respond to one or more inquiries of the commissioner; or

*m.* Has failed to timely file its annual report.

**58.16(4)** If the commissioner finds that one or more grounds exist for the suspension or revocation of a certificate of registration issued under this chapter, the commissioner may, in addition to or in lieu of suspension or revocation, impose a monetary penalty that shall not exceed \$1,000 for each act or violation of this chapter, up to an aggregate of \$10,000, unless the person knew or reasonably should have known that the person was in violation of this chapter, in which case the penalty shall not exceed \$5,000 for each act or violation, up to an aggregate of \$50,000 in any one six-month period.

**191—58.17(510) Confidential information.**

**58.17(1)** Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to Iowa Code section 510.14.

**58.17(2)** In order to assist in the performance of the commissioner's duties, the commissioner:

*a.* May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Iowa Code section 510.14, with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the documents, materials or other information;

*b.* May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

*c.* May enter into agreements governing the sharing and use of information consistent with this subrule.

**58.17(3)** No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under rule 191—58.17(510) or as a result of sharing as authorized in subrule 58.17(2).

## INSURANCE DIVISION[191](cont'd)

**58.17(4)** Nothing in this rule shall prohibit the commissioner from releasing final, adjudicated actions, including for-cause terminations that are open to public inspection pursuant to Iowa Code chapter 22 or Iowa Code section 505.8, to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.

**58.17(5)** In the event the insurer and the third-party administrator cancel their agreement, the third-party administrator may, by written agreement with the insurer, transfer all records to a new third-party administrator rather than retain the records for the five years required under Iowa Code section 510.14. In such cases, the new third-party administrator shall acknowledge, in writing, that it is responsible for retaining the records of the prior third-party administrator as required in Iowa Code section 510.14.

**191—58.18(510) Fees.**

**58.18(1)** Fees to be paid directly to the division shall be paid by check. Fees accompanying electronic filings shall be paid in a manner as directed by the commissioner.

**58.18(2)** Fees related to this chapter are as follows:

- a. The fee to accompany an application for a certificate of registration is \$100.
- b. The fee to accompany the filing of an annual report is \$50.
- c. The fee to renew a certificate of registration is \$100.
- d. The fee for the late filing of an annual report or of an application to renew a certificate of registration is \$100.

**58.18(3)** The division may charge a reasonable fee for the compilation and production of records necessary to evaluate an application for a certificate of registration, an application for the renewal of a certificate of registration, or an annual report.

**191—58.19(510) Severability clause.** If any provision of this chapter, or the application thereof to any person or circumstance, is subsequently held to be invalid, such invalidity shall not affect other provisions or applications of this chapter.

**191—58.20(510) Compliance date.** All persons shall comply with this chapter on and after January 1, 2010.

These rules are intended to implement Iowa Code chapters 505 and 510.

[Filed 10/28/09, effective 12/23/09]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.

**ARC 8300B**

**LABOR SERVICES DIVISION[875]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 92.21, the Labor Commissioner hereby amends Chapter 32, "Child Labor," Iowa Administrative Code.

The amendments implement 2009 Iowa Acts, House File 618, and Iowa Code chapter 92 by establishing rules for child labor civil penalties; adopting new definitions; and setting forth procedures for obtaining work permits, migrant labor permits, certificates of age, and street trades permits.

The principal reasons for adoption of these amendments are to implement legislative intent and help people obtain required permits and certificates of age.

Notice of Intended Action was published in the September 23, 2009, Iowa Administrative Bulletin as **ARC 8167B**. No public comment was received on the proposed amendments. These amendments are identical to those published under Notice of Intended Action.

No variance provision is included in these rules. Variance procedures are set forth in 875—Chapter 1.

## LABOR SERVICES DIVISION[875](cont'd)

These amendments are intended to implement Iowa Code chapter 92 as amended by 2009 Iowa Acts, House File 618.

These amendments shall become effective on January 1, 2010.

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 [32.1, 32.2, 32.11, 32.12] is being omitted. These amendments are identical to those published under Notice as **ARC 8167B**, IAB 9/23/09.

[Filed 10/28/09, effective 1/1/10]

[Published 11/18/09]

[For replacement pages for IAC, see IAC Supplement 11/18/09.]

**ARC 8283B****LABOR SERVICES DIVISION[875]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 89.14, the Boiler and Pressure Vessel Board amends Chapter 80, "Boiler and Pressure Vessel Board Administrative and Regulatory Authority," Chapter 90, "Administration of the Boiler and Pressure Vessel Program," Chapter 91, "General Requirements for All Objects," Chapter 92, "Power Boilers," Chapter 93, "Miniature Boilers Installed Prior to September 20, 2006," Chapter 94, "Steam Heating Boilers, Hot Water Heating Boilers and Hot Water Supply Boilers," and Chapter 96, "Pressure Vessels," Iowa Administrative Code.

The amendments update references to various national consensus codes; rescind unnecessary rules; change the requirements for combustion air; add rules pertaining to certificates of noncompliance issued by the Iowa centralized collection unit of the Iowa Department of Revenue; change the board membership; add definitions of "power boiler" and "unfired steam pressure vessel"; and make technical and editorial changes.

The purposes of these amendments are to update the rules due to statutory changes and changes in national codes; to implement changes identified by board members during the required rules review; to make the rules easier to read; to protect the safety of the public; and to implement legislative intent.

No variance provision is included in these rules. Applicable variance procedures are set forth in 875—Chapter 81.

Notice of Intended Action was published in the August 26, 2009, Iowa Administrative Bulletin as **ARC 8082B**. No public comment was received. These amendments are identical to those published under Notice of Intended Action.

These amendments shall become effective on January 1, 2010.

These amendments are intended to implement Iowa Code chapters 89 and 272D and 2009 Iowa Acts, House File 720.

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 80, 90 to 94, 96] is being omitted. These amendments are identical to those published under Notice as **ARC 8082B**, IAB 8/26/09.

[Filed 10/22/09, effective 1/1/10]

[Published 11/18/09]

[For replacement pages for IAC, see IAC Supplement 11/18/09.]

**ARC 8307B****PUBLIC SAFETY DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 100.1, the State Fire Marshal hereby rescinds Chapter 5, "Fire Marshal Administration," adopts new Chapter 200, "Fire Marshal Administration," and amends Chapter 201, "General Fire Safety Requirements," Chapter 202, "Requirements for Specific Occupancies," and Chapter 205, "Fire Safety Requirements for Hospitals and Health Care Facilities," Iowa Administrative Code.

The State Fire Marshal has authority for the following:

- To establish minimum requirements for fire safety for specific occupancies and for "all other buildings or structures in which persons congregate from time to time, whether publicly or privately owned";
- To establish requirements for storage, handling, and use of flammable liquids;
- To establish requirements for storage, handling, and use of explosive materials;
- To establish requirements for smoke detectors in residences;
- To investigate fires of unknown or suspicious origin;
- To establish minimum training requirements for fire fighters;
- To provide training to fire fighters;
- To license commercial explosive operations and blasting personnel;
- To certify fire extinguishing system contractors and alarm system contractors and installers; and
- To license fire suppression system installers and maintenance workers.

In addition, the Fire Marshal Division has been assigned responsibility for administration of the State Building Code, the Electrician and Electrical Contractor Licensing Program and the Electrical Inspection Program, as well as for providing administrative support to the Electrical Examining Board.

The amendments adopted herein establish the general administrative organization and procedures of the Fire Marshal Division and update general fire safety requirements established by the Fire Marshal and requirements for specific occupancies. New editions of the International Fire Code and the International Building Code are adopted by reference.

These amendments were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on September 23, 2009, as **ARC 8156B**. Three public hearings were held to accept comment on the amendments, on October 13 in Des Moines, October 14 in Carroll, and October 15 in Cedar Rapids. A comment was received asking that a change made in the new edition of the International Fire Code regarding measuring the required width of fire apparatus access roads not be adopted. The State Fire Marshal has determined that the new requirement will facilitate more ready access by fire apparatus to fire scenes, thereby contributing to the safety of the public and fire fighters, and has retained the provision in the new edition of the Code.

Several changes have been made to these amendments from those proposed in the Notice of Intended Action, including the following:

- Editorial changes have been made in Chapter 200 to clarify the meaning of some provisions.
- Several sections of Chapter 1 of the International Fire Code, which are administrative in nature and which are either redundant or contradict provisions of Chapter 200, were deleted.
- A provision of NFPA 10, Standard for Portable Fire Extinguishers, 2007 Edition, which requires certification of personnel who maintain portable fire extinguishers was deleted.
- Chapters 22, 34, and 38 of the International Fire Code are deleted in favor of references to 661—Chapters 221 and 226 of the administrative rules of the Department of Public Safety.

The amendments adopted herein are subject to the general waiver provisions applicable to rules adopted by the State Fire Marshal. That rule is included in the amendments adopted herein.

These amendments are intended to implement Iowa Code section 100.1, subsections 5 and 6, and section 100.35.

These amendments will become effective on January 1, 2010.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

The following amendments are adopted.

ITEM 1. Rescind **661—Chapter 5**.

ITEM 2. Adopt the following new 661—Chapter 200:

CHAPTER 200  
FIRE MARSHAL ADMINISTRATION

**661—200.1(100) Description.** The fire marshal division is created within the department of public safety. The division headquarters is located in the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. The main telephone number for the division is (515)725-6145. The general E-mail address for the division is [fminfo@dps.state.ia.us](mailto:fminfo@dps.state.ia.us).

**200.1(1)** The director of the division is the state fire marshal, who is appointed by and reports to the commissioner of public safety. There is an assistant fire marshal, appointed by the fire marshal, who also serves as chief of the arson and explosives bureau. The assistant fire marshal may act in place of the state fire marshal if the state fire marshal position is vacant or the state fire marshal is absent or unavailable.

**200.1(2)** The division includes the following four bureaus:

- a. Arson and explosives bureau.
- b. Fire prevention bureau.
- c. Fire service training bureau.
- d. Building code bureau.

**661—200.2(100) General administrative procedures.** The provisions of 661—Chapter 10 are adopted by reference with the following amendments:

1. Wherever the term “department of public safety” appears, delete the term and replace it with “state fire marshal.”
2. Wherever the term “commissioner of public safety” appears, delete the term and replace it with “state fire marshal.”

**661—200.3(100) Building plan approval and plan review fees.** Plans for the proposed construction of certain new buildings or additions, alterations or changes to existing buildings require the approval of the fire marshal and shall be submitted to the building code bureau.

**200.3(1)** Plans for initial construction or alterations, changes, additions, renovations or remodeling of the following shall be submitted to the building code bureau, unless the plans have been submitted to a local fire or building department for approval based upon compliance with the rules of the fire marshal or a local fire ordinance recognized in rule 661—201.4(100):

- a. Any educational building or facility serving kindergarten through twelfth grade,
- b. Any college or university building or facility,
- c. Any child care facility intended to serve seven or more children at one time,
- d. Any correctional facility,
- e. Any gaming facility,
- f. Any facility housing an adult day service,
- g. Any assisted living facility,
- h. Any residential care facility, or
- i. Any elder group home.

**200.3(2)** Plans for initial construction or alterations, changes, additions, renovations or remodeling of any building or facility subject to the provisions of 661—Chapter 205 shall be submitted to the building code bureau.

**200.3(3)** Building plan submittals.

a. *Working plans and specifications.* When approval of building construction projects is required by this chapter or when requested by the submitter for other building construction projects covered by this chapter, one complete set of the final working plans and specifications shall be submitted to the

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building code bureau. The submittal shall comply with Iowa Code chapters 542B and 544A and with 661—subrule 300.4(1). Each submittal shall be examined, and the submitter shall be notified of the findings. If the working plans and specifications comply with this chapter, an approval letter shall be sent to the submitter.

*b. Shop drawings.* Shop drawings, equipment specifications and supporting documentation for fire alarm and sprinkler systems shall be submitted for review and approval. If the system is being installed as part of a project which has been designed by an engineer or architect, the submittal shall be approved by the responsible architect or engineer prior to submittal to the fire marshal. Each submittal shall be examined, and the submitter shall be notified of the findings. Only one copy of shop drawings, equipment specifications and supporting documentation is required. Staff of the building code bureau shall send a letter of approval to the submitter in lieu of returning approved shop drawings.

*c. Changes.* No changes shall be made to the approved final working plans and specifications or shop drawings unless the changes are submitted to and approved by the building code bureau.

**200.3(4)** If the blueprints and specifications are not acceptable, the building code bureau shall notify the submitter of the deficiencies and request that the submitter either forward changes or request a review of the blueprints and specifications with the building code bureau.

**200.3(5)** If, after such review, the submitter disputes the findings of the plan reviewer, the submitter may request that the disputed questions be reviewed by the building code commissioner and the chief of the fire prevention bureau.

**200.3(6)** If the submitter disputes the findings of the building code commissioner and the chief of the fire prevention bureau, the submitter may appeal to the fire marshal under the provisions of rule 661—200.2(100).

**200.3(7)** 661—subrule 300.4(2), paragraphs “b” and “c,” are adopted by reference.

NOTE: 661—subrule 300.4(2) establishes fees for plan reviews.

**200.3(8)** The responsible design professional for a project shall schedule a preliminary meeting with the building code bureau to discuss code compliance issues early in the design development phase. The responsible design professional shall contact the bureau to schedule the preliminary meeting. There is no separate fee for a preliminary meeting. If the responsible design professional plans to request approval to bid the project as part of the preliminary meeting, the responsible design professional shall request a copy of the document “Preliminary Meeting Checklist” at the time the meeting is scheduled and shall be prepared to address all applicable issues identified on the checklist at the preliminary meeting. Approval to bid the project shall not be given unless all applicable issues identified on the checklist have been addressed to the satisfaction of the state fire marshal or the state fire marshal’s designee.

**200.3(9)** A construction project that is subject to a provision of this chapter or 661—Chapter 201 that requires compliance with a provision of the 2009 edition of any code published by the International Code Council may comply with either the current requirements of this chapter and 661—Chapter 201 or the provisions of this chapter and 661—Chapter 201 as they applied prior to January 1, 2010, if construction has commenced on or prior to March 31, 2010. “Commenced” means the submitter has received preliminary approval of the plans. If a construction project receives preliminary approval based upon the provisions of this chapter and 661—Chapter 201 as they applied prior to January 1, 2010, then final approval must be received on or prior to September 30, 2010.

**661—200.4(100,101,101A) Inspections and inspection fees.** Certain buildings, facilities, and installations as designated in the Iowa Code are required to comply with the Iowa Code and rules of the fire marshal. The fire marshal determines and enforces such compliance. To do so, the fire marshal or any employee of the fire marshal or local fire department authorized by the fire marshal may enter such building or premises at any time without notice to inspect it.

**200.4(1)** An inspection may be of a particular system in the building, facility, or installation, or the inspection may include the entire building, facility, or installation.

**200.4(2)** An inspection to evaluate compliance with the rules of the fire marshal shall be conducted by the fire marshal or by a consultant as requested by the fire marshal. A consultant is a person with the necessary degree of training, education or experience to examine a system within a building required

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to be in compliance with the rules of the fire marshal and determine if such system or systems are in compliance with such requirements. If a consultant who is not employed by the fire marshal is engaged to conduct an inspection, the consultant shall be accompanied by an employee of the fire marshal or of a local fire department while conducting the inspection.

**200.4(3)** Inspections shall be conducted without announcement and occur on a random basis, upon request, in response to a complaint or to investigate a suspected fire hazard.

**200.4(4)** An employee of the fire marshal or an employee of a local fire department acting on behalf of the fire marshal, upon arriving at a building, facility, or installation in order to conduct an inspection, shall advise the owner or the person in control of the building, if that person is available. If a person in such a position cannot be contacted, the inspection shall commence in any event. If the owner or the owner's representative wishes to accompany the employee during the inspection, the owner or the owner's representative may do so, provided that the inspection is not delayed.

**200.4(5)** Upon completion of an inspection, the employee or consultant may complete a written inspection order if any violations or deficiencies are discovered. The order shall be signed by the employee and, if prepared by a consultant, shall also be signed by the consultant.

**200.4(6)** Upon completion of the inspection, if the building, facility, or installation does not comply with applicable laws or rules, the employee or consultant shall identify specific provisions with which the building, facility, or installation does not comply and shall notify the owner. The owner may be ordered to correct or repair the deficiency. The owner may order the building, facility, or installation removed or demolished, in lieu of correcting the deficiency.

*a.* Copies of the notice of deficiencies or order shall be distributed to the fire marshal's office and the fire department having jurisdiction. The employee or consultant signing the order shall retain a copy.

*b.* The time allowed to comply with the order shall be determined by the employee or consultant, who shall consider the likelihood that a fire may occur, the possibility of personal injury or property loss, the cost and availability of materials and labor to correct, repair, remove or demolish, and other relevant information.

*c.* If the owner of the building, facility, or installation does not agree with the deficiency findings and order, the owner may appeal the order to the fire marshal under rule 661—200.2(100).

**200.4(7)** Inspection fees. The following fees shall apply respectively to inspections of the facilities of the types listed where a certificate of inspection from the fire marshal is required in order to obtain licensure or certification under Iowa law. The inspection fee shall be paid by check made payable to the Fire Marshal Division, Iowa Department of Public Safety. If a certificate of occupancy is required for use of the building, facility, or installation, the certificate shall not be issued until the inspection fee has been paid.

*a.* The inspection fee for a health care facility licensed or seeking licensure pursuant to Iowa Code chapter 135C or a group home licensed or seeking licensure in this state is \$2.50 per bed.

*b.* The inspection fee for an elder group home certified or seeking certification pursuant to Iowa Code chapter 231B or an assisted living facility licensed or seeking licensure pursuant to Iowa Code chapter 231C is \$10 per bed.

*c.* The inspection fee for an adult day services program certified or seeking certification pursuant to Iowa Code chapter 231D is \$75 per facility.

*d.* The inspection fee for a child care facility licensed or seeking licensure pursuant to Iowa Code chapter 237A is \$25 per facility.

*e.* When an initial inspection which requires a fee pursuant to paragraphs "a," "b," or "c" of this subrule results in a finding of a deficiency or deficiencies which require a reinspection, the initial reinspection shall be performed without the imposition of any additional fee. If the original deficiency or deficiencies have not been corrected at the time of the initial reinspection, then a fee of \$125 for each additional reinspection after the initial reinspection is required until the original deficiency or deficiencies have been corrected.

*f.* The fee for a suitability inspection of a prospective site for a building, facility, or installation which may seek licensure or certification from the state of Iowa is \$150.

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**661—200.5(100) Certificates for licensure.** Several Iowa statutes provide that a license to conduct certain functions may not be issued until the fire marshal has approved the building, facility, or installation to be used for such function. Upon completion of an inspection showing the building, facility, or installation to be in compliance with applicable rules of the fire marshal, the owner or the owner's agent may request the issuance of a certificate of occupancy specifying that the building, facility, or installation is approved for the specific use requiring licensure. Upon receipt of the request, provided that the building, facility, or installation is found to be in compliance with applicable rules of the fire marshal and all applicable fees have been paid, the fire marshal shall issue such a certificate. If the building, facility, or installation is found not to be in compliance, the person requesting the certificate may file a petition requesting a review, and the same procedure is used as if an order were being appealed. Upon completion of the appeal process, if the building, facility, or installation is found to be in compliance, a certificate will then be issued.

**661—200.6(100) Fire investigations.**

**200.6(1)** The fire marshal has the authority to investigate any fire in the state of Iowa.

- a. The fire marshal may initiate an investigation of any fire at the discretion of the fire marshal.
- b. Any local fire or law enforcement official may request the fire marshal to investigate any fire.

Such investigation shall be undertaken at the discretion of the fire marshal.

**200.6(2)** Local fire officials have the primary responsibility to and shall investigate fires. A local fire official who investigates a fire shall file a report of each fire investigated with the fire marshal division within one week of the fire even if the fire marshal division participated in, assisted with, directed or supervised the fire investigation. Upon written request, the fire marshal may grant an extension of the time for filing this report for a period not to exceed 14 days. The request shall set forth compelling reasons for such extension.

**200.6(3)** A local fire official who investigates a fire shall immediately report a fire that involves death or suspected arson and shall do so by contacting the member of the fire marshal division assigned to that area or, if that member is not available, another member of the fire marshal division. If direct contact with the fire marshal division is impractical, the local fire official may request the county sheriff to relay the information to the fire marshal division via Iowa state patrol communications.

**200.6(4)** The notice of a fire involving death or arson shall contain the following information, if known:

- a. The date, time, and address of the fire;
- b. If death has occurred or is suspected, the name, age and address of the person or persons deceased or missing;
- c. The suspected cause of the fire;
- d. If arson is suspected, the reasons for suspecting arson, whether there is obvious evidence of arson, and if there is an arson suspect; and
- e. Whether an explosion occurred.

**200.6(5)** The fire marshal may assist a local officer in the investigation of any fire. The fire marshal may direct, conduct, or assist in the investigation of a fire and may arrange for the participation of a consultant in the investigation.

**661—200.7(100) Fire drills.** All public and private school officials and teachers shall conduct fire drills in all school buildings as specified in Iowa Code section 100.31 when school is in session. All doors and exits of their respective rooms and buildings shall remain unlocked during school hours or when such areas are being used by the public at other times.

**661—200.8(100) Inspection based on complaint.**

**200.8(1) Request for inspection.** A person requesting the inspection of a building, facility, or installation that is alleged to require repair, removal or demolition because it presents a significant fire hazard shall provide the following information, if known:

- a. The address of the building, facility, or installation;



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- b. The name and address of the building's, facility's, or installation's owner;
- c. The requester's name, address and telephone number; and
- d. A general description of the alleged deficiencies for which the requester seeks remedy.

**200.8(2) Initial determination.** The fire marshal, upon receipt of the information, shall make an initial determination whether there are sufficient allegations to warrant an inspection.

a. If, in the fire marshal's opinion, the complaint fails to warrant an inspection, the fire marshal shall so advise the complainant.

b. If the fire marshal determines that an inspection is warranted, the fire marshal shall so advise the county attorney, the requester and the person(s) identified as the owner(s).

**200.8(3) Cause to be inspected.** After initial determination, the fire marshal shall cause the inspection of the building, facility, or installation to determine if:

a. By want of proper repair, or by reason of age and dilapidated condition, the building, facility, or installation is especially liable to fire and is so situated as to endanger other buildings, facilities, installations, property or persons, or

b. The building, facility, or installation contains combustibles, explosives or flammable materials dangerous to the safety of any buildings, premises or persons.

**200.8(4) Final decision.** Upon completion of the inspection, the fire marshal shall decide if the building, facility, or installation needs to be removed or repaired.

a. If the building, facility, or installation complies with applicable laws or rules and no deficiencies are found, the fire marshal shall accordingly notify the county attorney, the owner and the requester.

b. If any deficiencies are found, and the building, facility, or installation is within the corporate limits of a city, the fire marshal shall notify the mayor and clerk of said city of the deficiencies and the need for repairs or removal.

c. If any deficiencies are found, and the building, facility, or installation is outside the corporate limits of any city, the fire marshal shall specifically identify such deficiencies and prepare an order to correct or repair the deficiencies or remove or demolish the building, facility, or installation. Such notice and order shall be sent to the county attorney with a request that the notice and order be examined by the county attorney.

NOTE: An owner who receives an order from the fire marshal may appeal the order using procedures established in rule 661—200.2(100).

**200.8(5) Verification of legal description.** The county attorney shall, upon receipt of the fire marshal's notice and order, verify the legal description and identification of the property owner and shall advise the fire marshal how to properly serve the order.

**200.8(6) Contents of order.** The order shall notify the owner of the building, facility, or installation that the order becomes effective upon its receipt or issuance. The order shall also notify the owner that, within five days after the order's effective date, the owner may file a petition for review of the order in accordance with Iowa Code section 100.14.

**200.8(7) Who shall be served.** If the county attorney deems it appropriate, any occupants, lienholders or lessees shall be served with a copy of the order.

**200.8(8) Reasonable time to comply.** The order shall give the owner a reasonable time to comply with its mandate(s). The fire marshal shall determine what constitutes a reasonable time by considering the likelihood of fires, the possibility of personal injury or property loss, the cost, availability of materials and labor to correct, repair, remove or demolish the building, facility, or installation and other reasonable, relevant information.

**200.8(9) Reinspection.** If the owner of the building, facility, or installation elects not to challenge the fire marshal's order, the fire marshal shall, at the end of the period during which compliance was required, conduct another inspection of the building, facility, or installation.

a. If the fire marshal finds that the order has been complied with, the fire marshal shall notify the county attorney, owner and requester of this fact.

b. If the fire marshal finds that the order has not been complied with, the fire marshal shall notify the county attorney of noncompliance.

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NOTE: An owner who receives a notice of noncompliance from the fire marshal may appeal the notice using procedures established in rule 661—200.2(100).

**200.8(10) Failure to comply.** Upon receipt from the fire marshal of notice of the owner's failure to comply, the county attorney shall:

*a.* Institute the procedure necessary to subject the owner to a penalty of \$10 for each day the owner fails to comply, and

*b.* Confirm the legal description of the property; the owner's name and address; the alleged deficiencies of the building, facility, or installation; that an inspection was conducted; that some deficiency was found; that the owner was properly served, notified and given an adequate opportunity to repair the deficiency; and that the deficiency has not been remedied, and

*c.* Advise the fire marshal that destruction is appropriate.

**200.8(11) Final action taken.** The fire marshal, upon the advice of the county attorney, may repair, remove or destroy the building, facility, or installation. Such destruction may occur by:

*a.* Permitting the local fire service to burn the building, facility, or installation as a training exercise;

*b.* Asking for public bids on the building, facility, or installation; or

*c.* If significant costs are anticipated, the fire marshal may request funds from the Iowa executive council.

**661—200.9(100A) Sharing of insurance company information with the fire marshal.** Insurance companies shall provide specified information to the fire marshal as follows:

**200.9(1)** Whenever an insurance company has reason to believe that a fire loss insured by the company was caused by something other than an accident, the insurance company shall provide to the fire marshal, or some other agency authorized to receive such information under Iowa Code chapter 100A, all information and material possessed by the company relevant to an investigation of the fire loss or a prosecution for arson.

**200.9(2)** Whenever the fire marshal, or an agent or employee of the fire marshal, requests in writing that an insurance company provide information in its possession regarding a fire to the fire marshal, the insurance company shall provide all relevant information requested. Relevant information may include, but need not be limited to:

*a.* Insurance policy information relating to a fire loss under investigation, including information on the policy application.

*b.* Policy premium payment records.

*c.* History of previous claims made by the insured.

*d.* Material relating to the investigation of the loss, including the statement of any person, proof of loss, and other information relevant to the investigation.

**200.9(3)** Unless otherwise expressly limited, any request for information under this rule shall be construed to be a request for all information in the possession of an insurance company. Any information in the custody or control of any agent, employee, investigator, attorney or other person engaged, on a permanent or temporary basis, by an insurance company in the person's professional relationship to the insurance company shall be considered to be in the possession of the insurance company subject to this rule.

**661—200.10(100A) Release of information to an insurance company.** An insurance company that has provided fire loss information to an authorized agency pursuant to Iowa Code section 100A.2 may request information relevant to the fire loss investigation from the fire marshal. If the insurance company has provided information to an authorized agency other than the fire marshal, the request shall include proof that information was provided. For purposes of this rule, the term "insurance company" shall include an attorney, adjuster or investigator engaged by the company in reference to the particular fire loss involved in the request even though the attorney, adjuster or investigator is not a full-time employee of the insurance company. The attorney, adjuster or investigator shall provide the fire marshal with proof of authorization from the insurance company to act as its representative relative to the loss.

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**661—200.11(100A) Forms.** These rules require the use of the following forms that are available from the state fire marshal.

**200.11(1)** When an insurance company has reason to believe that a fire loss has occurred, the company shall notify the fire marshal on the form entitled Insurance Form Number One.

**200.11(2)** Requests for information by the fire marshal, the fire marshal's agents or employees from an insurance company pursuant to Iowa Code section 100A.2 shall comply with the form entitled Insurance Form Number Two.

**200.11(3)** Material requested on Insurance Forms Number One and Two shall carry a cover form which complies with Insurance Form Number Three.

**200.11(4)** Requests for information by an insurance company from the fire marshal shall comply with Insurance Form Number Four.

These rules are intended to implement Iowa Code chapters 100, 101 and 101A.

ITEM 3. Rescind rule 661—201.1(100) and adopt the following **new** rule in lieu thereof:

**661—201.1(100) Scope.** The provisions of this chapter apply to all buildings, structures and facilities that are subject to the jurisdiction of the state fire marshal unless the building, structure, or facility is subject to the provisions of 661—Chapter 202, 661—Chapter 205, 661—Chapter 221, or 661—Chapter 231.

ITEM 4. Rescind rule 661—201.2(100) and adopt the following **new** rule in lieu thereof:

**661—201.2(100) General provisions.** The following publications or indicated portions thereof are hereby adopted by reference as general fire safety requirements and shall apply to all occupancies other than those to which provisions specific to an occupancy explicitly exclude these provisions or any individual provision contained therein.

**201.2(1)** International Fire Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, with the following amendments:

Delete section 103 and sections contained therein, section 104 and sections contained therein, section 105 and sections contained therein, section 106 and sections contained therein, section 107 and sections contained therein, section 108 and sections contained therein, section 109 and sections contained therein, section 110 and sections contained therein, section 111 and sections contained therein, section 112, and section 113 and sections contained therein.

Delete section 301.2.

Delete section 307.2.

Delete section 307.3 and insert in lieu thereof the following new section:

**307.3 Extinguishment Authority.** The state fire marshal or an employee of the fire marshal division authorized to do so by the fire marshal, or local fire chief or member of the local fire department authorized to do so by the fire chief, is authorized to order the extinguishment by the permit holder, another person responsible or the fire department of open burning that creates or adds to a hazardous or objectionable situation.

Delete section 308.1.4 and insert in lieu thereof the following new section:

**308.1.4 Open Flame Cooking Devices.** Charcoal burners and ash- or coal-producing devices shall not be operated on combustible balconies or within 10 feet of combustible construction.

Exceptions:

1. One- and two-family dwellings.
2. LP-gas burners connected to one (1) 20-pound LP-gas container.
3. Where buildings, balconies and decks are protected by an automatic sprinkler system.

Delete section 315.2.3 and insert in lieu thereof the following new section:

**315.2.3 Equipment Rooms.** Combustible material shall not be stored in boiler rooms, mechanical rooms, or electrical equipment rooms.

Exception: In sprinklered equipment rooms that have sufficient space to allow a minimum of 10 feet between all combustible storage and the heating, mechanical or electrical equipment in the room.

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Delete section 405.2 and table 405.2 and insert in lieu thereof the following new section and new table:

**405.2 Frequency.** Required emergency evacuation drills shall be held at the intervals specified in Table 405.2 or more frequently where necessary to familiarize all occupants with the drill procedure.

**TABLE 405.2  
FIRE AND EVACUATION DRILL FREQUENCY AND PARTICIPATION**

GROUP OR OCCUPANCY	FREQUENCY	PARTICIPATION
Group A	Quarterly	Employees
Group B <sup>(c)</sup>	Annually	Employees
Group E	See <sup>(a)</sup> below	All occupants
Group I	Quarterly on each shift	Employees
Group I <sup>(b)</sup> and Group R-4 (assisted living facilities)	Quarterly	All occupants
Group R-1	Quarterly on each shift	Employees
Group R-2 <sup>(d)</sup>	Four annually	All occupants
High-rise	Annually	Employees

Footnotes:

(a) The frequency shall be allowed to be modified in accordance with Section 408.3.2. Fire and severe weather drills shall be conducted in accordance with Iowa Code chapter 100.

(b) Fire and evacuation drills in assisted living facilities shall include complete evacuation of the premises in accordance with Section 408.10.5. Drills shall be conducted not less than six times per year on a bimonthly basis, with not less than two drills conducted during the night when residents could reasonably be expected to be sleeping. The drills shall be permitted to be announced in advance to the residents. Where occupants receive habilitation or rehabilitation training, fire prevention and fire safety practices shall be included as part of the training program.

(c) Group B buildings that have an occupant load of 500 or more persons or more than 100 persons above or below the lowest level of exit discharge.

(d) Applicable to Group R-2 college and university buildings in accordance with Section 408.3.

Delete section 609.1 and insert in lieu thereof the following new section:

**609.1 General.** Commercial kitchen exhaust hoods shall comply with the requirements of National Fire Protection Association (NFPA) 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 edition.

Delete section 807.4.3.1 and insert in lieu thereof the following new section:

**807.4.3.1 Storage in corridors and lobbies.** Clothing and personal effects shall not be stored in corridors and lobbies.

Exceptions:

1. Corridors protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.

2. Storage in metal lockers, provided the minimum required egress width is maintained.

Delete section 906.1 and insert in lieu thereof the following new section:

**906.1 Where Required.** Portable fire extinguishers shall be installed in the following locations:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.

2. Within 30 feet (9144 mm) of commercial cooking equipment.

3. In areas where flammable or combustible liquids are stored, used or dispensed.

4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1.

5. Where required by the sections indicated in Table 906.1.

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6. Special-hazard areas, including but not limited to laboratories, computer rooms and generator rooms.

Add the following new paragraph to section 907.2.2:

4. The Group B fire area that contains an educational occupancy for students above the twelfth grade with an occupant load of greater than 50 persons.

Delete section 907.2.3 and insert in lieu thereof the following new section:

**907.2.3 Group E.** In the absence of a complete automatic sprinkler system, a complete automatic detection system shall be installed throughout the entire Group E occupancy. A Group E occupancy with a complete automatic sprinkler system shall be provided with a fire alarm system with a minimum of corridor smoke detection, at a maximum spacing of 30 feet on center, and heat or smoke detection in any hazardous or nonoccupied areas. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

Exceptions:

1. Group E occupancies with an occupant load of less than 50.  
2. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:

2.1. Interior corridors are protected by smoke detectors with alarm verification.  
2.2. Auditoriums, cafeterias, gymnasiums and the like are protected by heat detectors or other approved detection devices.  
2.3. Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.

2.4. Off-premises monitoring is provided.

2.5. The capability to activate the evacuation signal from a central point is provided.

2.6. In buildings where normally occupied spaces are provided with a two-way communication system between such spaces and a constantly attended receiving station from which a general evacuation alarm can be sounded, except in locations specifically designated by the fire code official.

3. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system, the notification appliances will activate on sprinkler water flow, and manual activation is provided from a normally occupied location.

Add the following new section 1003.8:

**1003.8 Location of Preschool through Second Grade Students.** In Group E occupancies, rooms normally occupied by preschool, kindergarten or first grade students shall not be located above or below the level of exit discharge. Rooms normally occupied by second grade students shall not be located more than one story above the level of exit discharge.

Amend any reference to any section within chapter 22 to read as a reference to "Chapter 22."

Delete chapter 22 and insert in lieu thereof the following new chapter:

CHAPTER 22

MOTOR FUEL-DISPENSING FACILITIES AND REPAIR GARAGES

SECTION 2201

GENERAL

**2201.1** Motor fuel-dispensing facilities and repair garages shall comply with the applicable provisions of 661—Chapter 221.

Amend any reference to any section within chapter 34 to read as a reference to "Chapter 34."

Delete chapter 34 and insert in lieu thereof the following new chapter:

CHAPTER 34

FLAMMABLE AND COMBUSTIBLE LIQUIDS

SECTION 3401

GENERAL

**3401.1** Transportation, storage, handling, and use of flammable and combustible liquids shall comply with the applicable provisions of 661—Chapter 221.

Amend any reference to any section within chapter 38 to read as a reference to "Chapter 38."

Delete chapter 38 and insert in lieu thereof the following new chapter:

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CHAPTER 38  
LIQUEFIED PETROLEUM GASES  
SECTION 3801  
GENERAL

**3801.1** Transportation, storage, handling, and use of liquefied petroleum gases shall comply with the applicable provisions of 661—Chapter 226.

Delete section 4603.6.1 and insert in lieu thereof the following new section:

**4603.6.1** Existing Group E occupancies shall be provided with a fire alarm system with a minimum of corridor smoke detection, at a maximum spacing of 30 feet on center, and heat or smoke detection in any hazardous or nonoccupied areas. Where smoke or heat detectors are installed, such detectors shall be connected to the building fire alarm system.

Exceptions:

1. A building with a maximum area of 1,000 square feet that contains a single classroom and is located no closer than 50 feet from another building.

2. Group E occupancy with an occupant load of less than 50.

Any reference to NFPA 10 is amended to read as follows:

NFPA 10 with the following amendment:

Delete sections 7.1.2.1, 7.1.2.2, and 7.1.2.3 and insert in lieu thereof the following new sections:

7.1.2.1 A trained person who has undergone the instructions necessary to reliably perform maintenance and has the manufacturer's service manual shall service the fire extinguishers not more than one year apart, as outlined in Section 7.3.

7.1.2.2\* Maintenance, servicing, and recharging shall be performed by trained persons who have available the appropriate servicing manual(s), the proper types of tools, recharge materials, lubricants, and manufacturer's recommended replacement parts or parts specifically listed for use in the fire extinguisher.

NOTE: Requirements in NFPA 10 for certification of personnel who maintain portable fire extinguishers are removed. These personnel must still be trained and have available service manuals.

Adopt Appendices B, C, and D.

**201.2(2)** The following Chapters and Sections of the International Building Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041.

a. Chapter 2.

b. Chapter 3.

c. Chapter 4.

d. Chapter 5.

e. Chapter 6.

f. Chapter 7.

g. Sections 804 and 805.

ITEM 5. Amend rule 661—201.4(100) as follows:

**661—201.4(100) Existing buildings or structures.** Additions or alterations to any building or structure shall comply with the requirements of this chapter for new construction. Additions or alterations shall not be made to an existing building or structure that will cause the existing building or structure to be in violation of any provisions of 661—Chapter 201. An existing building plus additions shall comply with the height and area provisions of Chapter 5 of the International Building Code, ~~2006~~ 2009 edition. Portions of the structure not altered and not affected by the alteration are not required to comply with the requirements established in 661—Chapter 201 for a new structure.

ITEM 6. Amend rule 661—201.5(100) as follows:

**661—201.5(100) Recognition of local fire ordinances and enforcement.** With the exception of a health care facility subject to the requirements of 661—Chapter 205, a building, structure, or facility shall be

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

deemed to be in compliance with the requirements established in rules of the fire marshal if all of the following conditions are met:

1. to 4. No change.

Notwithstanding any conflicting provisions contained in any code adopted by reference in this chapter or by any local fire ordinance, compliance with the provisions of ~~661—Chapter 51~~ 661—Chapter 221 is required at any location or facility in which flammable or combustible liquids are stored, handled, or used, other than incidental use.

ITEM 7. Rescind and reserve rule ~~661—202.4(100)~~.

ITEM 8. Adopt the following new rule 661—202.5(100,135C):

**661—202.5(100,135C) General requirements for small group homes (specialized licensed facilities) licensed pursuant to Iowa Code section 135C.2.**

**202.5(1) Scope.** This rule applies to specialized facilities licensed under the provisions of Iowa Code section 135C.2 which have three to five beds and serve persons with mental retardation, chronic mental illness, developmental disabilities, or brain injuries.

**202.5(2) Exits.**

*a.* There shall be a minimum of two approved exits from the main level of the home and from each level with resident sleeping rooms.

*b.* Interior and exterior stairways shall have a minimum clear width of not less than 30 inches.

**202.5(3) Windows.** Every resident sleeping room shall have an outside window or outside door arranged and located to permit the venting of products of combustion and access to fresh air in the event of an emergency.

*a.* In new construction, windows shall have a minimum net clear openable area of 5.7 square feet, minimum net clear openable height of 24 inches, and minimum net clear openable width of 20 inches, and the finished sill height shall be not more than 44 inches above the floor.

*b.* In existing construction, the finished sill height shall be not more than 44 inches above the floor or may be accessible from a platform not more than 44 inches below the window sill.

**202.5(4) Interior finish.** Interior finish in an exit shall be Class A, B or C.

**202.5(5) Doors.** Doors to resident sleeping rooms shall be a minimum of 1 $\frac{3}{8}$ -inch solid core wood or equivalent.

**202.5(6) Vertical separations.** Basement stairs must be enclosed with one-hour rated partitions and 1 $\frac{3}{4}$ -inch solid core wood doors equipped with self-closers. These doors must be kept closed unless held open by an approved electromagnetic holder, actuated by an approved smoke detection device located at the top of the stairwell and interconnected with the alarm system.

**202.5(7) Fire detection, fire alarms and sprinklers.**

*a.* The home shall have smoke detection installed on each occupied floor, including basements, in accordance with NFPA 72, 1999 edition, Chapter 11. Smoke detectors shall be interconnected so that activation of any detector will sound an audible alarm throughout. The system shall be tested by a competent person at least semiannually with date of test and name noted.

*b.* Homes in which exiting is restricted by special door-locking arrangements that prevent residents from free egress shall be equipped with sprinkler systems meeting the requirements of National Fire Protection Association Standard Number 13D, 1996 edition.

**202.5(8) Fire extinguishers.**

*a.* Approved fire extinguishers shall be provided on each floor, so located that a person will not have to travel more than 75 feet from any point to reach the nearest extinguisher. An additional extinguisher shall be provided in, or adjacent to, each kitchen or basement storage room.

*b.* Type and number of portable fire extinguishers shall be determined by the fire marshal.

**202.5(9) Mechanical, electrical and building service equipment.**

*a.* Air conditioning, ventilating, heating, cooking and other service equipment shall be in accordance with state regulations governing the same, or nationally recognized standards such as National Fire Protection Association standards governing the type of equipment, and shall be installed

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

in accordance with the manufacturer's specifications. All hazardous areas normally found in one- and two-family dwellings, such as laundry, kitchen, heating units and closets, need not be separated with walls if all equipment is installed in accordance with the manufacturer's listed instructions.

*b.* Portable comfort heating devices are prohibited.

**202.5(10) Attendants; evacuation plan.**

*a.* Every home shall have at least one staff person on the premises at all times while residents are present. This staff person shall be at least 18 years of age and capable of performing the required duties of evacuation. No person other than management personnel or a person under management control shall be considered an attendant.

*b.* Every facility shall formulate a plan for the protection of all persons in the event of fire and for their evacuation to areas of refuge and from the building when necessary. All employees shall be instructed and kept informed with respect to their duties under the plan. The plan shall be posted where all employees may readily study it. Fire drills shall be held at least once a month. Records must be kept available for inspection.

**202.5(11) Smoking.**

*a.* There shall be no smoking in resident sleeping areas, and smoking and no smoking policies shall be strictly enforced.

*b.* Ashtrays shall be constructed of noncombustible material with self-closing tops and shall be provided in all areas where smoking is permitted.

**202.5(12) Exit illumination.** Approved rechargeable battery-powered emergency lighting shall be installed to provide automatic exit illumination in the event of failure of the normal lighting system.

**202.5(13) Occupancy restrictions.**

*a.* Occupancies not under the control of, or not necessary to, the administration of residential care facilities are prohibited therein with the exception of the residence of the owner or manager.

*b.* Nonambulatory residents shall be housed only on accessible floors which have direct access to grade where the use of stairs or elevators is not required.

**202.5(14) Maintenance.**

*a.* All fire and life safety equipment or devices shall be regularly and properly maintained in an operable condition at all times in accordance with nationally recognized standards. Such equipment and devices include fire extinguishing equipment, alarm systems, doors and their appurtenances, cords and switches, heating and ventilating equipment, sprinkler systems and exit facilities.

*b.* Storerooms shall be maintained in a neat and proper manner at all times.

*c.* Excessive storage of combustible materials such as papers, cartons, magazines, paints, sprays, old clothing, furniture and similar materials shall be prohibited at all times.

This rule is intended to implement Iowa Code section 135C.2, subsection 5, paragraph "b."

ITEM 9. Rescind rule **661—205.100(135C)**.

[Filed 10/28/09, effective 1/1/10]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.

**ARC 8303B**

**PUBLIC SAFETY DEPARTMENT[661]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 101A.5, the State Fire Marshal hereby amends Chapter 5, "Fire Marshal Administration," and adopts new Chapter 235, "Commercial Explosive Licensing," Iowa Administrative Code.

During 2008, discussions were undertaken between the State Fire Marshal and the Iowa Limestone Association, which is the trade association representing most commercial explosive licensees in the state, to prepare to rewrite and more systematically codify requirements for commercial explosive licenses



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

issued by the Fire Marshal. Pursuant to these discussions, Notice of Intended Action was published in the Iowa Administrative Bulletin on November 5, 2008, as **ARC 7312B** proposing the adoption of new Chapter 235, "Commercial Explosive Licensing." As commercial explosive licenses expire on and are required to be renewed by January 1 each year, the plan had been to adopt the rules Emergency After Notice after the public comment period had ended, in order for the new rules to apply to licenses issued for calendar year 2009. However, after the public comment period had ended, it became apparent that additional work on the rules was needed before they were adopted. Consequently, the rules proposed during 2008 were never adopted and the Notice was terminated in a Notice of Termination published as **ARC 8154B** in the Iowa Administrative Bulletin on September 23, 2009. A new Notice of Intended Action was also published in the Iowa Administrative Bulletin on September 23, 2009, as **ARC 8155B**. A public hearing on the rules proposed in **ARC 8155B** was held on October 13, 2009. Comments were received from the Iowa Limestone Association and from several members of the industry. These comments focused on the proposed rule regarding inspections and inspection fees and on the definition of the owner of a commercial explosive business.

Iowa Code section 101A.2 establishes licensing of commercial explosive operations and users of explosives for commercial purposes. The rules for this program have been in the general rules of the Fire Marshal, 661—Chapter 5, and are now being moved to a separate chapter. This is part of a more general effort to reorganize and renumber the rules of the Department of Public Safety to make them more accessible and understandable to the public and to those subject to the provisions of the rules.

The rules adopted herein differ significantly from those that are currently in effect, primarily in that the adopted rules provide for licensing of individual blasters as well as commercial explosive businesses. The statute authorizes the licensing of individual blasters, but this has not previously been implemented. The following changes have been made since publication of the Notice of Intended Action:

- The term "owner" is replaced with the term "responsible person," as defined in federal law, except that the term "owner" is retained when describing a sole proprietorship.
- Individual blaster licenses will be required of the owners of sole proprietorships which hold commercial explosive licenses.
- Proposed subrule 235.7(1) is modified by adding a definition of the term "not of good moral character and sound judgment" and adding another reason for refusing to issue or for suspending or revoking a license, one which is already included elsewhere in the rules.
- Proposed rule 661—235.10(103A), which would have established requirements for inspections and inspection fees, has not been adopted. The Fire Marshal will continue to discuss these requirements with representatives of the industry, and the Fire Marshal plans to adopt a rule regarding inspections and inspection fees within the next few months.
- Minor clarifying editorial changes have been made.

These amendments are intended to implement Iowa Code chapters 101A, 252J and 272D.

These amendments will become effective on January 1, 2010.

The following amendments are adopted.

ITEM 1. Rescind and reserve rules **661—5.7(17A,101A)**, **661—5.851(101A)**, **661—5.865(101A,252J)** and **661—5.866(252J)**.

ITEM 2. Adopt the following new 661—Chapter 235:

CHAPTER 235  
COMMERCIAL EXPLOSIVE LICENSING

**661—235.1(101A) Licensing program established.** A commercial explosive licensing program is hereby established in the fire marshal division. The program shall issue licenses to commercial explosive firms and to individual blasters as provided in this chapter.

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**235.1(1)** The commercial explosive licensing program is located at the following address:

Commercial Explosive Licensing Program  
Fire Marshal Division  
Iowa Department of Public Safety  
215 East 7th Street  
Des Moines, Iowa 50319

The program may be contacted by mail or in person at this address.

**235.1(2)** The program may be contacted by telephone at (515)725-6145, by fax at (515)725-6172, or by electronic mail at [fminfo@dps.state.ia.us](mailto:fminfo@dps.state.ia.us).

**661—235.2(101A) Licenses required.** Except as specifically exempted by another provision of state or federal law, any business whose employees are engaged in the manufacture, importation, distribution, sale, or commercial use of explosives in the course of their employment shall be required to hold a current commercial explosive business license issued pursuant to this chapter. Any individual, except as specifically exempted by another provision of law, who conducts blasting or is in charge of or responsible for loading or detonation of any explosive material shall be required to hold a current individual blaster license issued pursuant to this chapter. An individual blaster license shall not be required to authorize a person solely to transport explosives from one location to another, to assist a licensed blaster, to train under a licensed blaster, or to engage in the manufacture of explosives.

NOTE: Iowa Code section 101A.1 excludes “fireworks” from the definition of “explosive.” Consequently, working with fireworks does not require a blaster license, nor does the manufacture, importation, distribution, sale, or commercial use of fireworks require a commercial explosive license.

**661—235.3(101A) License application process.**

**235.3(1)** Anyone wishing to obtain an application for a commercial explosive business license or an individual blaster license may obtain a copy of the required application by contacting the commercial explosive licensing program as specified in rule 661—235.1(101A).

**235.3(2)** A completed application for a license shall be submitted to the commercial explosive licensing program at the address specified in subrule 235.1(1). All information requested on the application shall be provided prior to the processing of the application.

**235.3(3)** Each license application shall be accompanied by a \$60 fee for each license for which application is being made, paid by check or money order made payable to the Iowa Department of Public Safety. If the application is being submitted later than January 31 of a given year, then the fee for each license shall be \$5 per month for each month remaining in the calendar year, including the month in which the application is submitted.

**235.3(4)** Each license issued shall expire on December 31 of the year in which it is issued, except that a license issued in December of any year shall expire on December 31 of the following year.

**661—235.4(101A) Issuance of commercial explosive business license.** A commercial explosive business license shall be issued only if all of the following conditions have been satisfied:

**235.4(1)** All items required on the application have been completed, and any items the fire marshal deems necessary to verify have been verified and found to be true.

**235.4(2)** For purposes of this rule, “responsible person” means an individual who has the power to direct the management and policies of the applicant pertaining to explosive materials. Generally, “responsible person” includes partners, sole proprietors, site managers, corporate officers, directors and majority shareholders.

**235.4(3)** No responsible person or manager of the business for which commercial explosive licensure is sought nor any person who will have, at any time, possession of explosives in the course of employment with the prospective business licensee:

*a.* Has been convicted of a felony or any offense involving explosives or firearms;

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

*b.* Has been previously disqualified from being licensed to handle explosives in this or any other state. The fire marshal may grant a license to a person previously disqualified if the fire marshal is satisfied that the condition or conditions that led to the disqualification have been corrected;

*c.* Is an unlawful user of or is addicted to controlled substances;

*d.* Has been adjudged mentally incompetent at any time by any court, been committed by any court to any mental institution, received inpatient treatment for any mental illness in the past three years, or received treatment by a health care professional for a serious mental illness or disorder which impairs a person's capacity to function normally and safely, both toward themselves and others.

**235.4(4)** The business has at least one responsible person or employee licensed as an individual blaster.

**661—235.5(101A) Issuance of individual blaster license.** An individual blaster license shall be issued only if all of the following conditions have been satisfied:

**235.5(1)** The applicant is an employee of a licensed commercial explosive business.

*a.* If, after an individual blaster license is issued, such employment ceases, the employing business and the individual blaster shall each notify the fire marshal within three business days of the final day of employment that the employment has ceased, and the individual blaster license shall be suspended until the individual blaster is again employed with a licensed commercial explosive business.

*b.* Upon reemployment, the employer shall notify the fire marshal that the individual blaster is again employed with a licensed commercial explosive business, and the fire marshal shall reinstate the individual blaster license as soon as practical, provided that the individual blaster is not disqualified from holding a license pursuant to any provision of this chapter.

*c.* If the fire marshal finds that an individual blaster is disqualified from holding a license, the fire marshal shall revoke the license.

**235.5(2)** All items required on the application have been completed and any items the fire marshal deems necessary to verify have been verified and found to be true.

**235.5(3)** The applicant is not or has not been:

*a.* Convicted of a felony or any offense involving explosives or firearms;

*b.* Previously disqualified from being licensed to handle explosives in this or any other state. The fire marshal may grant a license to a person previously disqualified if the fire marshal is satisfied that the condition or conditions that led to the disqualification have been corrected;

*c.* An unlawful user of or addicted to controlled substances;

*d.* Adjudged mentally incompetent at any time by any court or committed by any court to any mental institution; or

*e.* A recipient of inpatient treatment for any mental illness in the past three years or a recipient of treatment by a health care professional for a serious mental illness or disorder which impairs a person's capacity to function normally and safely toward themselves and others.

**235.5(4)** The applicant has satisfactorily completed training approved by the fire marshal for the handling and use of explosives. The training may be provided by the employer or by a reputable third party knowledgeable about the storage, handling, and use of explosives. The fire marshal may accept related job experience of 640 hours or more in lieu of training if the experience is documented by a sworn affidavit provided by the employing commercial explosive business licensee.

EXCEPTION: The fire marshal may issue an individual blaster license to a person licensed or certified as a blaster in another state, provided that the fire marshal finds that the requirements for licensing or certification in the other state are comparable to those provided for in this rule.

**235.5(5)** The applicant is 21 years of age or older.

**661—235.6(101A) Inventory and records.**

**235.6(1)** Each licensed commercial explosive business shall maintain records to show amounts of explosive material on hand at the beginning and end of each working day and quantities dispensed and to whom. The business shall conduct physical inventories at least once annually. Anytime a shortage appears that is in excess of limits established by the federal Bureau of Alcohol, Tobacco, Firearms

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

and Explosives, the shortage shall be reported within 24 hours to the chief of police or sheriff having jurisdiction, who in turn shall cause a federal Form 4712 (Department of Treasury, Internal Revenue Service) to be completed, a copy of which shall be sent to the commercial explosive licensing program, as specified in rule 661—235.1(101A). Inventory records shall be retained for five years after the date for which the activity is recorded and shall be made available upon request of the fire marshal.

**235.6(2)** Each licensed individual blaster shall maintain a daily record of all explosive materials received and fired or otherwise disposed of by the individual blaster. Such records are the property of the business license holder, who shall retain them for five years and make them available to the fire marshal upon request.

**235.6(3)** Any loss, theft, or unlawful removal of explosive materials shall be reported within 24 hours to the Bureau of Alcohol, Tobacco, Firearms and Explosives, to the fire marshal and to the local law enforcement agency having jurisdiction.

**235.6(4)** Any accident involving explosive materials that causes an injury to a person which requires medical attention or that causes damage to property beyond the limits of the property on which the blasting is being conducted or to property for which the responsible person has not provided a written waiver to the blasting operation shall be reported promptly to the fire marshal.

**661—235.7(101A,252J) Grounds for suspension, revocation, or denial of commercial explosive licenses; appeals.**

**235.7(1)** The fire marshal may refuse to issue a commercial or individual blaster license for the manufacture, importation, distribution, sale, and commercial use of explosives sought pursuant to Iowa Code section 101A.2 or may suspend or revoke such a license for any of the following reasons:

*a.* Finding that the applicant or licensee is not of good moral character and sound judgment. “Not of good moral character and sound judgment” means disqualified by any provision of federal or Iowa law from possessing explosives, firearms, or offensive weapons.

*b.* Finding that the applicant or licensee lacks sufficient knowledge of the use, handling, and storage of explosive materials to protect the public safety.

*c.* Finding that the applicant or licensee falsified information in the current or any previous license application.

*d.* Finding that the applicant or licensee has been adjudged mentally incompetent at any time by any court, been committed by any court to any mental institution, received inpatient treatment for any mental illness in the past three years, or received treatment by a health care professional for a serious mental illness or disorder which impairs a person’s capacity to function normally and safely, both toward themselves and others.

*e.* Proof that the licensee or applicant has violated any provision of Iowa Code chapter 101A, this chapter, or 661—Chapter 231.

*f.* Receipt of a certificate of noncompliance from the child support recovery unit of the Iowa department of human services, pursuant to the procedures set forth in Iowa Code chapter 252J.

*g.* Receipt of a certificate of noncompliance from the centralized collection unit of the department of revenue, pursuant to Iowa Code chapter 272D.

**235.7(2)** An applicant or licensee whose application is denied or a licensee whose license is suspended or revoked for a reason other than receipt of a certificate of noncompliance from the child support recovery unit or a certificate of noncompliance from the department of revenue may appeal that action pursuant to 661—Chapter 10, except that wherever “commissioner of public safety” or “department of public safety” appears, “fire marshal” shall be substituted. Applicants or licensees whose licenses are denied, suspended, or revoked because of receipt by the department of a certificate of noncompliance issued by the child support recovery unit or the department of revenue shall be subject to the provisions of rule 661—235.7(101A,252J). Procedures specified in 661—Chapter 10 for contesting department actions shall not apply in these cases.

**235.7(3)** The fire marshal shall notify the employing commercial explosive business licensee of the denial, suspension, or revocation of an individual blaster license.

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

**661—235.8(101A,252J) Child support collection procedures.** The following procedures shall apply to actions taken by the fire marshal on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

**235.8(1)** The notice required by Iowa Code section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

**235.8(2)** The effective date of revocation or suspension of a license or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the licensee or applicant.

**235.8(3)** Licensees and applicants for licensure shall keep the fire marshal informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the fire marshal with copies, within 7 days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

**235.8(4)** All fees for applications, license renewal or reinstatement must be paid by the licensee or applicant before a license will be issued, renewed, or reinstated after the fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 252J.

**235.8(5)** In the event a licensee or applicant files a timely district court action following service of a notice pursuant to Iowa Code sections 252J.8 and 252J.9, the fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the fire marshal to proceed. For the purpose of determining the effective date of revocation, suspension or denial of the issuance or renewal of a license, the fire marshal shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**661—235.9(101A,272D) Suspension or revocation for nonpayment of debts owed state or local government.** The following procedures shall apply to actions taken by the state fire marshal on a certificate of noncompliance received from the Iowa department of revenue pursuant to Iowa Code chapter 272D.

**235.9(1)** The notice required by Iowa Code section 272D.3 shall be served upon the licensee by regular mail.

**235.9(2)** The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 272D.3, shall be 20 days following service of the notice upon the licensee.

**235.9(3)** Licensees shall keep the state fire marshal informed of all court actions and centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the fire marshal with copies, within 7 days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

**235.9(4)** All applicable fees for an application or reinstatement must be paid by the licensee before a license will be issued, renewed, or reinstated after the fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 272D.

**235.9(5)** In the event the licensee files a timely district court action following service of a notice pursuant to Iowa Code section 272D.8, the fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the fire marshal to proceed. For the purpose of determining the effective date of revocation or suspension of the license, the fire marshal shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**235.9(6)** Suspensions or revocations imposed pursuant to this rule may not be appealed administratively to the fire marshal or within the department of public safety.

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NOTE: The procedures established in rule 661—235.9(101A,272D) implement the requirements of Iowa Code chapter 272D. The provisions of Iowa Code chapter 272D establish mandatory requirements for an agency which administers a licensing program and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A, but must be appealed directly to district court.

These rules are intended to implement Iowa Code chapters 101A, 252J, and 272D.

[Filed 10/28/09, effective 1/1/10]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.

**ARC 8302B**

**PUBLIC SAFETY DEPARTMENT[661]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 100B.10, the State Fire Marshal hereby amends Chapter 251, "Fire Fighter Training and Certification," Iowa Administrative Code.

The Fire Service Training Bureau administers a certification program for fire fighters in Iowa. The certification process maintained by the Fire Service Training Bureau is accredited by the International Fire Service Accreditation Congress (IFSAC). While certification is not a state requirement to work as a career or volunteer fire fighter in Iowa, some fire departments do require such certification for employment or for continued employment.

Certification is based upon satisfactory completion of training and testing which is in turn based upon standards published by the National Fire Protection Association. These nationally recognized standards are periodically updated, and adoption of the new editions of the published standards is required for continued accreditation of the certification program by IFSAC. This amendment updates various standards for certification in areas by the Fire Service Training Bureau to current editions of the relevant standards.

This amendment was proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on September 23, 2009, as **ARC 8178B**. A public hearing on the proposed amendment was held on October 15, 2009. No comments on the proposed amendment were received at the hearing or otherwise. The amendment adopted herein is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 100B.6.

This amendment will become effective on January 1, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [251.202] is being omitted. This amendment is identical to that published under Notice as **ARC 8178B**, IAB 9/23/09.

[Filed 10/28/09, effective 1/1/10]

[Published 11/18/09]

[For replacement pages for IAC, see IAC Supplement 11/18/09.]

**ARC 8305B**

**PUBLIC SAFETY DEPARTMENT[661]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby amends Chapter 300, "State Building

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

Code—Administration,” Chapter 301, “State Building Code—General Provisions,” and Chapter 303, “State Building Code—Energy Conservation in Construction,” Iowa Administrative Code.

Iowa Code section 103A.7 authorizes and requires the Building Code Commissioner to adopt the State Building Code. The amendments adopted herein update editions of national codes adopted by reference and revise administrative provisions of the State Building Code to make them clearer, easier to understand, and more tightly integrated with administrative provisions contained in nationally recognized codes adopted by reference.

These amendments were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on September 23, 2009, as **ARC 8179B**. Three public hearings were held to receive comments on the proposed amendments, on October 13 in Des Moines, October 14 in Carroll, and October 15 in Cedar Rapids. Numerous comments were received, the majority of which related to a provision in the 2009 edition of the International Residential Code requiring that all single- and two-family homes constructed on or after January 1, 2011, be sprinklered, a date which was delayed until January 1, 2013, in the proposed amendments. Comments were also received on various other provisions in the new editions of the codes to be adopted. The following changes were made to the amendments proposed in the Notice of Intended Action:

- Various changes were made to administrative portions of each adopted code to make them consistent with administrative provisions of the State Building Code, which are found in 661—Chapter 300.

- The effective date of a requirement in the International Residential Code that all new townhouses be sprinklered was changed to apply to townhouses constructed on or after January 1, 2013 (in the Notice, the requirement applied to townhouses constructed on or after January 1, 2010). This makes the effective date for the sprinklering requirement for new townhouses consistent with the sprinklering requirement for new one- and two-family residences.

- A requirement that roofing materials be replaced completely when asphalt shingles have been used in an area subject to moderate or severe hail exposure has been deleted from the International Residential Code.

- A clarification of the term “commencement” when applied to construction projects has been added.

These amendments are not subject to waiver but instead are subject to provisions for requesting approval of “alternative materials or methods of construction,” as provided in Iowa Code section 103A.13.

These amendments are intended to implement Iowa Code chapter 103A.

These amendments will become effective January 1, 2010.

The following amendments are adopted.

ITEM 1. Amend paragraphs **300.4(1)“c,” “d” and “l”** as follows:

c. Plans, specifications and other supporting information shall be sufficiently clear and complete to show in detail that the proposed work will comply with the requirements of the applicable provisions of the state building code ~~and with sections 106.1 and 106.1.1 of the International Building Code, 2006 edition.~~

d. In sections ~~106.1 and 106.1.1~~ 107.1 and 107.2.5 of the International Building Code, ~~2006~~ 2009 edition, the word “permit” shall be replaced by the words “plan review.”

l. No project for which a life cycle cost analysis is required to be completed pursuant to Iowa Code section 470.2 shall be approved for construction prior to receipt by the commissioner of the life cycle cost analysis, final approval of the life cycle cost analysis by the commissioner and the ~~department of natural resources~~ office of energy independence pursuant to Iowa Code section 470.7, and the completion of all applicable requirements established in Iowa Code section 470.7.

ITEM 2. Adopt the following **new** exception in subrule **300.5(1)**:

EXCEPTION: Construction which is limited to building renovations or repairs shall not be subject to inspection by the commissioner.

ITEM 3. Amend subrule **300.5(2)**, exception, as follows:

EXCEPTION: Construction which is limited to building ~~additions~~, renovations or repairs shall not be subject to inspection by the commissioner.

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

ITEM 4. Amend rule **661—301.2(103A)**, definition of “State plumbing code,” as follows:

“*State plumbing code*” means the state plumbing code adopted by the ~~Iowa department of public health~~ state plumbing and mechanical systems board, pursuant to Iowa Code ~~section 135.11, subsection 5~~ chapter 105.

NOTE: As of January 1, 2007, the state plumbing code is found in 641—Chapter 25.

ITEM 5. Adopt the following **new** definitions of “Responsible design professional” and “State fire code” in rule **661—301.2(103A)**:

“*Responsible design professional*” means a registered architect or licensed professional engineer who stamps and signs the documents submitted, pursuant to Iowa Code chapters 542B and 544A.

“*State fire code*” means the administrative rules adopted by the state fire marshal, pursuant to Iowa Code section 100.1, subsection 5.

ITEM 6. Amend rule 661—301.3(103A) as follows:

**661—301.3(103A) General provisions.** The provisions of the International Building Code, ~~2006~~ 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the general requirements for building construction, with the following amendments:

Delete sections 101 through 115 except for sections 106.1, 106.1.1, and 106.1.1.1.

Delete section 101.1.

Delete section 101.2 and insert in lieu thereof the following new section:

101.2 Scope. The provisions of this code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures shall comply with the International Residential Code, as amended by rule 661—301.8(103A).

Delete section 101.4 and sections therein.

Delete section 102.6 and insert in lieu thereof the following new section:

102.6 Existing Structures. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as specifically covered in this code or the state fire code, or as deemed necessary by the building code commissioner for the general safety and welfare of the occupants and the public.

Delete sections 103, 104, 105 and sections therein.

Delete section 106.2.

Delete section 107.1 and insert in lieu thereof the following new section:

107.1 General. Submittal documents consisting of construction documents, statement of special inspections, a geotechnical report and other data shall be submitted in one or more sets with each plan review application. The construction documents shall be prepared by a responsible design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the commissioner is authorized to require additional construction documents to be prepared by a responsible design professional.

Exception: The commissioner is authorized to waive the submission of construction documents and other data not required to be prepared by a responsible design professional if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this code.

Delete sections 107.3, 107.4, and 107.5 and sections therein.

Delete sections 109, 110, 111, 112, 113, 114, 115, and 116 and sections therein.

Delete section 906.1 and insert in lieu thereof the following new section:

906.1 Where required. Portable fire extinguishers shall be installed in the following locations:



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

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.
2. Within 30 feet (9144 mm) of commercial cooking equipment.
3. In areas where flammable or combustible liquids are stored, used or dispensed.
4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1 of the International Fire Code.
5. Where required by the sections indicated in Table 906.1.
6. Special-hazard areas, including but not limited to laboratories, computer rooms and generator rooms, where required by the fire code official.

Delete section 907.2.2 and insert in lieu thereof the following new section:

907.2.2 Group B. A manual fire alarm system shall be installed in Group B occupancies where one of the following conditions exists:

1. The combined Group B occupant load of all floors is 500 or more.
2. The Group B occupant load is more than 100 persons above or below the lowest level of exit discharge.
3. The Group B fire area contains a Group B ambulatory health care facility.
4. The Group B fire area contains an educational occupancy for students above the twelfth grade with an occupant load of 50 or more persons.

Exception: Manual fire alarm boxes are not required where the building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 and the occupant notification appliances will activate throughout the notification zones upon sprinkler water flow.

Delete section 907.2.3 and insert in lieu thereof the following new section:

907.2.3 Group E. In the absence of a complete automatic sprinkler system, a complete automatic detection system shall be installed throughout the entire Group E occupancy. A Group E occupancy with a complete automatic sprinkler system shall be provided with a fire alarm system with a minimum of corridor smoke detection, at a maximum spacing of 30 feet on center, and heat or smoke detection in any hazardous or nonoccupied areas. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

Exceptions:

1. Group E occupancies with an occupant load of less than 50.
2. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
  - 2.1. Interior corridors are protected by smoke detectors with alarm verification.
  - 2.2. Auditoriums, cafeterias, gymnasiums and the like are protected by heat detectors or other approved detection devices.
  - 2.3. Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
  - 2.4. Off-premises monitoring is provided.
  - 2.5. The capability to activate the evacuation signal from a central point is provided.
  - 2.6. In buildings where normally occupied spaces are provided with a two-way communication system between such spaces and a constantly attended receiving station from which a general evacuation alarm can be sounded, except in locations specifically designated by the fire code official.
3. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system, the notification appliances will activate on sprinkler water flow and manual activation is provided from a normally occupied location.

Add the following new section 1003.8:

1003.8 Location of Preschool through Second Grade Students. In Group E occupancies, rooms normally occupied by preschool, kindergarten or first grade students shall not be located above or below the level of exit discharge. Rooms normally occupied by second grade students shall not be located more than one story above the level of exit discharge.

Add the following new section 1100:

1100. Any building or facility which is in compliance with the applicable requirements of 661—Chapter 302 shall be deemed to be in compliance with any applicable requirements contained in the International Building Code concerning accessibility for persons with disabilities.

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

Delete chapter 29.

Amend section 3001.2 by adding the following new unnumbered paragraph after the introductory paragraph:

Notwithstanding the references in Chapter 35 to editions of national standards adopted in this section, any editions of these standards adopted by the elevator safety board in 875—Chapter 72 are hereby adopted by reference. If a standard is adopted by reference in this section and there is no adoption by reference of the same standard in 875—Chapter 72, the adoption by reference in this section is of the edition identified in Chapter 35.

Amend section 3401.3 by deleting “International Private Sewage Disposal Code” and inserting in lieu thereof “567 Iowa Administrative Code Chapter 69.”

Delete appendices A through K.

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete all references to the “ICC Electrical Code” and insert in lieu thereof “National Electrical Code, 2005 2008 edition as amended by rule 661—301.5(103A).”

Delete all references to the “International Fuel Gas Code” and insert in lieu thereof “rule 661—301.9(103A).”

**301.3(1)** No change.

**301.3(2)** Reserved.

ITEM 7. Amend rule 661—301.4(103A) as follows:

**661—301.4(103A) Mechanical requirements.** The provisions of the International Mechanical Code, 2006 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for the design, installation, maintenance, alteration, and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related processes within buildings, with the following amendments:

Delete chapter 1.

Delete section 101.1.

Delete sections 103, 104, 105, 106, 107, 108, 109, and 110 and sections therein.

Delete section 403 and insert in lieu thereof the following new section:

#### SECTION 403

#### MECHANICAL VENTILATION

Mechanical ventilation systems shall be designed in accordance with the provisions of ASHRAE Standard 62.1-2004 2007, “Ventilation for Acceptable Indoor Air Quality,” published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, GA 30329.

Delete appendices A and B.

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete all references to the “ICC Electrical Code” and insert in lieu thereof “National Electrical Code, 2005 2008 edition, as amended by rule 661—301.5(103A).”

Delete all references to the “International Fuel Gas Code” and insert in lieu thereof “rule 661—301.9(103A).”

ITEM 8. Amend rule 661—301.6(103A) as follows:

**661—301.6(103A) Plumbing requirements.** Provisions of the state plumbing code, 641—Chapter 25, adopted by the Iowa department of public health state plumbing and mechanical systems board pursuant to Iowa Code chapter 435 105, apply to plumbing installations in cities or which are connected to municipal water systems or municipal wastewater treatment systems this state.

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

EXCEPTION: Factory-built structures, as referenced by Iowa Code section 103A.10(3), that contain plumbing installations are allowed to comply with either the state plumbing code or with International Plumbing Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041. The manufacturer's data plate must indicate which plumbing code was utilized for compliance with this rule, as required by 661—paragraph 16.610(15)“e.”

Private sewage disposal systems shall comply with 567—Chapter 69.

~~301.6(1) Plumbing installations which are not subject to the state plumbing code, 641—Chapter 25, and which are in buildings or facilities subject to the state building code shall comply either with the state plumbing code or with the International Plumbing Code, 2006 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, except that any assembly occupancy, restaurant, pub or lounge constructed on or after January 1, 1991, shall comply with the provisions of subrule 301.6(2) regarding the provision of minimum plumbing facilities.~~

~~If the International Plumbing Code, 2006 edition, is used, section 708.3.3 is deleted and the following new section is inserted in lieu thereof:~~

~~708.3.3 Changes of direction. Cleanouts shall be installed at each fitting with a change of direction greater than 45 degrees (0.79 rad) in the building sewer, building drain and horizontal waste or soil lines. Where more than one change of direction occurs in a run of piping, only one cleanout shall be required for each 40 feet (12 192 mm) of developed length of the drainage piping.~~

~~301.6(2) 301.6(1) Places of public assembly, restaurants, pubs and lounges constructed on or after January 1, 1991, shall provide at least the numbers of plumbing facilities required in the Uniform Plumbing Code, 2000 2009 edition, Table 4-1, published by the International Association of Plumbing and Mechanical Officials, 5001 E. Philadelphia St., Ontario, CA 91761. Additions to, or adding seating capacity in, these types of occupancies shall require the installation of additional fixtures based upon the added number of occupants unless it can be shown that the existing facilities comply for the total number of occupants including the additional occupants.~~

All water closets installed pursuant to this subrule shall be water-efficient water closets complying with requirements of the U.S. Department of Energy.

This subrule is intended to implement Iowa Code section 104B.1.

~~301.6(3) 301.6(2) Fuel gas piping shall comply with the requirements established in rule 661—Chapter 51 301.9(103A).~~

ITEM 9. Amend rule 661—301.7(103A) as follows:

**661—301.7(103A) Existing buildings.**

~~301.7(1) Definition. “Existing building” means a building erected prior to January 1, 2007 2010, or for which plans have received approval from the building code bureau of the fire marshal division of the department of public safety prior to January 1, 2007.~~

~~301.7(2) Adoption. The provisions of the International Existing Building Code, 2006 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for repair, alteration, change of occupancy, addition, and relocation of existing buildings, with the following amendments:~~

~~Delete chapter 1.~~

~~Delete section 101.1.~~

~~Delete section 101.4.2 and insert in lieu thereof the following new section:~~

~~101.4.2 Buildings Previously Occupied. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as specifically covered in this code or the state fire code, or as deemed necessary by the building code commissioner for the general safety and welfare of the occupants and the public.~~

~~Delete section 101.5.4.~~

~~Delete section 101.5.4.1.~~

~~Delete section 101.5.4.2.~~

~~Delete section 101.7.~~

~~Delete sections 103, 104, and 105 and sections therein.~~

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

Delete sections 106.1, 106.3.1, 106.3.3, 106.5, and 106.6.

Delete sections 108, 109, 110, 112, 113, 114, 115, 116 and 117 and sections therein.

Delete section 605.

Delete section 706.

Delete section 806.

Delete section 912.8.

Delete chapters A1 through A5.

Adopt appendix B, with the following amendments:

Delete section B101 and insert in lieu thereof the following new section:

Any building or facility subject to this rule shall comply with the provisions of 661—Chapter 302.

Delete sections B102, B103, and B104.

Delete appendix B and insert in lieu thereof the following new section:

Any building or facility subject to this rule shall comply with the provisions of 661—Chapter 302.

Delete resource A.

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete all references to the “ICC Electrical Code” and insert in lieu thereof “National Electrical Code, 2005 2008 edition, as amended by rule 661—301.5(103A).”

Delete all references to the “International Fuel Gas Code” and insert in lieu thereof “rule 661—301.9(103A).”

ITEM 10. Amend rule 661—301.8(103A) as follows:

**661—301.8(103A) Residential construction requirements.** The provisions of the International Residential Code, 2006 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal, and demolition of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures, with the following amendments:

Delete chapters 1 and 11.

Delete section R101.1.

Delete sections R103 to R114 and sections therein.

NOTE: The values for table R301.2(1) shall be determined by the location of the project and referenced footnotes from table R301.2(1).

Delete chapter 11.

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete section R310.1 and insert in lieu thereof the following new section:

R310.1 Emergency escape and rescue required. Basements and every sleeping room shall have at least one operable emergency and rescue opening. Such opening shall open directly into a public street, public alley, yard or court. Where basements contain one or more sleeping rooms, emergency egress and rescue openings shall be required in each sleeping room, but shall not be required in adjoining areas of the basement. Where emergency escape and rescue openings are provided they shall have a sill height of not more than 44 inches (1118 mm) above an adjacent permanent interior standing surface. The adjacent permanent interior standing surface shall be no less than 36 inches wide and 18 inches deep and no more than 24 inches high. Where a door opening having a threshold below the adjacent ground elevation serves as an emergency escape and rescue opening and is provided with a bulkhead enclosure, the bulkhead enclosure shall comply with section R310.3. The net clear opening dimensions required by this section shall be obtained by the normal operation of the emergency escape and rescue opening from the inside. Emergency escape and rescue openings with a finished sill height below the adjacent ground elevation shall be provided with a window well in accordance with section R310.2. Emergency escape and rescue openings shall open directly into a public way, or to a yard or court that opens to a public way.

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

EXCEPTION: Basements used only to house mechanical equipment and not exceeding total floor area of 200 square feet (18.58 m<sup>2</sup>).

Delete section R313.1 and insert in lieu thereof the following new section:

R313.1 Townhouse automatic residential fire sprinkler systems. Effective January 1, 2013, an automatic residential fire sprinkler system shall be installed in townhouses.

EXCEPTION: An automatic residential fire sprinkler system shall not be required when additions or alterations are made to an existing townhouse that does not have an automatic residential fire sprinkler system installed.

Delete section R313.2 and insert in lieu thereof the following new section:

R313.2 One- and two-family dwellings automatic residential fire sprinkler systems. Effective January 1, 2013, an automatic residential fire sprinkler system shall be installed in one- and two-family dwellings.

EXCEPTION: An automatic residential fire sprinkler system shall not be required for additions or alterations to an existing building that is not already provided with an automatic fire sprinkler system.

Amend section ~~R324.1.6~~ R322.1.7 by striking the words “Chapter 3 of the International Private Sewage Disposal Code” and inserting in lieu thereof “567 Iowa Administrative Code Chapter 69.”

Delete section R907.3 and insert in lieu thereof the following new section:

R907.3 Recovering versus replacement. New roof coverings shall not be installed without first removing all existing layers of roof coverings where any of the following conditions exist:

1. Where the existing roof or roof covering is water-soaked or has deteriorated to the point that the existing roof or roof covering is not adequate as a base for additional roofing.

2. Where the existing roof covering is wood shake, slate, clay, cement or asbestos cement tile.

3. Where the existing roof has two or more applications of any type of roof covering.

Delete chapter 24 and sections therein and insert in lieu thereof the following new section:

All fuel gas piping installations shall comply with rule 661—301.9(103A).

Delete chapters 25 to 33 and sections therein, except for section P2904, and insert in lieu thereof the following new section:

All plumbing installations shall comply with the state plumbing code as adopted by the state plumbing and mechanical systems board pursuant to Iowa Code chapter 105.

EXCEPTION: Factory-built structures, as referenced by Iowa Code section 103A.10(3), that contain plumbing installations are allowed to comply with either the state plumbing code or with the International Plumbing Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041. The manufacturer’s data plate must indicate which plumbing code was utilized for compliance with this rule, as required by 661—paragraph 16.610(15)“e.”

Add the following new sections:

~~P2500. Chapter 25 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.~~

~~P2600. Chapter 26 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.~~

~~P2700. Chapter 27 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.~~

~~P2800. Chapter 28 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.~~

~~P2900. Chapter 29 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.~~

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

~~P3000. Chapter 30 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.~~

~~P3100. Chapter 31 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.~~

~~P3200. Chapter 32 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.~~

Delete chapters 34 to 43 and sections therein and insert in lieu thereof the following new section:

All electrical installations shall comply with National Electrical Code, 2008 edition, as amended by rule 661—301.5(103A).

Delete appendices A through Q.

ITEM 11. Adopt the following **new** rule 661—301.9(103A):

**661—301.9(103A) Fuel gas piping requirements.** Fuel gas piping shall comply with the requirements of 661—Chapter 221. Liquefied petroleum gas facilities and appliances shall comply with rule 661—226.1(101).

ITEM 12. Adopt the following **new** rule 661—301.10(103A):

**661—301.10(103A) Transition period.** A construction project that is subject to the provisions of any rule in 661—Chapter 301 or 661—Chapter 303 which requires compliance with provisions of the 2009 edition of any code published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, may comply with the requirements established either in the edition of the code adopted herein or the requirements established in the edition of the same code previously in effect if the project is commenced no later than March 31, 2010. “Commenced” shall mean that the submitter has obtained preliminary approval from the commissioner or a local building department pursuant to rule 661—300.6(103A) prior to April 1, 2010. If final approval for the project design has not been obtained prior to October 1, 2010, the project is subject to the provisions of 661—Chapters 301 and 303 in effect as of January 1, 2010.

ITEM 13. Amend rule 661—303.2(103A) as follows:

**661—303.2(103A) Residential energy code.** The International Energy Conservation Code, 2006 ~~2009~~ edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, is adopted by reference as the residential energy code of the state of Iowa building code, applicable to residential construction limited to three or fewer stories throughout the state of Iowa, with the following amendments:

~~1. Delete sections 101, 103, 104, 105, and 106, and all sections contained within each of these.~~

Delete section 101.1.

Delete section 101.2.

Delete section 103.3.1.

Delete section 103.3.2.

Delete section 103.3.3.

Delete section 103.4.

Delete section 103.5.

Delete sections 104, 107, 108, and 109 and all sections contained within each of these.

2. Strike section 403.2.2 and adopt the following new section 403.2.2 in lieu thereof:

~~403.2.2 Sealing. All ducts, air handlers, filter boxes, and building cavities used as ducts shall be sealed. Joints and seams shall comply with Section M1601.3.1 of the International Residential Code. Air handlers with a manufacturer’s designation for an air leakage of no more than 2 percent of the design air flow rate when tested at an air pressure of 1 inch water gauge when all air inlets, air outlets, and~~

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

~~condensate drain port(s) are sealed shall be deemed sealed. Air handlers with filter boxes shall be tested with the filter box in place.~~

~~3. Delete chapter 5.~~

ITEM 14. Amend rule 661—303.3(103A) as follows:

**661—303.3(103A) Adoption of nonresidential energy code.** The International Energy Conservation Code, 2006 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, is hereby adopted by reference as the nonresidential energy code of the state building code, applicable to commercial construction or residential construction of four or more stories within the state of Iowa, with the following amendments:

~~1. Delete sections 101, 103, 104, 105, and 106, and all sections contained within each of these.~~

~~Delete section 101.1.~~

~~Delete section 101.2.~~

~~Delete section 103.3.1.~~

~~Delete section 103.3.2.~~

~~Delete section 103.3.3.~~

~~Delete section 103.4.~~

~~Delete section 103.5.~~

~~Delete sections 104, 107, 108, and 109 and all sections contained within each of these.~~

~~2. Delete chapter 4.~~

ITEM 15. Amend subrule 303.4(2) as follows:

**303.4(2) Notification by state agency.** Any public agency which is a state agency as defined in Iowa Code section 7D.34 shall, within 60 days of final selection of a design architect or engineer, notify the commissioner and the ~~department of natural resources~~ office of energy independence of the methodology to be used to perform the life cycle cost analysis. Notice shall be given on the forms provided by the ~~department of natural resources~~ office of energy independence for this purpose. A life cycle cost analysis prepared by a state agency shall be submitted in sufficient time ahead of the release of plans for bids to allow for revisions or additions which may be made to the plans. Public funds shall not be used for the construction or renovation of a facility unless the design for the work is prepared in accordance with Iowa Code chapter 470 and the actual construction or renovation is consistent with the design.

ITEM 16. Amend paragraphs **303.4(3)“b,” “c” and “d”** as follows:

*b.* The public agency shall implement all recommendations of the life cycle cost analysis except those which have been approved for exemption by the commissioner and the director of ~~natural resources~~ the office of energy independence.

EXCEPTION: The public agency is not required to implement any recommendation which would result in a violation of any other provision of law. If the public agency determines that compliance with any recommendation of the life cycle cost analysis would result in a violation of law, the public agency shall so notify the commissioner.

*c.* The commissioner and the director of ~~natural resources~~ the office of energy independence shall evaluate each request for an exemption on a case-by-case basis.

*d.* The commissioner and the director of ~~natural resources~~ the office of energy independence shall consider the following factors in determining whether or not to grant an exemption:

(1) to (6) No change.

[Filed 10/28/09, effective 1/1/10]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.

**ARC 8304B****PUBLIC SAFETY DEPARTMENT[661]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 103A.41, the Building Code Commissioner, with the approval of the State Historical Society Board of Trustees, hereby amends Chapter 350, "State Historic Building Code," Iowa Administrative Code.

Iowa Code section 103A.41 authorizes and requires the Building Code Commissioner, with the approval of the State Historical Society Board of Trustees, to adopt the State Historic Building Code. The State Historic Building Code provides an "alternative" building code for qualified historic buildings that meet the requirements for inclusion in the National Register of Historic Places.

The amendment adopted herein updates references to the International Existing Building Code from the 2006 edition to the 2009 edition. The 2006 edition of the International Existing Building Code was adopted as the basis of the State Historic Building Code in 2006 and became effective on January 1, 2007.

Notice of Intended Action for this amendment was published in the September 23, 2009, Iowa Administrative Bulletin as **ARC 8180B**. A public hearing on this amendment was held on October 13, 2009, in Des Moines. No comments were received regarding the amendment. This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code sections 103A.41 to 103A.45.

This amendment will become effective January 1, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [350.1(3)] is being omitted. This amendment is identical to that published under Notice as **ARC 8180B**, IAB 9/23/09.

[Filed 10/28/09, effective 1/1/10]

[Published 11/18/09]

[For replacement pages for IAC, see IAC Supplement 11/18/09.]

**ARC 8284B****REAL ESTATE COMMISSION[193E]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 543B.9 and 543B.18, the Real Estate Commission hereby amends Chapter 6, "Termination and Transfer," Iowa Administrative Code.

The amendment to paragraph 6.2(1)"b" requires that a request for transfer submitted by a licensee to the licensee's current broker be signed and returned to the requesting licensee within 48 hours.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8058B** on August 26, 2009. No comments were received from the public. This amendment is identical to that published under Notice.

This amendment was adopted by the Commission on October 22, 2009.

This amendment shall become effective on December 23, 2009.

This amendment is intended to implement Iowa Code section 543B.33.

The following amendment is adopted.

Amend paragraph **6.2(1)"b"** as follows:

*b. Step 2.* If a new affiliating broker has completed and signed step 1 of the ~~form~~ Application to Transfer, the releasing broker ~~must~~ shall, within 48 hours, make every reasonable effort to sign and date return the transfer form and ~~attach the old license of the transferring licensee to the form to the~~



REAL ESTATE COMMISSION[193E](cont'd)

requesting licensee. The releasing broker shall retain copies for records to demonstrate compliance with Iowa Code section 543B.33.

[Filed 10/22/09, effective 12/23/09]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.

**ARC 8285B**

**REAL ESTATE COMMISSION[193E]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 543B.9 and 543B.18, the Real Estate Commission hereby amends Chapter 14, "Seller Property Condition Disclosure," Iowa Administrative Code.

The amendments to subrule 14.1(6) require that Seller(s) and Buyer(s) acknowledge the delivery and receipt of the "Iowa Radon Home-Buyers and Sellers Fact Sheet" informational pamphlet provided by the Iowa Department of Public Health concerning radon gas. The amendments also change the listed order of the items for which the Buyer(s) acknowledges receipt.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8057B** on August 26, 2009. Comments were received from the public and changes were made as a result of the comments received. In the amendments published under Notice, the licensee, Buyer(s), and Seller(s) were to acknowledge receipt of the informational pamphlet. As a result of public comment received at the hearing on September 15, 2009, the Commission removed the requirement that licensees acknowledge receipt of the pamphlet.

These amendments were adopted by the Commission on October 22, 2009.

These amendments shall become effective on December 23, 2009.

These amendments are intended to implement Iowa Code sections 543B.9 and 543B.18.

The following amendments are adopted.

ITEM 1. Amend subrule **14.1(6)**, Residential Property Seller Disclosure Statement, section entitled "Seller(s) Disclosure," as follows:

**SELLER(S) DISCLOSURE:**

Seller(s) discloses the information regarding this property based on information known or reasonably available to the Seller(s).

The Seller(s) has owned the property since \_\_\_\_/\_\_\_\_/\_\_\_\_. The Seller(s) certifies that as of the date signed this information is true and accurate to the best of my/our knowledge.

Seller(s) acknowledges requirement that Buyer(s) be provided with the "Iowa Radon Home-Buyers and Sellers Fact Sheet" prepared by the Iowa Department of Public Health.

Seller\_\_\_\_\_

Seller\_\_\_\_\_

Date \_\_\_\_/\_\_\_\_/\_\_\_\_

Date \_\_\_\_/\_\_\_\_/\_\_\_\_

REAL ESTATE COMMISSION[193E](cont'd)

ITEM 2. Amend subrule **14.1(6)**, Residential Property Seller Disclosure Statement, section entitled "Buyer(s) Acknowledgment," as follows:

**BUYER(S) ACKNOWLEDGMENT:**

Buyer(s) acknowledges receipt of a copy of this Real Estate Disclosure Statement. This statement is not intended to be a warranty or to substitute for any inspection ~~the buyer(s)~~ Buyer(s) may wish to obtain.

Buyer(s) acknowledges receipt of the "Iowa Radon Home-Buyers and Sellers Fact Sheet" prepared by the Iowa Department of Public Health.

Buyer \_\_\_\_\_ Buyer \_\_\_\_\_  
Date \_\_\_/\_\_\_/\_\_\_ Date \_\_\_/\_\_\_/\_\_\_

[Filed 10/22/09, effective 12/23/09]

[Published 11/18/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/18/09.