



IOWA ADMINISTRATIVE BULLETIN

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PREFACE

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

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

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

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

STEPHANIE A. HOFF, Administrative Code Editor

Telephone: (515)281-3355

Fax: (515)281-5534

CITATION of Administrative Rules

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

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

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

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

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

Schedule for Rule Making 2013

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

PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
13	Wednesday, December 4, 2013	December 25, 2013
14	Wednesday, December 18, 2013	January 8, 2014
15	Friday, January 3, 2014	January 22, 2014

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 10, 2013, at 9:30 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

AGING, DEPARTMENT ON[17]

Senior internship program—name change to older American community service employment program, amendments to ch 10 Filed **ARC 1172C** 11/13/13

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Grape and wine development funding program, rescind ch 52 Notice **ARC 1193C** 11/27/13
Trichomoniasis testing of bulls brought into Iowa, 65.4(3)“c” Notice **ARC 1179C** 11/13/13

DENTAL BOARD[650]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Sedation and nitrous oxide inhalation analgesia, 29.1 to 29.5, 29.9(1), 29.10 to 29.14 Filed Emergency After Notice **ARC 1194C** 11/27/13

ECONOMIC DEVELOPMENT AUTHORITY[261]

Reinvestment districts program, ch 200 Filed **ARC 1175C** 11/13/13

EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]“umbrella”

Out-of-state applicants for Iowa licensure—provision of valid or expired license with application, 13.3, 13.17(1) Filed **ARC 1166C** 11/13/13
Master educator license—degree from regionally accredited college or university, 13.8 Filed **ARC 1168C** 11/13/13
Substitute teacher license—in-state and out-of-state graduates required to pass Iowa-mandated assessment(s), 13.16(1) Notice **ARC 1182C** 11/13/13
International exchange license, 13.17(3) Notice **ARC 1181C** 11/13/13
Engineering and STEM endorsements, 13.28(31), 13.28(32), 17.1(3) Filed **ARC 1171C** 11/13/13
Superintendent/AEA administrator—demonstration of required experience, 18.10 Filed **ARC 1167C** 11/13/13
Iowa jobs for America’s graduates (iJAG) authorization, 22.7 Notice **ARC 1180C** 11/13/13
Prohibited conduct between licensees and former students, 25.3(1) Filed **ARC 1170C** 11/13/13

ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

Storm water permits—notice of intent, transfer agreements, 64.6, 64.15 Notice **ARC 1176C** 11/13/13
Onsite wastewater assistance program, 93.3(1), 93.4(1) Notice **ARC 1177C** 11/13/13

HUMAN SERVICES DEPARTMENT[441]

Autism support program, ch 22 Notice **ARC 1184C** 11/13/13
Mental health and disability services—regional service system, amendments to ch 25 Filed **ARC 1173C** 11/13/13
Medicaid coverage for transplants, 78.1(20)“a” Notice **ARC 1185C** 11/13/13
Healthy and well kids in Iowa (HAWK-I) program, amendments to ch 86 Notice **ARC 1183C** 11/13/13

INSPECTIONS AND APPEALS DEPARTMENT[481]

Food and consumer safety, ch 30 Filed **ARC 1190C** 11/27/13
Food establishment and food processing plant inspections, ch 31 Filed **ARC 1191C** 11/27/13

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]“umbrella”

Credit for reinsurance—update of cross references, 5.33 Notice **ARC 1178C** 11/13/13
Burial sites and cemeteries, rescind ch 18; adopt ch 140 Filed **ARC 1186C** 11/13/13

LABOR SERVICES DIVISION[875]

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

Boiler inspection schedule, 90.6(2) Filed **ARC 1189C** 11/27/13

MEDICINE BOARD[653]

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Fees for licensure, amendments to chs 8 to 10 Filed **ARC 1187C** 11/27/13
Iowa physician health committee, 14.2, 14.4(2), 14.5 to 14.7, 14.8(2), 14.9, 14.11 Filed **ARC 1188C** 11/27/13

NURSING BOARD[655]

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Purchase of or access to rosters of licensees, 11.5 Filed **ARC 1174C** 11/13/13**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Podiatrists, orthotists, prosthetists, and pedorthists—licensure, discipline, continuing education, amend 5.15, ch 224; adopt chs 221, 225 Filed **ARC 1192C** 11/27/13Continuing education for podiatrists, 222.3(2) Notice **ARC 1199C** 11/27/13**PUBLIC SAFETY DEPARTMENT[661]**Energy conservation code—adoption by reference, 301.10, 303.1 to 303.3 Notice **ARC 1198C** 11/27/13**REAL ESTATE APPRAISER EXAMINING BOARD[193F]**

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COMMERCE DEPARTMENT[181]"umbrella"

Nonresident certification by reciprocity, 10.1 Filed **ARC 1197C** 11/27/13**REVENUE DEPARTMENT[701]**Agricultural real estate—algae cultivation and production, 71.1(3) Filed **ARC 1196C** 11/27/13Business property tax credit, 80.30 Notice **ARC 1200C** 11/27/13**UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]"umbrella"

Natural gas and electric safety standards; compressed natural gas providers, 10.12(1), 10.17, 15.10(1), 19.2(5), 19.5(2), 19.14, 20.5(2), 25.2, 25.3(5), 45.1 Notice **ARC 1169C** 11/13/13**ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS**

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

Senator Mark Chelgren
819 Hutchinson
Ottumwa, Iowa 52501

Representative Lisa Heddens
4115 Wembley Avenue
Ames, Iowa 50010

Senator Thomas Courtney
2609 Clearview
Burlington, Iowa 52601

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

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

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

Senator Pam Jochum
2368 Jackson Street
Dubuque, Iowa 52001

Representative Jeff Smith
1006 Brooks North Lane
Okoboji, Iowa 51355

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

Representative Guy Vander Linden
1610 Carbonado Road
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Brenna Findley
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 18
Des Moines, Iowa 50319
Telephone (515)281-5211

EDUCATIONAL EXAMINERS BOARD[282]

Substitute teacher license—in-state and out-of-state graduates required to pass Iowa-mandated assessment(s), 13.16(1) IAB 11/13/13 ARC 1182C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	December 4, 2013 1 p.m.
International exchange license, 13.17(3) IAB 11/13/13 ARC 1181C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	December 4, 2013 1 p.m.
Iowa jobs for America's graduates (iJAG) authorization, 22.7 IAB 11/13/13 ARC 1180C	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	December 4, 2013 1 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Storm water permits—notice of intent, transfer agreements, 64.6, 64.15 IAB 11/13/13 ARC 1176C	5E Conference Room Wallace State Office Bldg. Des Moines, Iowa	December 12, 2013 9 a.m.
Onsite wastewater assistance program, 93.3(1), 93.4(1) IAB 11/13/13 ARC 1177C	5E Conference Room Wallace State Office Bldg. Des Moines, Iowa	December 4, 2013 3:30 to 5:30 p.m.

INSURANCE DIVISION[191]

Credit for reinsurance—update of cross references, 5.33 IAB 11/13/13 ARC 1178C	Conference Room 4 North Two Ruan Center, 4th Floor 601 Locust St. Des Moines, Iowa	December 4, 2013 10 a.m.
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Drug product selection, 6.9(8)"b," 6.11 IAB 11/13/13 ARC 1165C [See ARC 1041C , IAB 10/2/13]	Conference Room, Suite E 400 SW 8th St. Des Moines, Iowa	December 17, 2013 1 p.m.
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PROFESSIONAL LICENSURE DIVISION[645]

Continuing education for podiatrists, 222.3(2) IAB 11/27/13 ARC 1199C	Fifth Floor Conference Room 526 Lucas State Office Bldg. Des Moines, Iowa	December 17, 2013 9 to 9:30 a.m.
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PUBLIC SAFETY DEPARTMENT[661]

Energy conservation code—adoption by reference, 301.10, 303.1 to 303.3 IAB 11/27/13 ARC 1198C	First Floor Conference Room 125 Oran Pape State Office Bldg. 215 E. 7th St. Des Moines, Iowa	January 7, 2014 10 a.m.
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REVENUE DEPARTMENT[701]

Business property tax credit, 80.30 IAB 11/27/13 ARC 1200C	First Floor Auditorium Wallace State Office Bldg. Des Moines, Iowa	December 17, 2013 10 to 11:30 a.m.
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UTILITIES DIVISION[199]

Natural gas and electric safety standards; compressed natural gas providers, 10.12(1), 10.17, 15.10(1), 19.2(5), 19.5(2), 19.14, 20.5(2), 25.2, 25.3(5), 45.1
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Board Hearing Room
1375 E. Court Ave.
Des Moines, Iowa

December 18, 2013
9:30 a.m.

The following list will be updated as changes occur.

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

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

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

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ARC 1193C**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 159.5(10), the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to rescind Chapter 52, “Grape and Wine Development Funding Program,” Iowa Administrative Code.

The proposed amendment eliminates the program because the funding has been transferred to Iowa State University and the statutory provisions in Iowa Code chapter 175A have been repealed.

Any interested persons may make written comments or suggestions on the proposed amendment on or before 4:30 p.m. on December 17, 2013. Written comments should be sent to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319; or faxed to (515)281-6236. E-mail comments may be sent to Margaret.Thomson@IowaAgriculture.gov.

No waiver provision is included in the proposed amendment.

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

This amendment is intended to implement Iowa Code section 159.5.

The following amendment is proposed.

Rescind and reserve **21—Chapter 52**.

CIVIL REPARATIONS TRUST FUND

Pursuant to Iowa Administrative Code 361—subrule 12.2(1), the Executive Council gives Notice that the Civil Reparations Trust Fund balance as of October 25, 2013, is approximately \$492,204.00. Money in the Civil Reparations Trust Fund is available for use for indigent civil litigation programs or insurance assistance programs. Application forms are available in the office of the State Treasurer by contacting GeorgAnna Madsen, Executive Secretary, State Capitol Room 114, Des Moines, Iowa 50319; telephone (515)281-5368. Applications must be filed on the thirtieth day after the date of publication of this Notice in the Iowa Administrative Bulletin, or on the thirtieth day after the date affixed to the Notice sent by first-class mail, whichever is later. Any person/company that would like to receive future notices should make request in writing to the above-mentioned contact. Rules regarding the Civil Reparations Trust Fund can be found at 361 IAC Chapter 12.

ARC 1199C

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 sections 147.10 and 147.76, the Board of Podiatry hereby gives Notice of Intended Action to amend Chapter 222, “Continuing Education for Podiatrists,” Iowa Administrative Code.

The proposed amendment allows podiatrists to earn continuing education credit for presenting a continuing education course or teaching a college level course that is directly related to the practice of podiatry.

Any interested person may make written comments on the proposed amendment no later than December 17, 2013, addressed to Tony Alden, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; e-mail tony.alden@idph.iowa.gov.

A public hearing will be held on December 17, 2013, from 9 to 9:30 a.m. in the Fifth Floor Conference Room 526, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendment.

After analysis and review of this rule making, no adverse impact on jobs exists.

This amendment is intended to implement Iowa Code section 147.10.

The following amendment is proposed.

Amend subrule 222.3(2) as follows:

222.3(2) Specific criteria.

a. Licensees may obtain continuing education hours of credit by teaching in a college, university, or graduate school that is recognized by the U.S. Department of Education. The licensee may receive credit on a one-time basis for the first offering of a course.

~~a.~~ b. Continuing education hours of credit may be obtained by completing the following programs/activities of a podiatric scientific nature and sponsored by an accredited college of podiatric medicine or the American Podiatric Medical Association or a regional or state affiliate or nonprofit hospital that are:

(1) Educational activities in which participants and faculty are present at the same time and attendance can be verified. Such activities include lectures, conferences, focused seminars, clinical and practical workshops, simultaneous live satellite broadcasts and teleconferences;

(2) Scientifically oriented material or risk management activities.

~~b.~~ c. If the podiatrist utilizes conscious sedation, the podiatrist shall obtain a minimum of one hour of continuing education in the area of conscious sedation or other related topics;

~~e.~~ d. Combined maximum per biennium of 20 hours for the following continuing education source areas shall not exceed:

(1) Presenting professional programs which (1) meet the criteria listed in this subrule. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit.

~~(1)~~ (2) Ten hours of credit for viewing videotaped presentations if the following criteria are met:

1. There is an approved sponsoring group or agency;
2. There is a facilitator or program official present;
3. The program official is not the only attendee; and
4. The program meets all the criteria in 645—222.3(149,272C).

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

~~(2)~~ (3) Ten hours of credit for computer-assisted instructional courses or programs pertaining to patient care and the practice of podiatric medicine and surgery. These courses and programs must be approved by the American Podiatric Medical Association or its affiliates and have a certificate of completion that includes the following information:

1. Date course/program was completed;
2. Title of course/program;
3. Number of course/program contact hours; and
4. Official signature or verification of course/program sponsor.

~~(3)~~ (4) Five hours of credit for reading journal articles pertaining to patient care and the practice of podiatric medicine and surgery. The licensee must pass a required posttest and be provided with a certificate of completion.

~~e.~~ e. No office management courses will be accepted by the board.

~~e.~~ Rescinded IAB 8/3/05, effective 9/7/05.

~~f.~~ f. Continuing education hours of credit equivalents for academic coursework per biennium are as follows:

- 1 academic semester hour = 15 continuing education hours
- 1 academic quarter hour = 10 continuing education hours
- g. Credit is given only for actual hours attended.

ARC 1198C**PUBLIC SAFETY DEPARTMENT[661]****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 103A.7, 103A.11 and 103A.14, the Building Code Commissioner in the Department of Public Safety and the Building Code Advisory Council hereby give Notice of Intended Action to amend Chapter 301, “State Building Code—General Provisions,” and Chapter 303, “State Building Code—Requirements for Energy Conservation in Construction,” Iowa Administrative Code.

The Building Code Commissioner in the Department of Public Safety is authorized to adopt administrative rules, and the Building Code Advisory Council is authorized to approve or disapprove the administrative rules, according to Iowa Code sections 103A.7, 103A.11, and 103A.14. The proposed amendments implement the policy of adopting the energy code provisions that are closely connected to the mechanical code adopted in Iowa. Plumbing and mechanical codes are required to comply with the most current code cycle, pursuant to Iowa Code section 105.4 as amended by 2013 Iowa Acts, Senate File 427, effective April 26, 2013. The most recent editions of the codes used in the construction industry reflect current industry standards, and adoption of the current codes helps to promote consistency in the regulations affecting the construction industry.

A public hearing on these proposed amendments will be held on January 7, 2014, at 10 a.m. in the first floor public conference room (Room 125) of the Oran Pape State Office Building, 215 East 7th Street, Des Moines, Iowa. Persons may present their views orally or in writing at the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail to Agency Rules Administrator, Iowa Department of Public Safety, Oran Pape State Office Building, 215 East 7th Street, Des Moines, Iowa 50319, or by electronic mail to admrule@dps.state.ia.us by 4:30 p.m. on January 6, 2014.

Adoption of the 2012 energy code is proposed because the energy code and mechanical code are closely related, and newly enacted statutory provisions require the adoption of the most recent edition

PUBLIC SAFETY DEPARTMENT[661](cont'd)

of the mechanical code. In addition, federal regulations mandate substantial compliance (by 2017) with certain standards set in the 2009 International Energy Conservation Code (IECC). That level of compliance would require changes in current standard practices in the industry, although business trends are making compliance easier and more affordable. Adoption of the 2012 energy code can establish progress toward compliance, which may make federal funding options available to Iowans, and promote economic development. The out-of-pocket expense for purchase of the energy code is a fraction of the cost of the entire family of 2012 building codes.

Prior to publication of this Notice, informal meetings were held with stakeholders in the construction industry. Those stakeholders have reached consensus in support of the adoption of the most recent edition of the International Building Code, including the adoption of the 2012 energy code.

An informal working group of stakeholders was also convened to discuss plans to achieve compliance in the most effective way. The working group met several times from March 2013 to May 2013 to focus on the practical implications of adoption of amendments to the state energy code. The informal working group included representatives from multiple stakeholders, including the Iowa Home Builders Association; local building code officials; Iowa Finance Authority; Iowa Economic Development Authority; Alliant Energy; Cedar Falls Utilities; American Institute of Architects (AIA); American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE); Leadership in Energy & Environmental Design (LEED); Home Energy Rating System (HERS); residential and commercial contractors, including Hubbell Construction, Bell Brothers and Jerry's Homes; American Chemistry Association; and American Plywood Association. The working group also benefited from assistance from the Midwest Energy Efficiency Alliance (MEEA), which assists many Midwestern states with energy code issues, because MEEA representatives were familiar with the amendments adopted in the surrounding states of Minnesota, Illinois and Nebraska.

Based on the recommendations of the working group, this proposed rule making is designed to adopt the commercial IECC with no amendments and to adopt the residential IECC with five amendments. The proposed amendments are consistent with recent 2012 IECC adoptions in Minnesota and Illinois.

The economic impact of the adoption of the energy code should be positive. United States Census data show that Iowa suffered less and has recovered faster than its neighboring states during the latest recessionary period. Similarly, Associated General Contractor data also show that Iowa's economic recovery has occurred faster than the national average. In fact, construction employment in Iowa rose 7 percent from 2008 to 2012, in comparison to the national average of just 1.3 percent, and Iowa ranked fourth out of 51 jurisdictions in its construction employment numbers. Given Iowa's economic edge in recovering from the recessionary period in 2008 to 2010, it is not surprising to see that measures of both residential and nonresidential construction are stronger in Iowa in comparison to its neighbors.

Iowa's strong recovery means that construction in the state is likely to continue to be strong. Eligibility for federal funding programs can provide additional incentives to build in Iowa, and use of energy-efficient construction also can support financing of construction and reduce the long-term costs for the buildings constructed. This investment in infrastructure can have long-term benefits for businesses, workers and homeowners.

After analysis and review of this rule making, there should be a positive impact on jobs. Increased opportunity for building in Iowa, including access to federal funding to support the projects, is likely to increase jobs in the construction industry. It also supports other economic growth opportunities because new construction supports and enhances other economic development. The Board will continue to work with stakeholders to maximize this rule making's positive impact on jobs.

Rules regarding the building code are subject to the waiver provisions of rule 661—10.222(17A). The Commissioner and the Board do not have authority to waive requirements established by statute, according to Iowa Code section 103A.7.

These amendments are intended to implement Iowa Code sections 103A.7, 103A.8, and 103A.8A.

The following amendments are proposed.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 1. Rescind rule 661—301.10(103A) and adopt the following **new** rule in lieu thereof:

661—301.10(103A) Transition period. A construction project which 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 between January 1, 2014, and March 31, 2014.

ITEM 2. Amend rule 661—303.1(103A) as follows:

661—303.1(103A) Scope and applicability of energy conservation requirements.

303.1(1) Scope. Rules 661—303.1(103A) through 661—303.3(103A) establish thermal energy efficiency standards for the design of new buildings and structures or portions thereof, additions to existing buildings, and renovation and remodeling of existing buildings, except for residential buildings of one or two dwelling units, which are intended for human occupancy and which are heated or cooled by regulating their exterior envelopes and selection of their heating, ventilation, and air-conditioning systems, service water heating systems and equipment for the efficient use of energy, and lighting efficiency standards for buildings intended for human occupancy which are lighted.

303.1(2) Applicability. Rules 661—303.1(103A) through 661—303.3(103A) apply to design and construction of buildings which are intended for human occupancy throughout the state of Iowa. Any construction of buildings or facilities which are intended for human occupancy and which are heated or cooled is covered, with the exception of renovation and remodeling of residential buildings of one or two dwelling units, which are not covered. Rule 661—303.2(103A) establishes standards for design and construction of residential buildings of three or fewer stories. Rule 661—303.3(103A) establishes standards for design and construction of commercial buildings and residential buildings of four or more stories. The occupancy of any building covered by this chapter shall be determined based upon the occupancy definitions in chapter 3 of the International Building Code, ~~2006~~ 2012 edition.

303.1(3) No change.

ITEM 3. Amend rule 661—303.2(103A) as follows:

661—303.2(103A) Residential energy code. The International Energy Conservation Code — Residential Provisions, ~~2009~~ 2012 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:

~~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.~~

~~Delete chapter 5.~~

~~Delete section R101.1.~~

~~Delete section R101.2 and insert in lieu thereof the following new section:~~

R101.2 Scope. This code applies to residential buildings and the building sites and associated systems and equipment as defined pursuant to 661—subrule 303.1(2). The remodeling or renovation of one- and two-family dwelling units is not within the scope of this code.

~~Delete section R103.3.1.~~

~~Delete section R103.3.2.~~

~~Delete section R103.3.3.~~

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Delete section R104.1 and insert in lieu thereof the following new section:

R104.1 General. Construction or other work that is required to be inspected by state law or local ordinance shall be in accordance with sections R104.2 through R104.8. The state fire marshal shall have authority to perform audits to ensure compliance with the requirements of this code. When local governments conduct compliance audits, the information may be provided to the Department of Energy or to the state fire marshal in a timely way. Local governments may contract with the state fire marshal to conduct audits.

Delete sections R108 and R109 and all sections contained therein.

Delete section R402.1.1 and insert in lieu thereof the following new section:

R402.1.1 Insulation and fenestration criteria. The building thermal envelope shall meet the requirements of Table R402.1.1 based on the climate zone specified in chapter 3.

Table R402.1.1

Table R402.1.1 Insulation and Fenestration Requirements by Component^a

<u>Climate Zone</u>	<u>Fenestration U-Factor^b</u>	<u>Skylight U-Factor^b</u>	<u>Glazed Fenestration SHGC^{b,e}</u>	<u>Ceiling R-Value</u>	<u>Wood Frame Wall R-Value</u>	<u>Mass Wall R-Valueⁱ</u>	<u>Floor R-Value</u>	<u>Basement Wall R-Value^c</u>	<u>Slab R-Value & Depth^d</u>	<u>Crawl Space^c Wall R-Value</u>
<u>1</u>	<u>NR</u>	<u>.75</u>	<u>.25</u>	<u>30</u>	<u>13</u>	<u>3/4</u>	<u>13</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>2</u>	<u>.40</u>	<u>.65</u>	<u>.25</u>	<u>38</u>	<u>13</u>	<u>4/6</u>	<u>13</u>	<u>0</u>	<u>0</u>	<u>0</u>
<u>3</u>	<u>.35</u>	<u>.55</u>	<u>.25</u>	<u>38</u>	<u>20 or 13+5^h</u>	<u>8/13</u>	<u>19</u>	<u>5/13^f</u>	<u>0</u>	<u>5/13</u>
<u>4</u>	<u>.35</u>	<u>.55</u>	<u>.40</u>	<u>49</u>	<u>20 or 13+5^h</u>	<u>8/13</u>	<u>19</u>	<u>10/13</u>	<u>10, 2ft</u>	<u>10/13</u>
<u>5</u>	<u>.32</u>	<u>.55</u>	<u>NR</u>	<u>49</u>	<u>20 or 13+5^h</u>	<u>13/17</u>	<u>30^g</u>	<u>15/19</u>	<u>10, 2ft</u>	<u>15/19</u>
<u>6</u>	<u>.32</u>	<u>.55</u>	<u>NR</u>	<u>49</u>	<u>20 or 13+5^h</u>	<u>15/20</u>	<u>30^g</u>	<u>15/19</u>	<u>10, 4ft</u>	<u>15/19</u>
<u>7 & 8</u>	<u>.32</u>	<u>.55</u>	<u>NR</u>	<u>49</u>	<u>20+5 or 13+10^h</u>	<u>19/21</u>	<u>38^g</u>	<u>15/19</u>	<u>10, 4ft</u>	<u>15/19</u>

^a R-values are minimums. U-factors and SHGC are maximums. When insulation is installed in a cavity which is less than the label or design thickness of the insulation, the installed R-value of the insulation shall not be less than the R-value specified in the table.

^b The fenestration U-factor column excludes skylights. The SHGC column applies to all glazed fenestration. EXCEPTION: Skylights may be excluded from glazed fenestration SHGC requirements in Climate Zones 1 through 3 where the SHGC for such skylights does not exceed .30.

^c "15/19" means R-15 continuous insulation on the interior or exterior of the home or R-19 cavity insulation at the interior of the basement wall. "15/19" shall be permitted to be met with R-13 cavity insulation on the interior of the basement wall plus R-5 continuous insulation on the interior or exterior of the home. "10/13" means R-10 continuous insulation on the interior or exterior of the home or R-13 cavity insulation at the interior of the basement wall.

^d R-5 shall be added to the required slab edge R-values for heated slabs. Insulation depth shall be the depth of the footing or 2 feet, whichever is less in Climate Zones 1 through 3 for heated slabs.

^e There are no SHGC requirements in the Marine Zone.

^f Basement wall insulation is not required in warm-humid locations as defined by Figure R301.1 and Table R301.1.

^g Or insulation sufficient to fill the framing cavity, R-19 minimum.

^h First value is cavity insulation; second value is continuous insulation or insulated siding. Therefore, "13+5" means R-13 cavity insulation plus R-5 continuous insulation or insulated siding. If structural sheathing covers 40 percent or less of the exterior, continuous insulation R-value shall be permitted to be reduced by no more than R-3 in the locations where structural sheathing is used – to maintain a consistent total sheathing thickness.

ⁱ The second R-value applies when more than half the insulation is on the interior of the mass wall.

Delete section R402.4.1.2 and insert in lieu thereof the following new section:

R402.4.1.2 Testing. The building or dwelling unit shall be tested and verified as having an air leakage rate not exceeding 5 air changes per hour in Climate Zones 1 and 2, and 4 air changes per hour in Climate Zones 3 through 8. Testing shall be conducted with a blower door at a pressure of 0.2 inches w.g. (50 pascals). Where required by the code official, testing shall be conducted by an approved third party. A

PUBLIC SAFETY DEPARTMENT[661](cont'd)

written report of the results of the test shall be signed by the party conducting the test and provided to the code official. Testing shall be performed at any time after creation of all penetrations of the building thermal envelope.

During testing:

1. Exterior windows and doors, fireplace and stove doors shall be closed, but not sealed beyond the intended weatherstripping or other infiltration control measures;
2. Dampers including exhaust, intake, makeup air, backdraft and flue dampers shall be closed, but not sealed beyond intended infiltration control measures;
3. Interior doors, if installed at the time of the test, shall be open;
4. Exterior doors for continuous ventilation systems and heat recovery ventilators shall be closed and sealed;
5. Heating and cooling systems, if installed at the time of the test, shall be turned off; and
6. Supply and return registers, if installed at the time of the test, shall be fully open.

Delete section R403.2.2 and insert in lieu thereof the following new section:

R403.2.2 Sealing (mandatory). Ducts, air handlers, and filter boxes shall be sealed. Joints and seams shall comply with either the International Mechanical Code or International Residential Code, as applicable.

EXCEPTIONS:

1. Air-impermeable spray foam products shall be permitted to be applied without additional joint seals.
2. Where a duct connection is made that is partially inaccessible, three screws or rivets shall be equally spaced on the exposed portion of the joint so as to prevent a hinge effect.
3. Continuously welded and locking-type longitudinal joints and seams in ducts operating at static pressures less than 2 inches of water column (500 Pa) pressure classification shall not require additional closure systems.

Duct tightness shall be verified by either of the following:

1. Postconstruction test: Total leakage shall be less than or equal to 6 cfm (169.90 L/min) per 100 square feet (9.29 m²) of conditioned floor area when tested at a pressure differential of 0.1 inches w.g. (25 Pa) across the entire system, including the manufacturer's air handler enclosure. All register boots shall be taped or otherwise sealed during the test.
2. Rough-in test: Total leakage shall be less than or equal to 6 cfm (169.90 L/min) per 100 square feet (9.29 m²) of conditioned floor area when tested at a pressure differential of 0.1 inches w.g. (25 Pa) across the system, including the manufacturer's air handler enclosure. All registers shall be taped or otherwise sealed during the test. If the air handler is not installed at the time of the test, total leakage shall be less than or equal to 3 cfm (85 L/min) per 100 square feet (9.29 m²) of conditioned floor area.

EXCEPTION: The duct leakage test is not required for ducts and air handlers located entirely within the building thermal envelope unless cavities are used for returns.

Delete section R403.2.3 and insert in lieu thereof the following new section:

R403.2.3 Building cavities (mandatory). Building framing cavities shall not be used as supply ducts. Building framing cavities may be used as plenums if both of the following conditions exist:

1. Plenums must be tested for duct leakage in accordance with section R403.2.2.
2. Exterior wall cavities shall not be used for plenums.

ITEM 4. Amend rule 661—303.3(103A) as follows:

661—303.3(103A) Adoption of nonresidential energy code. The International Energy Conservation Code – Commercial Provisions, 2009 2012 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:

~~Delete section 101.1.~~

~~Delete section 101.2.~~

~~Delete section 103.3.1.~~

PUBLIC SAFETY DEPARTMENT[661](cont'd)

- ~~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.~~
~~Delete chapter 4.~~
~~Delete section C101.1.~~
~~Delete section C101.2 and insert in lieu thereof the following new section:~~
C101.2. Scope. This code applies to commercial buildings and the buildings' sites and associated systems and equipment as defined pursuant to 661—subrule 303.1(2).
~~Delete section C103.3.1.~~
~~Delete section C104.1 and insert in lieu thereof the following new section:~~
C104.1 General. Construction or other work that is required to be inspected by state law or local ordinance shall be in accordance with sections C104.2 through C104.8.
~~Delete sections C108 and C109 and all sections contained therein.~~

ARC 1200C

REVENUE DEPARTMENT[701]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68 and 2013 Iowa Acts, Senate File 295, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 80, “Property Tax Credits and Exemptions,” Iowa Administrative Code.

The subject matter of new rule 701—80.30(85GA,SF295) is the business property tax credit. This rule is intended to implement 2013 Iowa Acts, Senate File 295 (new Iowa Code chapter 426C), which creates a business property tax credit available to certain properties classified as commercial, industrial, or railway.

The proposed rule 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 this rule would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that this proposed rule may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 30, 2013, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed rule on or before December 17, 2013. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

REVENUE DEPARTMENT[701](cont'd)

A public hearing will be held on December 17, 2013, from 10 to 11:30 a.m. in the Wallace State Office Building, First Floor Auditorium, 502 E. 9th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed rule.

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

This rule is intended to implement 2013 Iowa Acts, Senate File 295.

The following amendment is proposed.

Adopt the following **new** rule 701—80.30(85GA,SF295):

701—80.30(85GA,SF295) Business property tax credit.

80.30(1) Definitions. For purposes of this rule, the following definitions shall govern.

“*Contiguous parcels*” means any of the following:

1. Parcels that share a common boundary. There is a rebuttable presumption that parcels separated by a roadway, alley, or waterway share a common boundary. The burden of proof shall be upon the property owners to provide evidence or verification that parcels separated by a roadway, alley, or waterway do not share a common boundary. Parcels owned to the middle of a road, river, alley, or railway in fee simple title are considered to share a common boundary.

2. Parcels within the same building or structure regardless of whether the parcels share a common boundary.

3. Permanent improvements to the land that are situated on one or more parcels of land that are assessed and taxed separately from the permanent improvements if the parcels of land upon which the permanent improvements are situated share a common boundary. This arrangement is more commonly referred to as buildings or permanent improvements upon leased land.

“*Dwelling unit*” means an apartment, group of rooms, or single room that is occupied as separate living quarters, or, if vacant, is intended for occupancy as separate living quarters, in which a tenant can live and sleep separately from any other persons in the building. A vacant dwelling unit that does not have active utility services is not considered to be intended for occupancy. Dwelling units do not include hotels, motels, inns, or other buildings where rooms are rented for less than one month.

“*Multiresidential property*” means, for valuations established on or after January 1, 2015, any of the following types of property:

1. Mobile home park as defined in Iowa Code section 435.1.

2. Manufactured home community and land-leased community as defined in Iowa Code sections 335.30A and 414.28A and 2013 Iowa Acts, Senate File 295, section 28.

3. Assisted living facility as defined in Iowa Code section 231C.2. Assisted living facility also includes:

- A health care facility as defined in Iowa Code section 135C.1;
- A child foster care facility under Iowa Code chapter 237; or
- Property used for a hospice program as defined in Iowa Code section 135J.1.

4. Property primarily used or intended for human habitation containing three or more separate dwelling units.

5. That portion of a building that is used or intended for human habitation and a proportionate share of the land upon which the building is situated, regardless of the number of dwelling units located in the building, if the use for human habitation is not the primary use of the building and such building is not otherwise classified as residential property.

Multiresidential property does not include hotels, motels, inns, or other buildings where rooms or dwelling units are usually rented for less than one month.

“*Parcel*” means each separate item shown on the tax list, manufactured or mobile home tax list, schedule of assessment, or schedule of rate change or charge. For fiscal years beginning on or after January 1, 2016, “parcel” also means that portion of a parcel assigned to be commercial property, industrial property, or railway property pursuant to 2013 Iowa Acts, Senate File 295, section 28.

“*Person*” means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

REVENUE DEPARTMENT[701](cont'd)

“*Property unit*” means contiguous parcels all of which are located within the same county, with the same property tax classification, are owned by the same person, and are operated by that person for a common use and purpose.

80.30(2) *In general.* Except as provided in subrule 80.30(8), for property taxes due and payable in fiscal years beginning on and after July 1, 2014, one business property tax credit is available to each parcel of land classified and taxed as commercial property, industrial property, or railway property unless the parcel is part of a property unit for which a credit is claimed. For property taxes due and payable in fiscal years beginning on and after July 1, 2014, one business property tax credit is available to each property unit made up of property assessed as commercial property, industrial property, or railway property.

80.30(3) *Application for credit.*

a. Notwithstanding paragraph 80.30(3) “*b*,” for a business property tax credit against property taxes due and payable during the fiscal year beginning July 1, 2014, the claim for credit shall be received in the office of the applicable city or county assessor not later than January 15, 2014.

b. For a business property tax credit against property taxes due and payable during fiscal years beginning on and after July 1, 2015, no business property tax credit shall be allowed unless the first application for business property tax credit is signed by the owner of the property or the owner’s qualified designee and received in the office of the applicable city or county assessor on or before March 15 preceding the fiscal year during which the credit is claimed. For example, the first application for a business property tax credit against property taxes due and payable during the fiscal year beginning July 1, 2016, must be received in the office of the applicable city or county assessor on or before March 15, 2016.

c. A claim filed after the filing deadlines set forth in paragraphs 80.30(3) “*a*” and 80.30(3) “*b*” will be applied against property taxes due and payable for the following year.

d. Once filed, the claim for credit is applicable to subsequent years, and no further filing shall be required as long as the parcel or property unit satisfies the requirements of the credit. If the parcel or property unit ceases to qualify for the credit, the owner shall provide written notice to the assessor by the date for filing claims in paragraph 80.30(3) “*b*” following the date on which the parcel or property unit ceases to qualify for the credit. When all or a portion of a parcel or property unit that is allowed a credit is sold or transferred or ownership otherwise changes, the buyer, transferee, or new owner who wishes to receive the credit shall refile the claim for credit. When a portion of a parcel or property unit that is allowed a credit is sold or transferred or ownership otherwise changes, the owner of the portion of the parcel or property unit for which ownership did not change shall refile the claim for credit.

e. In the event March 15 falls on either a Saturday or Sunday, applications for the business property tax credit may be received in the office of the applicable city or county assessor the following Monday.

f. In the event March 15 falls on a state holiday, applications for the business property tax credit may be received in the office of the applicable city or county assessor the following business day.

g. For assessment years 2013, 2014, and 2015, Table 1 shows the applicable claim receipt deadlines and the taxes toward which the claim applies.

Table 1

	Assessment Year 2013	Assessment Year 2014	Assessment Year 2015
Claim Receipt Deadline	January 15, 2014	March 16, 2015*	March 15, 2016
For Taxes Payable	September 2014 & March 2015	September 2015 & March 2016	September 2016 & March 2017

* March 15, 2015, falls on a Sunday.

REVENUE DEPARTMENT[701](cont'd)

h. An assessor may not refuse to accept an application for business property tax credit. Assessors shall remit claims for credit to the county auditor with a recommendation to allow or disallow the claim. If it is the opinion of the assessor that a business property tax credit should not be allowed, the assessor's recommendation to the county auditor shall include in writing the reasons for recommending disallowance.

i. Upon receipt from the assessor of the claims and recommendations, the county auditor shall forward the claims to the board of supervisors. The board shall allow or disallow the claims. If the board disallows a claim for credit, the board shall send written notice by mail to the claimant at the claimant's last-known address. The written notice shall state the reasons for disallowing the claim for the credit. Notwithstanding the foregoing, the board is not required to send notice that a claim for credit is disallowed if the claimant voluntarily withdraws the claim.

80.30(4) Appeals.

a. Initial appeal. Any person whose claim is disallowed by the board of supervisors may appeal that action to the district court of the county in which the parcel or property unit is located. Notice of appeal must be given to the county auditor within 20 days from the date on which the notification of disallowance was mailed by the board of supervisors.

b. Reversal. If the board of supervisors' disallowance of the claim for credit is reversed upon appeal, the credit shall be allowed on the applicable parcel or property unit. The director of revenue, the county auditor, and the county treasurer shall provide the credit and change their books and records accordingly. If the claimant has paid one or both of the installments of the tax payable in the year or years in question, the county treasurer shall remit the amount of the credit to the claimant and submit a request to the department for reimbursement from the business property tax credit fund. The amounts payable as credits awarded on appeal shall be allocated and paid from the balance remaining in the business property tax credit fund established in 2013 Iowa Acts, Senate File 295, section 4.

80.30(5) Audit.

a. Authority and period. The director of revenue may audit any credit provided under 2013 Iowa Acts, Senate File 295. However, the director shall not adjust a credit allowed more than three years from October 31 of the year in which the claim for credit was filed.

b. Recalculation or denial. If an audit reveals that the amount of the credit was incorrectly calculated or that the credit should not have been allowed, the director shall recalculate the credit, if applicable, and notify both the claimant and the county auditor of the recalculation and the reasons it is being made.

c. Recapture. If the credit has already been paid, the director shall notify the claimant, the county treasurer, and the applicable assessor of the recalculation or denial of the credit. If the claimant still owns the parcel or property unit for which the credit was claimed, the county treasurer shall collect the tax owed in the same manner as other due and payable property taxes are collected. If the claimant no longer owns the parcel or property unit for which the credit was claimed, the department may recover the amount of tax owed by filing a lien under Iowa Code section 422.26 or by issuing a jeopardy assessment under Iowa Code section 422.30. Upon collection, the amount of the erroneously allowed credit shall be deposited in the business property tax credit fund.

d. Appeal of recalculation or denial. The claimant or the board of supervisors may appeal any decision of the director to the state board of tax review. The state board shall review the director's decision in accordance with Iowa Code section 421.1, subsection 5. The claimant, the board of supervisors, and the director may all seek judicial review of the state board of tax review's decision pursuant to the provisions of Iowa Code chapter 17A.

e. False claim and penalty. Any person who makes a false claim for the purpose of obtaining a credit or who knowingly receives the credit without being legally entitled to it is guilty of a fraudulent practice. The claim for a credit for such a person shall be disallowed, and the director shall send a notice of disallowance. If the credit has been paid, the amount shall be recovered in the manner described in paragraph 80.30(5) "c."

80.30(6) Property eligible for credit.

a. Eligible parcels.

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(1) Except as provided in subrule 80.3(8), parcels that are part of a property unit that is classified and taxed as commercial property, industrial property, or railway property under Iowa Code chapter 434 are eligible for the business property tax credit.

(2) Parcels that, in part, would satisfy the requirements for classification as multiresidential property as defined in 2013 Iowa Acts, Senate File 295, section 28, where the primary use of the building is not for human habitation with three or more units and the building is not otherwise classified as a residential property are eligible for the business property tax credit against valuations established prior to January 1, 2015.

b. Eligible property units. Except as provided in subrule 80.30(8), only property units made up of property assessed and taxed as commercial property, industrial property, or railway property under Iowa Code chapter 434 are eligible for the business property tax credit. To be eligible as a property unit, all of the parcels that make up the property unit must be:

- (1) Located within the same county;
- (2) The same property classification;
- (3) Owned by the same person;
- (4) Contiguous as defined in subrule 80.30(1); and
- (5) Operated by that person for a common use and purpose.

80.30(7) Common use and purpose. Whether parcels are operated for a common use and purpose depends on all the facts and circumstances of each set of parcels. The following nonexclusive examples illustrate common use and purpose.

EXAMPLE 1. ABC Properties is in the business of building, owning, leasing, and managing large retail spaces. ABC builds and owns a large shopping mall that covers contiguous parcels, all of which are located within the same county. Although the retail establishments that lease retail space in the shopping mall offer different products and services, the shopping mall is owned and operated by ABC for the common use and purpose of being a lessor. Thus, the parcels that make up the mall are eligible as a single property unit.

EXAMPLE 2. John's LLC owns four commercial parcels located within the same building, and they are, therefore, contiguous as defined in subrule 80.30(1). John's owns and operates two parcels as a beauty parlor. John's rents the other two parcels to a bicycle shop. The four parcels, together, do not have a common use and purpose. However, the two parcels used by John's as an owner-operator of the beauty parlor business are operated with the common use and purpose of providing beauty services and are eligible as one property unit. The two parcels that John's rents to the bicycle shop are operated with the common use and purpose of being rented out for profit as a landlord and are eligible as a second property unit.

80.30(8) Property ineligible for credit. All of the following are not eligible to receive a business property tax credit or to be part of a property unit that receives the business property tax credit:

a. Property that is rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code, as amended, and that is subject to assessment procedures relating to Section 42 property under Iowa Code section 441.21, subsection 2, for the applicable assessment year.

b. Mobile home park as defined in Iowa Code section 435.1.

c. Manufactured home community and land-leased community as defined in Iowa Code sections 335.30A and 414.28A and 2013 Iowa Acts, Senate File 295, section 28.

d. Assisted living facility as defined in Iowa Code section 231C.2. Assisted living facility also includes:

- (1) A health care facility as defined in Iowa Code section 135C.1;
- (2) A child foster care facility under Iowa Code chapter 237; or
- (3) Property used for a hospice program as defined in Iowa Code section 135J.1.

e. Property primarily used or intended for human habitation with three or more separate dwelling units.

80.30(9) Application of credit.

a. A person may claim and receive one business property tax credit for each eligible parcel unless the parcel is part of a property unit for which a credit is claimed.

REVENUE DEPARTMENT[701](cont'd)

- b.* A person may claim and receive one business property tax credit for each property unit.
- c.* A credit approved for a property unit shall be allocated to the several parcels within the property unit in the proportion that each parcel's total amount of property taxes due and payable bears to the total amount of property taxes due and payable on the property unit.
- d.* The classification of property used to determine eligibility for the business property tax credit shall be the classification of the property for the assessment year used to calculate the taxes due and payable in the fiscal year for which the credit is claimed.
- e.* Once filed and allowed, the credit shall continue to be allowed on the parcel or property unit for successive years without further filing of an application unless the parcel or property unit ceases to qualify for the credit under Iowa Code chapter 421C.
- f.* When all or a portion of a parcel or property unit is sold or transferred or ownership otherwise changes, the new owner must reapply for the credit. The owner of the portion of a parcel or property unit that did not change shall also reapply for the credit.
- g.* The following noninclusive examples illustrate the application of the business property tax credit under various circumstances.

EXAMPLE 1. On February 13, 2015, Mr. Jones files with his county assessor his application for the business property tax credit for taxes due and payable in the fiscal year beginning July 1, 2015. The property that Mr. Jones claims is eligible for the credit is a single parcel that is classified as commercial property. The property is not rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code. The property is not a mobile home park, manufactured home community, land-leased community, or assisted living facility nor is it primarily used or intended for human habitation with three or more separate dwelling units. Therefore, Mr. Jones' application should be approved as a credit against the taxes due and payable in the fiscal year beginning July 1, 2015.

EXAMPLE 2. Same facts as in EXAMPLE 1, but Mr. Jones files his application on March 17, 2015. Mr. Jones' application should be approved, but the credit will be against taxes due and payable in the fiscal year beginning July 1, 2016.

EXAMPLE 3. Davidoff LLC owns two parcels of land, both of which are classified as industrial property. Each parcel is being operated for a common use and purpose. The parcels are separated by a road. If Davidoff owns the property parcels to the middle of the road in fee simple title, the parcels are considered contiguous and would qualify as a unit, and Davidoff would be eligible for a single business property tax credit. If a third party, including the state, a municipality, or other government entity, owned the road in fee simple title, the parcels would not be considered contiguous, and Davidoff would be eligible for two separate business property tax credits.

EXAMPLE 4. In Oak County, Iowa, there is a wind farm with five turbines. The turbines sit upon five contiguous parcels of land. The land parcels are all classified as agricultural property and are owned respectively by Turbine LLC I, Turbine LLC II, Turbine LLC III, Turbine LLC IV, and Turbine LLC V. The five wind turbines are not considered a single property unit because, even though the parcels of land upon which the turbines sit are assessed and taxed separately from the turbines and those parcels also share a common boundary, the turbines are not all owned by the same person. The wind turbines would each be eligible for one business property tax credit.

EXAMPLE 5. In Madison County, Iowa, there is a wind farm that consists of four wind turbines that are taxed separately as permanent improvements to the land. All the wind turbines are owned by Windy LLC. The turbines sit upon four parcels of land that share a common boundary. Each parcel of land is owned by a different owner. The four wind turbines are contiguous because the wind turbines are taxed as permanent improvements to the land, they are situated upon four parcels of land that share a common boundary, and the land is assessed and taxed separately from the wind turbines. The four wind turbines qualify as a property unit and would be eligible for one business property tax credit.

80.30(10) *Calculation of credit.*

a. Auditor certification. On or before June 30 of each year, the county auditor shall certify to the department the following:

- (1) The claims allowed by the board of supervisors in that county;

REVENUE DEPARTMENT[701](cont'd)

(2) The actual value, prior to the imposition of any applicable assessment limitations, of the parcels and property units for which credits were allowed in that county; and

(3) The information applicable to the location of the parcels and property units.

b. Department process and methodology.

(1) Department of management information. The department shall obtain from the department of management tax district and applicable consolidated rates.

(2) Initial amount of actual value. For each parcel or property unit certified by the county auditor, the department shall calculate, for each fiscal year, an initial amount of actual value to use for determining the amount of credit for each such parcel or property unit that provides the maximum possible credit according to the credit formula and limitations prescribed by 2013 Iowa Acts, Senate File 295, section 5(5). The department shall also calculate the initial amount of actual value so as to provide that the total dollar amount of credits against the taxes due and payable in the fiscal year equals 98 percent of the moneys in the business property tax credit fund following the deposit of the appropriation for the fiscal year, including any interest or earnings that have been credited to the fund.

(3) Credit amount. The amount of the credit shall be calculated as follows:

Step 1. Determine the lesser of the actual value calculated in paragraph 80.30(10) "a" and the initial value calculated in subparagraph 80.30(10) "b"(2).

Step 2. Multiply the amount determined in Step 1 by the difference between the assessment limitation percentage applicable to the parcel or property unit under Iowa Code section 441.21(5) as amended by 2013 Iowa Acts, Senate File 295, section 18, and the assessment limitation applicable to residential property under Iowa Code section 441.21(4) as amended by 2013 Iowa Acts, Senate File 295, section 17. For purposes of this calculation, such difference shall be stated as a percentage.

Step 3. Divide the product of Steps 1 and 2 by \$1000.

Step 4. Multiply the quotient obtained in Step 3 by the consolidated levy rate or average consolidated levy rate per \$1000 of taxable value applicable to the parcel or property unit for the fiscal year for which the credit is claimed as certified by the county auditor under 2013 Iowa Acts, Senate File 295, section 5(5).

(4) Allocation to parcels. The business property tax credit approved for a property unit shall be allocated to the several parcels within the property unit in the proportion that each parcel's total amount of property taxes due and payable bears to the total amount of property taxes due and payable on the property unit.

(5) Limitation on information. Notwithstanding the foregoing, the department's calculations shall be based upon the certified information it has received by June 30 of each fiscal year. Any information, whether certified or uncertified, received after June 30 of each fiscal year will not be included in the department's credit calculations for the applicable fiscal year.

This rule is intended to implement 2013 Iowa Acts, Senate File 295.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions JoAnn Johnson, Superintendent of Banking James M. Schipper, and Auditor of State Mary Mosiman have established today the following rates of interest for public obligations and special assessments. The usury rate for November is 4.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

TREASURER OF STATE(cont'd)

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

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

New official state interest rates, effective November 9, 2013, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS		
7-31 days	.....	Minimum .05%
32-89 days	.....	Minimum .05%
90-179 days	.....	Minimum .05%
180-364 days	.....	Minimum .05%
One year to 397 days	.....	Minimum .05%
More than 397 days	.....	Minimum .10%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 1194C

DENTAL BOARD[650]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 147.76, the Dental Board hereby adopts amendments to Chapter 29, "Sedation and Nitrous Oxide Inhalation Analgesia," Iowa Administrative Code.

The amendments include:

- Adding new definitions for "board," "committee," "capnography," and "facility."
- Clarifying that before a permit will be issued the facility must be inspected and successfully pass the inspection.
- Clarifying that a permit will not be issued until completion of a peer review evaluation, if required by the Board.
- Clarifying that a dentist shall ensure that each facility where sedation services are provided is permanently equipped, as defined in Board rule.
- Rescinding the option of issuing a "provisional" permit.
- Establishing the frequency of Board office inspections (every five years) and providing an exception for the University of Iowa College of Dentistry (requiring UICD to submit, every five years, written verification that it is properly equipped).
- Requiring all deep sedation/general anesthesia permit holders to use capnography at all facilities where they provide sedation beginning January 1, 2014, consistent with practices of the American Association of Oral and Maxillofacial Surgeons (AAOMS).
- Correcting a reference in subrule 29.10(1) to "conscious" sedation by changing it to "moderate" sedation and updating a cross reference to the rule applicable to facility site visits.
- Describing the process by which permit applications are reviewed by staff and reviewed by the Anesthesia Credentials Committee (ACC) at a public meeting and the process by which the ACC recommendations are presented to the Dental Board for final action.
- Clarifying that the appeal process for denial of a permit will follow the process described in rule 650—11.10(147).
- Rescinding outdated references to earlier renewal years, correcting cross references, and making other minor amendments.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 4, 2013, as **ARC 1008C**.

A public hearing was held on September 24, 2013. A representative of the Association of Nurse Anesthetists attended the hearing and offered written and oral comments. The written comments indicated that the Association is supportive of the proposed amendments concerning use of capnography during procedures involving deep sedation/general anesthesia. The Association requested that the Board consider adding the requirement of capnography and pulse oximetry whenever nitrous oxide inhalation is used, whether for moderate sedation or deep sedation/general anesthesia. The Association also asked the Board to consider requiring Advanced Cardiac Life Support (ACLS) education and training for dentists utilizing nitrous oxide at any time and for all deep sedation/general anesthesia, as well as requiring ACLS for auxiliary personnel monitoring patients receiving nitrous oxide sedation at any level and for monitoring patients undergoing deep sedation/general anesthesia for dental procedures.

Other written comments were offered by the Iowa Society of Oral and Maxillofacial Surgeons (ISOMS) during the public comment period at the Board's open-session meeting on October 31, 2013. The ISOMS letter indicated that the organization endorses the amendments that require facilities to pass inspection prior to provision of moderate/deep sedation and general anesthesia procedures; supports the five-year period for office inspections; and is concerned about the removal of the Board's ability to issue "provisional" or "interim" permits and the impact this would have on ISOMS practices, especially on new practitioners joining established practices. The letter stated that ISOMS is in favor of potential revisions under consideration by the Board that would authorize the Executive Director to issue a permit if the ACC recommended an unrestricted permit.

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ISOMS also brought to the attention of the Board the discrepancy between the AAOMS parameters of care, which require the use of capnography for patients under moderate sedation, deep sedation, and general anesthesia, and the proposed amendments, which do not require use of capnography when moderate sedation is being utilized.

The following revisions were made to the proposed amendments:

- A corrective revision was made in rule 650—29.4(153), “Requirements for the issuance of moderate sedation permits.” The cross reference in subrule 29.4(3) was corrected to refer to subrule 29.4(2) (listing what constitutes a properly equipped facility utilizing moderate sedation) instead of 29.3(2) (listing what constitutes a properly equipped facility utilizing deep sedation/general anesthesia).
- A change was made to rule 650—29.11(153), “Review of permit applications,” as a result of public comments received. Subrule 29.11(3) was added to provide for the delegation of authority to the Executive Director to issue a permit administratively, provided that the ACC recommends an unrestricted permit. Consequently, proposed subrules 29.11(3) to 29.11(5) were renumbered as 29.11(4) to 29.11(6).

There were several comments received that the Board determined would need to be addressed by a separate rule making. The Board intends to initiate a Notice of Intended Action regarding (1) the type of education and training required for the dentist and the person monitoring the patient (e.g., Advanced Cardiac Life Support (ACLS), Pediatric Advanced Life Support (PALS)) and (2) the use of capnography at dental offices where moderate sedation is administered.

These amendments were approved at the October 31 and November 1, 2013, quarterly meeting of the Iowa Dental Board.

The Board finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing, as they confer a benefit on permit applicants and provide for the protection of the public health and safety. The amendment by which the Board delegates authority to the Executive Director to issue moderate sedation and deep sedation/general anesthesia permits administratively, provided that the Anesthesia Credentials Committee recommends an unrestricted permit, confers a benefit on dentists who otherwise would need to wait until the next quarterly Board meeting for final action to be taken on their applications. According to ISOMS, many practices have a significant number of patients for whom anesthesia services are necessary and beneficial. ISOMS reports that delays in provision of these services would substantially limit available care to Iowa residents in need of treatment.

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

These amendments are intended to implement Iowa Code sections 153.33 and 153.34.

These amendments became effective November 4, 2013.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions in rule **650—29.1(153)**:

“*Board*” means the Iowa dental board established in Iowa Code section 147.14(1) “*d.*”

“*Capnography*” means the monitoring of the concentration of exhaled carbon dioxide in order to assess physiologic status or determine the adequacy of ventilation during anesthesia.

“*Committee*” or “*ACC*” means the anesthesia credentials committee of the board.

“*Facility*” means a dental office, clinic, dental school, or other location where sedation is used.

ITEM 2. Amend rule 650—29.2(153) as follows:

650—29.2(153) Prohibitions.

29.2(1) Deep sedation/general anesthesia. Dentists licensed in this state shall not administer deep sedation/general anesthesia in the practice of dentistry until they have obtained a permit ~~as required by the provisions of this chapter.~~ Dentists shall only administer deep sedation/general anesthesia in a facility that has successfully passed inspection as required by the provisions of this chapter.

29.2(2) Moderate sedation. Dentists licensed in this state shall not administer moderate sedation in the practice of dentistry until they have obtained a permit ~~as required by the provisions of this chapter.~~

DENTAL BOARD[650](cont'd)

Dentists shall only administer moderate sedation in a facility that has successfully passed inspection as required by the provisions of this chapter.

29.2(3) and 29.2(4) No change.

ITEM 3. Amend rule 650—29.3(153) as follows:

650—29.3(153) Requirements for the issuance of deep sedation/general anesthesia permits.

29.3(1) A permit may be issued to a licensed dentist to use deep sedation/general anesthesia on an outpatient basis for dental patients provided the dentist meets the following requirements:

a. Has successfully completed an advanced education program accredited by the Commission on Dental Accreditation that provides training in deep sedation and general anesthesia; and

b. Has formal training in airway management; and

c. Has completed a minimum of one year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program approved by the board; and

d. Has completed a peer review evaluation, as may be required by the board, prior to issuance of a permit.

29.3(2) A dentist using deep sedation/general anesthesia shall maintain a properly equipped facility at each facility where sedation is administered. The dentist shall maintain and be trained on the following equipment at each facility where sedation is provided: ~~anesthesia or analgesia machine~~ capnography, EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs, defibrillator. A licensee may submit a request to the board for an exemption from any of the provisions of this subrule. Exemption requests will be considered by the board on an individual basis and shall be granted only if the board determines that there is a reasonable basis for the exemption.

29.3(3) The dentist shall ensure that each facility where sedation services are provided is permanently equipped pursuant to subrule 29.3(2) and staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident to the administration of general anesthesia. Auxiliary personnel shall maintain current certification in basic life support and be capable of administering basic life support.

29.3(4) to 29.3(7) No change.

ITEM 4. Amend rule 650—29.4(153) as follows:

650—29.4(153) Requirements for the issuance of moderate sedation permits.

29.4(1) A permit may be issued to a licensed dentist to use moderate sedation for dental patients provided the dentist meets the following requirements:

a. Has successfully completed a training program approved by the board that meets the American Dental Association Guidelines for Teaching Pain Control and Sedation to Dentists and Dental Students and that consists of a minimum of 60 hours of instruction and management of at least 20 patients; and

b. Has formal training in airway management; or

c. Has submitted evidence of successful completion of an accredited residency program that includes formal training and clinical experience in moderate sedation, which is approved by the board; and

d. Has completed a peer review evaluation, as may be required by the board, prior to issuance of a permit.

29.4(2) A dentist utilizing moderate sedation shall maintain a properly equipped facility. The dentist shall maintain and be trained on the following equipment at each facility where sedation is provided: ~~anesthesia or analgesia machine~~, EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs, defibrillator. A licensee may submit a request to the board for an exemption from any of the provisions of this subrule. Exemption requests will be considered by the

DENTAL BOARD[650](cont'd)

board on an individual basis and shall be granted only if the board determines that there is a reasonable basis for the exemption.

29.4(3) The dentist shall ensure that each facility where sedation services are provided is permanently equipped pursuant to subrule 29.4(2) and staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident to the administration of general anesthesia moderate sedation. Auxiliary personnel shall maintain current certification in basic life support and be capable of administering basic life support.

29.4(4) and **29.4(5)** No change.

~~**29.4(6)** A licensed dentist who has been utilizing moderate sedation on an outpatient basis in a competent manner for five years preceding July 9, 1986, but has not had the benefit of formal training as outlined in this rule, may apply for a permit provided the dentist fulfills the provisions set forth in subrules 29.4(2), 29.4(3), 29.4(4) and 29.4(5).~~

~~**29.4(7)**~~ **29.4(6)** Dentists qualified to administer moderate sedation may administer nitrous oxide inhalation analgesia provided they meet the requirement of rule 650—29.6(153).

~~**29.4(8)**~~ **29.4(7)** If moderate sedation results in a general anesthetic state, the rules for deep sedation/general anesthesia apply.

~~**29.4(9)**~~ **29.4(8)** A dentist utilizing moderate sedation on pediatric or ASA category 3 or 4 patients must have completed an accredited residency program that includes formal training in anesthesia and clinical experience in managing pediatric or ASA category 3 or 4 patients. A dentist who does not meet the requirements of this subrule is prohibited from utilizing moderate sedation on pediatric or ASA category 3 or 4 patients.

ITEM 5. Amend rule 650—29.5(153) as follows:

650—29.5(153) Permit holders.

29.5(1) No dentist shall use or permit the use of deep sedation/general anesthesia or moderate sedation ~~in a dental office for dental patients, unless the dentist possesses a current permit issued by the Iowa board of dental examiners.~~ No dentist shall use or permit the use of deep sedation/general anesthesia or moderate sedation for dental patients in a facility that has not successfully passed an equipment inspection pursuant to the requirements of subrule 29.3(2). A dentist holding a permit shall be subject to review and facility inspection as deemed appropriate by the board at a frequency described in subrule 29.5(10).

29.5(2) and **29.5(3)** No change.

~~**29.5(4)** If an applicant will be practicing at a facility that has been previously inspected and approved by the board, a provisional permit may be granted to the applicant upon the recommendation of the anesthesia credentials committee after review of the applicant's credentials.~~

~~**29.5(4)** If a facility has not been previously inspected, no permit shall be issued until the facility has been inspected and successfully passed.~~

29.5(5) to **29.5(9)** No change.

29.5(10) Frequency of facility inspections.

a. The board office will conduct ongoing facility inspections of each facility every five years, with the exception of the University of Iowa College of Dentistry.

b. The University of Iowa College of Dentistry shall submit written verification to the board office every five years indicating that it is properly equipped pursuant to this chapter.

29.5(11) Use of capnography required beginning January 1, 2014. Consistent with the practices of the American Association of Oral and Maxillofacial Surgeons (AAOMS), all general anesthesia/deep sedation permit holders shall use capnography at all facilities where they provide sedation beginning January 1, 2014.

ITEM 6. Amend subrule 29.9(1), introductory paragraph, as follows:

29.9(1) *Reporting.* All licensed dentists in the practice of dentistry in this state must submit a report within a period of seven days to the board office of any mortality or other incident which results in temporary or permanent physical or mental injury requiring hospitalization of the patient during, or as

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a result of, antianxiety premedication, nitrous oxide inhalation analgesia, or sedation. The report shall include responses to at least the following:

ITEM 7. Amend rule 650—29.10(153) as follows:

650—29.10(153) Anesthesia credentials committee.

29.10(1) The anesthesia credentials committee is a peer review committee appointed by the board to assist the board in the administration of this chapter. This committee shall be chaired by a member of the board and shall include at least six additional members who are licensed to practice dentistry in Iowa. At least four members of the committee shall hold deep sedation/general anesthesia or ~~conscious~~ moderate sedation permits issued under this chapter.

29.10(2) The anesthesia credentials committee shall perform the following duties at the request of the board:

a. Review all permit applications and make recommendations to the board regarding those applications.

b. Conduct site visits at facilities under ~~subrule 29.5(4)~~ rule 650—29.5(153) and report the results of those site visits to the board. The anesthesia credentials committee may submit recommendations to the board regarding the appropriate nature and frequency of site visits.

c. Perform professional evaluations and report the results of those evaluations to the board.

d. Other duties as delegated by the board or board chairperson.

ITEM 8. Rescind rule **650—29.12(153)**.

ITEM 9. Renumber rule **650—29.11(153)** as **650—29.12(153)**.

ITEM 10. Adopt the following new rule 650—29.11(153):

650—29.11(153) Review of permit applications.

29.11(1) *Review by board staff.* Upon receipt of a completed application, board staff will review the application for eligibility. Following staff review, a public meeting of the ACC will be scheduled.

29.11(2) *Review by the anesthesia credentials committee (ACC).* Following review and consideration of an application, the ACC may at its discretion:

a. Request additional information;

b. Request an investigation;

c. Request that the applicant appear for an interview;

d. Recommend issuance of the permit;

e. Recommend issuance of the permit under certain terms and conditions or with certain restrictions;

f. Recommend denial of the permit;

g. Refer the permit application to the board for review and consideration without recommendation;

or

h. Request a peer review evaluation.

29.11(3) *Review by executive director.* If, following review and consideration of an application, the ACC recommends issuance of the permit with no restrictions or conditions, the executive director as authorized by the board has discretion to authorize the issuance of the permit.

29.11(4) *Review by board.* The board shall consider applications and recommendations from the ACC. The board may take any of the following actions:

a. Request additional information;

b. Request an investigation;

c. Request that the applicant appear for an interview;

d. Grant the permit;

e. Grant the permit under certain terms and conditions or with certain restrictions; or

f. Deny the permit.

29.11(5) *Right to defer final action.* The ACC or board may defer final action on an application if there is an investigation or disciplinary action pending against an applicant who may otherwise meet the

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requirements for permit until such time as the ACC or board is satisfied that issuance of a permit to the applicant poses no risk to the health and safety of Iowans.

29.11(6) Appeal process for denials. If a permit application is denied, an applicant may file an appeal of the final decision using the process described in rule 650—11.10(147).

ITEM 11. Amend renumbered rule 650—29.12(153) as follows:

650—29.12(153) Renewal. A permit to administer deep sedation/general anesthesia or moderate sedation shall be renewed biennially at the time of license renewal. ~~Prior to July 1, 2008, permits expired on June 30 of every even-numbered year. A permit due to expire June 30, 2008, shall be automatically extended until August 30, 2008, and expire August 31, 2008. Beginning July 1, 2008, permits~~ Permits expire August 31 of every even-numbered year.

29.12(1) To renew a permit, a licensee must submit the following:

- a. Evidence of renewal of ACLS certification.
- b. A minimum of six hours of continuing education in the area of sedation. These hours may also be submitted as part of license renewal requirements.
- c. The appropriate fee for renewal as specified in 650—Chapter 15.

29.12(2) Failure to renew the permit prior to November 1 following its expiration shall cause the permit to lapse and become invalid for practice.

29.12(3) A permit that has been lapsed may be reinstated upon submission of a new application for a permit in compliance with rule 650—29.5(153) and payment of the application fee as specified in 650—Chapter 15.

ITEM 12. Renumber rule **650—29.13(153)** as **650—29.14(153)**.

ITEM 13. Adopt the following **new** rule 650—29.13(147,153,272C):

650—29.13(147,153,272C) Grounds for nonrenewal. A request to renew a permit may be denied on any of the following grounds:

29.13(1) After proper notice and hearing, for a violation of these rules or Iowa Code chapter 147, 153, or 272C during the term of the last permit renewal.

29.13(2) Failure to pay required fees.

29.13(3) Failure to obtain required continuing education.

29.13(4) Failure to provide documentation of current ACLS certification.

29.13(5) Failure to provide documentation of maintaining a properly equipped facility.

29.13(6) Receipt of a certificate of noncompliance from the college student aid commission or the child support recovery unit of the department of human services in accordance with 650—Chapter 33 or 650—Chapter 34.

[Filed Emergency After Notice 11/4/13, effective 11/4/13]

[Published 11/27/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/27/13.

ARC 1190C

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code chapters 10A, 137C, and 137D and Iowa Code section 137F.2, the Department of Inspections and Appeals hereby rescinds Chapter 30, “Food and Consumer Safety,” Iowa Administrative Code, and adopts a new Chapter 30 with the same title.

This rule making coincides with the introduction of a new licensing and inspection data system in an effort to reduce the cost of updating the chapter. A companion revision to Chapter 31, “Food Establishment and Food Processing Plant Inspections,” is also adopted herein as **ARC 1191C**.

The rules include the following changes:

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

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 18, 2013, as **ARC 1026C**. A public hearing was held on October 9, 2013, at which no comments were provided related to these rules. Comments were received from the Iowa Department on Aging related to an inaccurate cross reference in the definition of “food establishment.” The recommended change has been incorporated in rule 481—30.2(10A,137C,137D,137F). The reference to “boarding houses” has been removed as boarding houses are no longer common and to avoid confusion with “boarding homes,” which is now defined in statute. An additional comment was received and withdrawn after additional information was provided. In addition to the changes noted above, one nonsubstantive change has been made to add an implementation sentence to rule 481—30.1(10A,137C,137D,137F).

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

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

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

These rules will become effective January 1, 2014.

The following amendment is adopted.

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

CHAPTER 30
FOOD AND CONSUMER SAFETY

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

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gambling (481—Chapters 100 to 103, 106, and 107), and amusement devices (481—Chapters 104 and 105).

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

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

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

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

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

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

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

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

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

“Department” means the department of inspections and appeals.

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

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

“Food establishment” means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a salvage or distressed food operation, nutrition program operated pursuant to Title III-C of the Older Americans Act, school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school and the Iowa juvenile home. Assisted living programs and adult day services are included in the definition of food establishment to the extent required by 481—subrules 69.28(6) and 70.28(6). “Food establishment” does not include the following:

1. A food processing plant.
2. An establishment that offers only prepackaged foods that are not potentially hazardous.
3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
4. Premises which are a home food establishment pursuant to Iowa Code chapter 137D.
5. Premises which operate as a farmers market.
6. Premises of a residence in which food that is not potentially hazardous is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. This exception does not apply to resale goods. This exception applies only to sales made from the residence in person and does not include mail order or Internet sales.

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7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.

8. A private home that receives catered or home-delivered food.

9. Child day care facilities and other food establishments located in hospitals or health care facilities that serve only patients and staff and are subject to inspection by other state agencies or divisions of the department.

10. Supply vehicles or vending machine locations.

11. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to Iowa Code section 189A.3.

12. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:

- Premises covered by a current Class "A" beer permit, including a Class "A" native beer permit as provided in Iowa Code chapter 123;

- Premises covered by a current Class "A" wine permit, including a Class "A" native wine permit as provided in Iowa Code chapter 123; and

- Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.

13. Premises covered or regulated by Iowa Code section 192.107 with a milk or milk products permit issued by the department of agriculture and land stewardship.

14. Premises or operations which are regulated by or subject to Iowa Code section 196.3 and which have an egg handler's license.

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

16. Premises regularly used by a nonprofit organization which engages in the serving of food on the premises as long as the nonprofit organization does not exceed the following restrictions:

- The nonprofit organization serves food no more than one day per calendar week and not on two or more consecutive days;

- Twice per year, the nonprofit organization may serve food to the public for up to three consecutive days; and

- The nonprofit organization may use the premises of another nonprofit organization not more than twice per year for one day to serve food.

"Food processing plant" means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. "Food processing plant" does not include any of the following:

1. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:

- Premises covered by a current Class "A" beer permit, including a Class "A" native beer permit as provided in Iowa Code chapter 123;

- Premises covered by a current Class "A" wine permit, including a Class "A" native wine permit as provided in Iowa Code chapter 123; and

- Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

481—30.3(137C,137D,137F) Licensing and postings. A license to operate any food establishment or food processing plant defined in rule 481—30.2(10A,137C,137D,137F) must be granted by the department of inspections and appeals. Application for a license is made on a form furnished by the department which contains the names of the business, owner, and manager; locations of buildings; and other data relative to the license requested. Applications are available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or from contractors. An application for licensure shall be submitted 30 days in advance of the opening of the food establishment or food processing plant. Temporary food establishment license applications shall be submitted a minimum of 3 business days prior to opening.

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

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

- a. License fees of \$67.50 or less are an application processing fee and are not refundable.
- b. If an on-site visit has not occurred, license fees of more than \$67.50 will be refunded less the \$67.50.
- c. If an on-site visit has occurred, the entire license fee is nonrefundable.

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

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

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

- a. A copy of the firm's business tax return;
- b. Quarterly sales tax data;
- c. A letter from an independent tax preparer;
- d. Other appropriate records.

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

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

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

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

- a. For annual gross sales of less than \$10,000—\$40.50.
- b. For annual gross sales of \$10,000 to \$250,000—\$101.25.
- c. For annual gross sales of \$250,000 to \$500,000—\$155.25.
- d. For annual gross sales of \$500,000 to \$750,000—\$202.50.
- e. For annual gross sales of \$750,000 or more—\$303.75.

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

- a. For annual gross sales of less than \$50,000—\$67.50.
- b. For annual gross sales of \$50,000 to \$100,000—\$114.50.
- c. For annual gross sales of \$100,000 to \$250,000—\$236.25.
- d. For annual gross sales of \$250,000 to \$500,000—\$275.00.
- e. For annual gross sales of \$500,000 or more—\$303.75.

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

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

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

- a. For 1 to 15 guest rooms—\$27.00.
- b. For 16 to 30 guest rooms—\$40.50.
- c. For 31 to 75 guest rooms—\$54.00.
- d. For 76 to 149 guest rooms—\$57.50.
- e. For 150 or more guest rooms—\$101.25.

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

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

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

- a. Annual gross sales of less than \$50,000—\$67.50.
- b. Annual gross sales of \$50,000 to \$250,000—\$135.00.
- c. Annual gross sales of \$250,000 to \$500,000—\$202.50.
- d. Annual gross sales of \$500,000 or more—\$337.50.

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

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

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

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

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

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

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

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

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

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

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

481—30.7(137F) *Double licenses.*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

481—30.9(22) Examination of records.

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

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

- a. Trade secrets and proprietary information including items such as formulations, processes, policies and procedures, and customer lists;
- b. Health information related to foodborne illness complaints and outbreaks; and
- c. Other state or federal agencies' records.

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

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

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

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

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

- a. The department may revoke the license of a license holder who:
 - (1) Conducts an activity constituting a criminal offense in the licensed food establishment; and
 - (2) Is convicted of a felony as a result.
- b. The department may suspend or revoke the license of a license holder who:
 - (1) Conducts an activity constituting a criminal offense in the licensed food establishment; and
 - (2) Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.
- c. A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

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

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

481—30.11(10A,137C,137D,137F) Formal hearing. All decisions of the food and consumer safety bureau may be contested by an adversely affected party. A request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa

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50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by 481—Chapter 10, “Contested Case Hearings.”

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

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

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

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

[Filed 10/31/13, effective 1/1/14]

[Published 11/27/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/27/13.

ARC 1191C**INSPECTIONS AND APPEALS DEPARTMENT[481]****Adopted and Filed**

Pursuant to the authority of Iowa Code chapters 137C and 137D and sections 10A.104 and 137F.2, the Department of Inspections and Appeals hereby rescinds Chapter 31, “Food Establishment and Food Processing Plant Inspections,” Iowa Administrative Code, and adopts a new Chapter 31 with the same title.

This rule making coincides with the introduction of a new licensing and inspection data system in an effort to reduce the cost of updating the chapter. A companion revision to Chapter 30, “Food and Consumer Safety,” is also adopted herein as **ARC 1190C**.

In addition, the Department adopts herein the most current Food Code and food processing plant standards to assist industry in having standards consistent with nearby states. For example, Kansas and Nebraska have both moved to the 2009 Food Code and most current processing standards.

The amendment accomplishes the following:

- Adopts the 2009 FDA Food Code with Supplement. A summary of the changes between the current Food Code (2005 with Supplement) and the adopted Food Code (2009 with Supplement) is available at <http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/ucm272584.htm> and <http://www.fda.gov/Food/GuidanceRegulation/RetailFoodProtection/FoodCode/ucm188119.htm>.
- Adopts the certified food protection manager requirement from the Food Code, along with transition provisions.
- Adopts provisions related to reduced oxygen packaging that reduce regulatory requirements and have been included in the 2013 Food Code.
- Clarifies provisions related to reduced oxygen packaging of meats in custom exempt meat and poultry processing plants.
- Updates food processing inspection standards to coincide with current federal law and regulations and current practice.
- Removes enforcement provisions from Chapter 31 and moves them to Chapter 30.
- Reorders Food Code amendments to coincide with Food Code numbering.

The adoption of the 2009 Food Code with Supplement includes a requirement that establishments have a certified food protection manager. The cost of this requirement is approximately \$140 per food

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

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

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 18, 2013, as **ARC 1025C**. No comments were received. A public hearing was held on October 9, 2013, and comments were provided related to person-in-charge. Similar comments were received in the pre-comment phase, and a discussion with both commenters resulted in a consensus to include additional information in the marking instructions for inspectors and did not necessitate a change in the rules. After the comment period, additional questions were received related to the certified food protection manager requirement and additional information was provided.

Technical, nonsubstantive changes have been made in subrules 31.1(6) and 31.1(8). The subrules were updated to be identical to the final version of the 2013 FDA Food Code, which was released in November 2013. Proposed subrules 31.1(6) and 31.1(8) were based upon draft language. The update resulted in no substantive changes.

At the request of the Iowa Department of Agriculture and Land Stewardship, the catchwords for subrule 31.1(7) were clarified and now read: “reduced oxygen packaging in meat and poultry processing plants.”

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

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

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

These rules will become effective January 1, 2014.

The following amendment is adopted.

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

CHAPTER 31
FOOD ESTABLISHMENT AND FOOD
PROCESSING PLANT INSPECTIONS

481—31.1(137F) Inspection standards for food establishments. The department adopts, with the following exceptions, the 2009 Food Code with Supplement of the Food and Drug Administration

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as the state's "food code," which is the inspection standard for food establishments other than food processing plants.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“(2) Does not contain a raw animal food but is to be cooked in the food establishment to heat all parts of the food to a temperature of at least 63°C (145°F).”

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

(D) Prior to sale or service, cooked using a process that heats all parts of the FOOD to a temperature and for a time as specified under ¶¶ 3-401.11(A)-(C);^P

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

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

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

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

d. The food products are properly labeled.

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

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

(A) Except for a FOOD ESTABLISHMENT that obtains a VARIANCE as specified under § 3-502.11, a FOOD ESTABLISHMENT that PACKAGES TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a REDUCED OXYGEN PACKAGING method shall control the growth and toxin formation of *Clostridium botulinum* and the growth of *Listeria monocytogenes*.^P

(B) Except as specified under ¶ (F) of this section, a FOOD ESTABLISHMENT that PACKAGES TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a REDUCED OXYGEN PACKAGING method shall implement a HACCP PLAN that contains the information specified under ¶¶ 8-201.14(B) and (D) and that:^{Pf}

(1) Identifies the FOOD to be PACKAGED;^{Pf}

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

(a) Has an A_w of 0.91 or less,^{Pf}

(b) Has a pH of 4.6 or less,^{Pf}

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

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

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

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

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

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

(5) Includes operational procedures that:

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

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

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

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

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

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

(a) Concepts required for a safe operation, ^{Pf}

(b) EQUIPMENT and facilities, ^{Pf} and

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

(7) Is provided to the REGULATORY AUTHORITY prior to implementation as specified under ¶ 8-201.13(B).

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

(D) Except as specified under ¶ (C) and ¶ (F) of this section, a FOOD ESTABLISHMENT that PACKAGES TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a cook-chill or sous vide process shall:

(1) Provide to the REGULATORY AUTHORITY prior to implementation, a HACCP PLAN that contains the information as specified under ¶¶ 8-201.14(B) and (D); ^{Pf}

(2) Ensure the FOOD is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(E) Except as specified under ¶ (F) of this section, a FOOD ESTABLISHMENT that PACKAGES cheese using a REDUCED OXYGEN PACKAGING method shall:

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

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

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

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

(F) A HACCP PLAN is not required when a FOOD ESTABLISHMENT uses a REDUCED OXYGEN PACKAGING method to PACKAGE TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is always:

(1) Labeled with the production time and date,

(2) Held at 5°C (41°F) or less during refrigerated storage, and

(3) Removed from its PACKAGE in the FOOD ESTABLISHMENT within 48 hours after PACKAGING.

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

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

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

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

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

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

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

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

31.1(14) *Backflow protection.* Section 5-203.14 is amended by adding the following: “Water outlets with hose attachments, except for water heater drains and clothes washer connections, shall be protected by a non-removable hose bibb backflow preventer or by a listed atmospheric vacuum breaker installed at least six inches above the highest point of usage and located on the discharge side of the last valve.”

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. 21 CFR Part 1, Sections 1.20 to 1.24 (labeling).
- b. 21 CFR Part 7, Sections 7.1 to 7.13 and 7.40 to 7.59 (guaranty and recalls).
- c. 21 CFR Part 70, Sections 70.20 to 70.25 (labeling requirements for colors).
- d. 21 CFR Part 73, Sections 73.1 to 73.615 (color additives exempt from certification).
- e. 21 CFR Part 81, general specifications and general restrictions for provisional color additives for use in foods, drugs, and cosmetics.
- f. 21 CFR Part 82, Sections 82.3 to 82.706 (certified provisionally listed colors and specifications).
- g. 21 CFR Part 100, Section 100.155 (specific provisions for salt and iodized salt).
- h. 21 CFR Part 101, except Sections 101.69 and 101.108 (food labeling).

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- i.* 21 CFR Part 102, except Section 102.19 (common or usual name for nonstandard food).
- j.* 21 CFR Part 104, nutritional quality guidelines for foods.
- k.* 21 CFR Part 105, food for special dietary use.
- l.* 21 CFR Part 106, except Section 106.120 (infant formula quality control procedures).
- m.* 21 CFR Part 107, except Sections 107.200 to 107.280 (infant formula labeling).
- n.* 21 CFR Part 108, Sections 108.25 to 108.35 (exceptions for when a permit is not required, acidified and thermal processing of low-acid foods packaged in hermetically sealed containers).
- o.* 21 CFR Part 109, unavoidable contaminants in food for human consumption and food-packaging material.
- p.* 21 CFR Part 110, current good manufacturing practice in manufacturing, packing or holding human food.
- q.* 21 CFR Part 111, current good manufacturing practice in manufacturing, packaging, labeling, or holding operations for dietary supplements.
- r.* 21 CFR Part 113, thermally processed low-acid food packaged in hermetically sealed containers.
- s.* 21 CFR Part 114, acidified foods.
- t.* 21 CFR Part 115, shell eggs.
- u.* 21 CFR Part 120, hazard analysis and critical control point (HACCP) systems (juice).
- v.* 21 CFR Part 123, fish and fisheries products (seafood).
- w.* 21 CFR Part 129, processing and bottling of bottled drinking water.
- x.* 21 CFR Part 130, except Sections 130.5, 130.6 and 130.17, food standards: general.
- y.* 21 CFR Part 131, milk and cream.
- z.* 21 CFR Part 133, cheeses and related cheese products.
- aa.* 21 CFR Part 135, frozen desserts.
- ab.* 21 CFR Part 136, bakery products.
- ac.* 21 CFR Part 137, cereal flours and related products.
- ad.* 21 CFR Part 139, macaroni and noodle products.
- ae.* 21 CFR Part 145, canned fruits.
- af.* 21 CFR Part 146, canned fruit juices.
- ag.* 21 CFR Part 150, fruit butters, jellies, preserves, and related products.
- ah.* 21 CFR Part 152, fruit pies.
- ai.* 21 CFR Part 156, vegetable juices.
- aj.* 21 CFR Part 158, frozen vegetables.
- ak.* 21 CFR Part 160, egg and egg products.
- al.* 21 CFR Part 161, fish and shellfish.
- am.* 21 CFR Part 163, cacao products.
- an.* 21 CFR Part 164, tree nut and peanut products.
- ao.* 21 CFR Part 165, beverages.
- ap.* 21 CFR Part 166, margarine.
- aq.* 21 CFR Part 168, sweeteners and table syrups.
- ar.* 21 CFR Part 169, food dressings and flavorings.
- as.* 21 CFR Part 170, except Sections 170.6, 170.15, and 170.17, food additives.
- at.* 21 CFR Part 172, food additives permitted for direct addition to food for human consumption.
- au.* 21 CFR Part 173, secondary direct food additives permitted in food for human consumption.
- av.* 21 CFR Part 174, indirect food additives: general.
- aw.* 21 CFR Part 175, indirect food additives: adhesives and components of coatings.
- ax.* 21 CFR Part 176, indirect food additives: paper and paperboard components.
- ay.* 21 CFR Part 177, indirect food additives: polymers.
- az.* 21 CFR Part 178, indirect food additives: adjuvants, production aids, and sanitizers.
- ba.* 21 CFR Part 180, food additives permitted in food or in contact with food on an interim basis pending additional study.
- bb.* 21 CFR Part 181, prior-sanctioned food ingredients.

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- bc.* 21 CFR Part 182, substances generally recognized as safe.
- bd.* 21 CFR Part 184, direct food substances affirmed as generally recognized as safe.
- be.* 21 CFR Part 186, indirect food substances affirmed as generally recognized as safe.
- bf.* 21 CFR Part 189, substances prohibited from use in human food.
- bg.* 21 CFR Part 190, dietary supplements.

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

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

- a.* Equipment must be cleaned on a schedule of frequency that prevents the accumulation of mold, fungus and bacteria. A formal cleaning program and schedule which include the use of sanitizers to eliminate microorganisms must be developed and used.
- b.* Packaged ice must be tested every 120 days for the presence of bacteria.
- c.* Plants that use a nonpublic water system must sample the water supply monthly for the presence of bacteria and annually for chemical and pesticide contamination as required by law.

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

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

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

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

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

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

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

- a.* Employees shall keep their hands and exposed portions of their arms clean.
- b.* Employees shall have clean garments and aprons and effective hair restraints. Smoking, eating or drinking in food booths is not allowed. All nonworking, unauthorized persons are to be kept out of the food booth.
- c.* All employees, including volunteers, shall be under the direction of the person in charge. The person in charge shall ensure that the workers are effectively cleaning their hands, that potentially hazardous food is adequately cooked, held or cooled, and that all multiuse equipment or utensils are adequately washed, rinsed and sanitized.
- d.* Employees and volunteers shall not work at a temporary food establishment or farmers market potentially hazardous food establishment if the employees and volunteers have open cuts, sores or communicable diseases. The person in charge shall take appropriate action to ensure that employees and volunteers who have a disease or medical condition transmissible by food are excluded from the food operation.

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

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

31.5(2) Food handling and service.

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

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

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

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

165°F	<ul style="list-style-type: none"> ● Poultry and game animals that are not commercially raised ● Products stuffed or in a stuffing that contains fish, meat, pasta, poultry or ratite ● All products cooked in a microwave oven
155°F	<ul style="list-style-type: none"> ● Rabbits, ratite and game meats that are commercially raised ● Ground or comminuted (such as hamburgers) meat/fish products ● Raw shell eggs not prepared for immediate consumption
145°F	<ul style="list-style-type: none"> ● Pork and raw shell eggs prepared for immediate consumption ● Fish and other meat products not requiring a 155°F or 165°F cooking temperature as listed above

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

f. *Thermometers.* Each refrigeration unit shall have a numerically scaled thermometer to measure the air temperature of the unit accurately. An appropriate thermometer shall be provided where necessary to check the internal temperature of both hot and cold food. Thermometers must be accurate and have a range from 0°F to 220°F.

g. *Food display.* Foods on display must be covered. The public is not allowed to serve itself from opened containers of food or uncovered food items. Condiments such as ketchup, mustard, coffee creamer and sugar shall be served in individual packets or from squeeze containers or pump bottles. Milk shall be dispensed from the original container or from an approved dispenser. All fruits and vegetables must be washed before being used or sold. Food must be stored at least six inches off the ground. All cooking and serving areas shall be adequately protected from contamination. Barbeque areas shall be roped off or otherwise protected from the public. All food shall be protected from customer handling, coughing or sneezing by wrapping, sneeze guards or other effective means.

h. *Food preparation.* Unless otherwise approved by a variance from the department, no bare-hand contact of ready-to-eat food shall occur.

i. *Approved food source.* All food supplies shall come from a commercial manufacturer or an approved source. The use of food in hermetically sealed containers that is not prepared in an approved food processing plant is prohibited. Transport vehicles used to supply food products are subject to inspection and shall protect food from physical, chemical and microbial contamination.

j. *Leftovers.* Hot-held foods that are not used by the end of the day must be discarded.

31.5(3) Utensil storage and warewashing.

a. *Single-service utensils.* The use of single-service plates, cups and tableware is required.

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

b. Dishwashing. If approved, an adequate means to heat the water and a minimum of three basins large enough for complete immersion of the utensils are required to wash, rinse and sanitize utensils or food-contact equipment.

c. Sanitizers. Chlorine bleach or another approved sanitizer shall be provided for warewashing sanitization and wiping cloths. An appropriate test kit shall be provided to check the concentration of the sanitizer used. The person in charge shall demonstrate knowledge in the determination of the correct concentration of sanitizer to be used.

d. Wiping cloths. Wiping cloths shall be stored in a clean, 100 ppm chlorine sanitizing solution or equivalent. Sanitizing solution shall be changed as needed to maintain the solution in a clean condition.

31.5(4) Water.

a. Water supply. An adequate supply of clean water shall be provided from an approved source. Water storage units and hoses shall be food grade and approved for use in storage of water. If not permanently attached, hoses used to convey drinking water shall be clearly and indelibly identified as to their use. Water supply systems shall be protected against backflow or contamination of the water supply. Backflow prevention devices, if required, shall be maintained and adequate for their intended purpose.

b. Wastewater disposal. Wastewater shall be disposed of in an approved wastewater disposal system sized, constructed, maintained and operated according to law.

31.5(5) Premises.

a. Hand-washing container. An insulated container with at least a two-gallon capacity with a spigot, basin, soap and dispensed paper towels shall be provided for hand washing. The container shall be filled with hot water.

b. Floors, walls and ceilings. If required, walls and ceilings shall be of tight design and weather-resistant materials to protect against the elements and flying insects. If required, floors shall be constructed of tight wood, asphalt, rubber or plastic matting or other cleanable material to control dust or mud.

c. Lighting. Adequate lighting shall be provided. Lights above exposed food preparation areas shall be shielded.

d. Food preparation surfaces. All food preparation or food contact surfaces shall be of a safe design, smooth, easily cleanable and durable.

e. Garbage containers. An adequate number of cleanable containers with tight-fitting covers shall be provided both inside and outside the establishment.

f. Toilet rooms. An adequate number of approved toilet and hand-washing facilities shall be provided at each event.

g. Clothing. Personal clothing and belongings shall be stored at a designated place in the establishment, adequately separated from food preparation, food service and dishwashing areas.

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

[Filed 10/31/13, effective 1/1/14]

[Published 11/27/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/27/13.

ARC 1189C

LABOR SERVICES DIVISION[875]**Adopted and Filed**

Pursuant to the authority of Iowa Code section 89.14 as amended by 2013 Iowa Acts, House File 484, the Boiler and Pressure Vessel Board amends Chapter 90, "Administration of the Boiler and Pressure Vessel Program," Iowa Administrative Code.

This amendment conforms the regulatory inspection schedule with 2013 Iowa Acts, House File 484. The purposes of this amendment are to make the rule more current and to implement legislative intent.

LABOR SERVICES DIVISION[875](cont'd)

Notice of Intended Action was published in the September 18, 2013, Iowa Administrative Bulletin as **ARC 1015C**. No public comment was received on the proposed amendment. One change was made to the amendment published under Notice of Intended Action. The word "certificate" has been added to 90.6(2)"b."

After analysis and review of this rule making, no impact on jobs will occur.

This amendment is intended to implement Iowa Code chapter 89 as amended by 2013 Iowa Acts, House File 484.

This amendment shall become effective on January 1, 2014.

The following amendment is adopted.

Amend subrule 90.6(2) as follows:

90.6(2) Schedule.

a. ~~Inspections~~ All required inspections must be performed according to the schedule set forth in Iowa Code section 89.3 ~~and~~.

b. Except for inspections of unfired steam pressure vessels operating in excess of 15 pounds per square inch and low pressure steam boilers, each certificate inspection must be performed within a 60-day period prior to the expiration date of the operating certificate. Modification of this 60-day period will be permitted only upon written application showing just cause for waiver of the 60-day period.

c. Special inspections may be conducted at any time mutually agreed to by the division and the object's owner or user.

[Filed 10/30/13, effective 1/1/14]

[Published 11/27/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/27/13.

ARC 1187C

MEDICINE BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.10, 148.2, and 272C.2, the Board of Medicine hereby amends Chapter 8, "Fees," Chapter 9, "Permanent Physician Licensure," and Chapter 10, "Resident, Special and Temporary Physician Licensure," Iowa Administrative Code.

Chapter 8 defines application and licensure fees for physicians; Chapter 9 defines requirements for permanent physician licensure; and Chapter 10 defines requirements for resident, special and temporary physician licensure. The amendments to these chapters reduce the resident physician licensure fee from \$150 to \$100; reduce the criminal background check fee (all licenses) from \$55 to \$45; reduce the licensure verification fee from \$40 to \$30; eliminate the \$25 duplicate license fee; eliminate the \$50 electronic data fee; and increase the quarterly monitoring fee from \$100 to up to \$300. Other amendments eliminate redundant or outdated language.

The Board approved a Notice of Intended Action during a regularly scheduled meeting on June 28, 2013. Notice of Intended Action was published in the Iowa Administrative Bulletin on August 7, 2013, as **ARC 0943C**. A public hearing on the amendments was held on August 27, 2013. No comments, oral or in writing, were presented to or received by the Board. These amendments are identical to those published under Notice.

On October 25, 2013, the Board voted to adopt these amendments.

After analysis and review of this rule making, it has been determined that the amendments could have a positive impact on jobs. The reduction in fees for resident licensure could encourage physicians to pursue postgraduate training in the state of Iowa and subsequent employment in Iowa. The elimination of fees for certain public records could assist in the recruitment of physicians wishing to practice in Iowa.

These amendments are intended to implement Iowa Code chapters 147, 148, and 272C.

These amendments will become effective January 1, 2014.

The following amendments are adopted.

MEDICINE BOARD[653](cont'd)

ITEM 1. Amend subrule 8.2(2) as follows:

8.2(2) Fees for acupuncturists. The following fees apply to licensure for acupuncturists.

a. to *d.* No change.

~~*e.* Fee for a duplicate wall certificate or renewal card, \$25. The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.~~

~~*f. e.* Fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks, \$55 \$45. The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.~~

ITEM 2. Amend subrule 8.4(1) as follows:

8.4(1) Fees for permanent licensure. For provisions for permanent licensure, see 653—Chapter 9, “Permanent Physician Licensure.” The following fees shall apply to permanent licensure.

a. Initial licensure, \$450 plus the \$45 fee for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

b. to *e.* No change.

f. Reinstatement of a license to practice one year or more after becoming inactive, \$500 plus the \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

g. No change.

ITEM 3. Amend paragraph **8.4(2)“a”** as follows:

a. Application for a resident physician license, ~~\$150~~ \$100 plus the \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

ITEM 4. Amend paragraph **8.4(3)“a”** as follows:

a. Application for a special physician license, \$300 plus the \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

ITEM 5. Amend paragraph **8.4(4)“a”** as follows:

a. Application for a temporary physician license, \$100 plus the \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

ITEM 6. Rescind subrule **8.4(6)**.

ITEM 7. Renumber subrule **8.4(7)** as **8.4(6)**.

ITEM 8. Amend renumbered subrule 8.4(6) as follows:

8.4(6) Fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks, \$55 \$45. ~~The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.~~

ITEM 9. Amend subrule 8.5(1) as follows:

8.5(1) Verification fees.

a. Physicians shall use VeriDoc to secure a certified statement that verifies Iowa licensure status for any state medical board that accepts VeriDoc. VeriDoc is accessible at <http://www.veridoc.org/>. The fee for this service is ~~\$40~~ \$30.

b. A physician who needs a certified statement that verifies Iowa licensure status for a state medical board that does not accept verification from VeriDoc shall make a written request for a certified statement with payment of a ~~\$40~~ \$30 verification fee to the Iowa Board of Medicine. The Iowa board shall provide a certified statement that verifies Iowa licensure status to the nonaccepting state medical board.

c. No change.

d. The board shall provide an automated telephone or electronic verification service whereby callers users can input the licensee’s license number or social security number ~~and receive verbally to learn~~ the licensee’s current licensure status. There is no fee for this service.

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The board shall provide a license number for an individual caller to use in the automated telephone or electronic verification service. Businesses that utilize verifications will be required to utilize the automated telephone or electronic verification service or the alternative outlined in 8.5(1) "c."

ITEM 10. Amend subrule 8.6(2) as follows:

8.6(2) Purchase of public records. Public records are available according to 653—Chapter 2, "Public Records and Fair Information Practices." Payment made to the Iowa Board of Medicine shall be received in the board office prior to the release of the records.

a. ~~Copies~~ Printed copies of public records shall be calculated at \$.25 per page plus labor. ~~A The board may charge a \$16 per hour fee shall be charged~~ for labor in excess of one-quarter hour for searching and copying documents or retrieving and copying information stored electronically. No additional fee shall be charged for delivery of the records by mail, ~~or fax, or e-mail~~. Fax is an option if the requested records are fewer than 30 pages. The board office shall not require payment when the fees for the request would be less than \$5 total.

b. ~~Electronic copies of public records delivered by e-mail shall be calculated at \$.10 per page; the minimum charge shall be \$5 provided at no charge per page. A The board may charge a \$16 per hour fee shall be charged~~ for labor in excess of one-quarter hour for searching and copying documents or retrieving and copying information stored electronically. ~~The board office shall not require payment when the fees for the requests would be less than \$5 total.~~

c. ~~Printed copies of press releases, statements of charges, final orders and consent agreements from each board meeting shall be available for an annual subscription fee of \$192 or a prorated portion thereof based on the calendar year.~~

ITEM 11. Amend rule 653—8.7(147,148,272C) as follows:

653—8.7(147,148,272C) Purchase of a licensee Licensee data list. A data list of all physicians and acupuncturists includes the following information about each licensee: full name, year of birth, mailing address, business telephone number, ~~E-mail address~~, Iowa county (if applicable), medical school (if applicable), year of graduation from medical school (if applicable), two medical specialties (if available), license issue date, license expiration date, license number, license type, license status, and an indicator of whether the board has taken any public action on the license. ~~The fee for an electronic file of the list is \$50. There is no fee for an electronic file of this list. A printed copy of the data list is available at the board's office at fees described in rule 653—8.6(147,148,272C).~~ Payment made to the Iowa Board of Medicine shall be received in the board office prior to the release of a printed copy of the list. ~~The fee shall be considered a repayment receipt as defined in Iowa Code section 8.2.~~

ITEM 12. Amend rule 653—8.9(147,148,272C) as follows:

653—8.9(147,148,272C) Copies of the laws and rules. ~~Copies~~ Electronic copies of laws and rules pertaining to the practice of medicine or acupuncture are available ~~from on the board for the following fees:~~ board's Web site, www.medicalboard.iowa.gov, at no cost. Printed copies of these laws and rules are available at the board's office at fees described in rule 653—8.6(147,148,272C).

1. ~~Iowa Code and Iowa Administrative Code access, no fee, available at www.medicalboard.iowa.gov.~~

2. ~~Printed copies of the Iowa Code chapters that pertain to the practice of medicine or acupuncture, \$10.~~

3. ~~Printed copies of board rules in the Iowa Administrative Code, \$10.~~

ITEM 13. Amend rule 653—8.12(8,147,148,272C) as follows:

653—8.12(8,147,148,272C) Request for reports. The board may request a report from the National Practitioner Data Bank ~~or the Healthcare Integrity and Protection Data Bank~~ regarding an applicant or licensee. The cost of obtaining the report is included within the fee for initial licensure or licensure reinstatement or renewal. ~~However, that portion of the fee spent to obtain that report shall be considered a repayment receipt as defined in Iowa Code section 8.2.~~

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ITEM 14. Amend rule 653—8.13(8,147,148,272C) as follows:

653—8.13(8,147,148,272C) Monitoring fee. ~~A provision for payment of \$100~~ The board may require payment of up to \$300 per quarter to cover the board's expenses ~~in monitoring to monitor a licensee's compliance with the a settlement agreement may be included in the settlement agreement, and payments shall be considered repayment receipts as defined in Iowa Code section 8.2~~ or final decision and order.

ITEM 15. Amend paragraph **9.4(2)“a”** as follows:

a. Pay a nonrefundable initial application fee of \$450 plus the \$45 fee identified in 653—subrule ~~8.4(7)~~ 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

ITEM 16. Amend paragraph **9.5(2)“a”** as follows:

a. Pay a nonrefundable initial application fee of \$450 plus the \$45 fee identified in 653—subrule ~~8.4(7)~~ 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

ITEM 17. Amend paragraph **9.6(2)“a”** as follows:

a. Pay a nonrefundable initial application fee of \$450 plus the \$45 fee identified in 653—subrule ~~8.4(7)~~ 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

ITEM 18. Amend subrule 9.15(2) as follows:

9.15(2) Reinstatement of an unrestricted Iowa license that has been inactive for one year or longer. An individual whose license is in inactive status and who has not submitted a reinstatement application that was received by the board within one year of the license's becoming inactive shall follow the application cycle specified in this rule and shall satisfy the following requirements for reinstatement:

a. Submit an application for reinstatement to the board upon forms provided by the board. The application shall require the following information:

(1) to (8) No change.

(9) A completed fingerprint packet to facilitate a national criminal history background check. The \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

b. Pay the reinstatement fee of \$500 plus the \$45 fee identified in 653—subrule ~~8.4(7)~~ 8.4(6) for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks. No fee is required for reinstatement for those whose licenses became inactive between December 8, 1999, and July 4, 2001; however, the \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed.

c. to e. No change.

ITEM 19. Amend subparagraph **10.3(3)“a”(1)** as follows:

(1) Pay a nonrefundable application fee of ~~\$150~~ \$100 plus the \$45 fee identified in 653—subrule ~~8.4(7)~~ 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

ITEM 20. Amend subrule 10.3(9) as follows:

10.3(9) An Iowa resident physician who changes resident training programs in Iowa. A resident physician who changes resident training programs shall acquire new resident physician licensure or permanent licensure prior to entering the new resident training program. Such changes include a transfer to a different program in the same institution, a move to a program in another institution, or becoming a fellow after completing a residency in the same core program. An individual who contracts with an institution to be in two programs from the time of application for the resident license shall not be required to apply for another resident license for the second program. ~~A resident physician licensee applying for a new resident license shall submit the following:~~

a. ~~A nonrefundable resident licensure application fee of \$100;~~

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- ~~*b.*—Materials required in subparagraphs 10.3(3) “b”(1) to (4) and (7) to (10);~~
~~*c.*—A statement from the director of the applicant’s most recent residency program documenting the applicant’s progress in the program and whether any warnings had been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action; and~~

ITEM 21. Amend subparagraph **10.4(3)“a”(1)** as follows:

(1) Pay a nonrefundable special license fee of \$300 plus the \$45 fee identified in 653—subrule 8.4(7) 8.4(6) for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks;

ITEM 22. Amend paragraph **10.5(3)“a”** as follows:

a. Pay a nonrefundable application fee of \$100 plus the \$45 fee identified in 653—subrule 8.4(7) 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI). A physician who is serving as a camp physician and who is not receiving payment other than expenses shall be exempt from the license application fee and the fee for the criminal history background check.

[Filed 10/28/13, effective 1/1/14]

[Published 11/27/13]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/27/13.

ARC 1188C

MEDICINE BOARD[653]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3(1)“k,” the Board of Medicine hereby amends Chapter 14, “Iowa Physician Health Committee,” Iowa Administrative Code.

Chapter 14 establishes the Iowa Physician Health Committee and a confidential monitoring and advocacy program for physicians with diagnosed mental health issues, physical disabilities or substance use disorders. The amendments update language throughout Chapter 14 to provide clarity and to more closely align rules with practices of the Committee and the program. The amendments define program participants, the duties of the Committee’s officers, and the discretion of the Committee to report a participant to the Board of Medicine for noncompliance with the participant’s program contract.

The Board approved a Notice of Intended Action during a regularly scheduled meeting on June 28, 2013. Notice of Intended Action was published in the Iowa Administrative Bulletin on August 21, 2013, as **ARC 0977C**. A public hearing on the amendments was held September 10, 2013. No comments, either oral or written, were received by the Board. These amendments are identical to those published under Notice.

On October 25, 2013, the Board voted to adopt these amendments.

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

These amendments are intended to implement Iowa Code chapters 147, 148, and 272C.

These amendments will become effective January 1, 2014.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definition of “Participant” in rule **653—14.2(272C)**:

“*Participant*” means an applicant or licensee who does any of the following: self-reports an impairment to the Iowa physician health program, is referred to the Iowa physician health program by the board pursuant to 653—14.11(272C), signs an initial agreement with the Iowa physician health committee, or signs a contract with the Iowa physician health committee.

ITEM 2. Amend subrule 14.4(2) as follows:

14.4(2) Officers. The ~~committee~~ IPHC shall elect a chairperson and a co-chairperson or a vice chairperson at the last meeting of each calendar year to begin serving a one-year term on January 1.

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a. The chairperson and co-chairperson are responsible for offering guidance and direction to staff between regularly scheduled committee meetings, including negotiation and execution of initial agreements, contracts, and program descriptions and interim restrictions on practice on behalf of the committee. The IPHC retains authority to review all interim decisions at its discretion.

b. The vice chairperson is responsible for providing guidance and direction to staff between regularly scheduled committee meetings if the chairperson is unavailable or unable to assist in a particular matter.

ITEM 3. Amend rule 653—14.5(272C) as follows:

653—14.5(272C) Eligibility. To be eligible for participation in the IPHP, an applicant or a licensee must self-report an impairment or suspected potential impairment directly to the IPHP or be referred by the board for an impairment or suspected potential impairment pursuant to 653—14.11(272C) and be determined by the IPHC to be an appropriate candidate for participation in the IPHP.

14.5(1) ~~An applicant's or licensee's participation~~ Participation in the program does not divest the board of its authority or jurisdiction over the ~~applicant or licensee participant~~. ~~An applicant or licensee~~ A participant with an impairment or suspected potential impairment as defined at 653—14.2(272C) may retain eligibility to participate in the program if appropriate while subject to investigation or discipline by the board for matters other than the alleged impairment.

14.5(2) ~~An applicant or a licensee~~ A participant may be determined to be ineligible to participate in the program as a self-reporter or a referral from the board if the committee finds sufficient evidence of any of the following:

a. ~~The applicant or licensee participant~~ provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the ~~committee~~ IPHC.

b. ~~The applicant or licensee participant~~ fails to sign a contract when recommended by the ~~committee~~ IPHC.

c. The IPHC determines it will be unable to assist the ~~applicant or licensee participant~~.

14.5(3) The IPHC shall report to the board any knowledge of violations of administrative rules or statutes other than the impairment, including, but not limited to, competency concerns or sexual misconduct.

ITEM 4. Amend rule 653—14.6(272C) as follows:

653—14.6(272C) Type of program. The IPHP is an individualized recovery, rehabilitation, or maintenance program designed to meet the specific needs of the ~~impaired licensee participant~~. The committee, in consultation with an IPHC-approved evaluator, shall determine the type of recovery, rehabilitation, or maintenance program required to treat the ~~applicant's or licensee's participant's~~ impairment. The ~~committee~~ IPHC shall prepare a health contract, to be signed by the ~~applicant or licensee participant~~, that shall provide a detailed description of the goals of the program, the requirements for successful participation, and the ~~applicant's or licensee's participant's~~ obligations therein.

ITEM 5. Amend rule 653—14.7(272C) as follows:

653—14.7(272C) Terms of participation. A ~~licensee or an applicant~~ participant shall agree to comply with the terms for participation in the IPHP established in the initial agreement and contract. Terms of participation specified in the contract shall include, but are not limited to:

14.7(1) Duration. The length of time ~~an applicant or a licensee~~ a participant may participate in the program shall be determined by the ~~committee~~ IPHC in accordance with the following:

a. Participation in the program for ~~applicants or licensees~~ participants impaired as a result of alcohol or drug dependency or addiction is set at a minimum of five years. The ~~committee~~ IPHC may offer a contract with a shorter duration to ~~an applicant or licensee~~ a participant who can demonstrate successful participation in another state's physician health program, who can document similar

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experience, or who, as a board referral, has successfully completed a portion of the monitoring period established in the board order.

b. Length of participation in the program for ~~applicants or licensees~~ participants with impairments resulting from mental or physical disorders or disabilities will vary depending upon the recommendations provided by an approved evaluator and the determination of the ~~IPHP~~ IPHC following review of all relevant information.

14.7(2) Noncompliance. A ~~licensee or an applicant participating in the program~~ participant is responsible for promptly notifying the ~~committee~~ IPHC of ~~any instance~~ all instances of noncompliance including, ~~but not limited to,~~ a relapse. Notification of noncompliance made to the ~~IPHP~~ IPHC by the ~~applicant or licensee~~ participant, any person responsible for ~~providing or monitoring treatment or treating the participant,~~ or another party shall result in the following:

a. First instance. Upon receiving notification of a first instance of significant noncompliance including, but not limited to, a relapse, the ~~IPHP~~ IPHC shall make a report to the board which identifies the ~~applicant or licensee~~ participant by IPHP case number, describes the relevant terms of the ~~applicant's or licensee's~~ participant's contract and ~~the nature of the noncompliance,~~ and includes ~~recommendations~~ the IPHC's recommendation as to whether the ~~applicant or licensee~~ participant should be allowed to remain in the program ~~or whether formal disciplinary charges should be filed by the board.~~ Upon receiving the report, the board shall determine if formal disciplinary charges should be filed, pursuant to 653—subrule 23.1(12).

b. Second instance. Upon receiving notification of a second instance of significant noncompliance including, but not limited to, a relapse, the ~~IPHP~~ IPHC shall ~~nullify the contract and~~ refer the case ~~and the participant's identity~~ to the board for ~~the filing of formal charges or other appropriate action~~ a determination of whether formal disciplinary charges should be filed or other appropriate action taken. In its referral, the IPHC may make recommendations as to whether the participant should be allowed to remain in the program.

14.7(3) Practice restrictions. The ~~IPHP~~ IPHC may impose restrictions on the license to practice the applicable profession as a term of the initial agreement or contract until such time as it receives a report from an approved evaluator and the IPHC determines, based on all relevant information, that the ~~licensee~~ participant is capable of practicing with reasonable skill and safety. As a condition of participation in the program, a ~~licensee~~ participant is required to agree to restrict practice in accordance with the terms specified in the initial agreement or contract. In the event that ~~the licensee or applicant~~ a participant refuses to agree to or comply with the restrictions established in the initial agreement or contract, the ~~committee~~ IPHC shall refer the ~~applicant or licensee~~ participant to the board for appropriate action.

ITEM 6. Amend subrule 14.8(2) as follows:

14.8(2) ~~An applicant's or licensee's participation~~ Participation in the program ~~IPHP~~ shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. ~~An applicant or licensee~~ A participant who violates a statute or administrative rule of the board which is unrelated to impairment, including, but not limited to, competency concerns or sexual misconduct, shall be referred to the board in accordance with these administrative rules for appropriate action.

ITEM 7. Amend rule 653—14.9(272C) as follows:

653—14.9(272C) Confidentiality. Information in the possession of the board or the committee shall be subject to the confidentiality requirements of Iowa Code section 272C.6. Information about applicants or licensees in the program shall not be disclosed except as provided in this rule.

14.9(1) The IPHC is authorized pursuant to Iowa Code section 272C.6(4) to communicate information about ~~an~~ a current or former ~~IPHP~~ participant to the applicable regulatory authorities or impaired licensee programs ~~of in the state of Iowa and in~~ any jurisdiction of the United States or foreign nations in which the participant is currently licensed to practice medicine or in which the participant seeks licensure. ~~IPHP~~ participants must report their participation to the applicable physician health program or licensing authority in any state in which the participant is currently licensed or in which the participant seeks licensure.

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14.9(2) The IPHC is authorized to communicate information about an IPHP participant to any person assisting in the participant's treatment, recovery, rehabilitation, monitoring, or maintenance for the duration of the contract.

14.9(3) The IPHC is authorized to communicate information about an IPHP participant to the board in the event a participant does not comply with the terms of the contract as set forth in subrule 14.7(2). The IPHC may provide the board with a participant's IPHP file in the event the participant does not comply with the terms of the contract and the IPHC refers the case to the board for the filing of formal disciplinary charges or other appropriate action. If the board initiates disciplinary action against a licensee for noncompliance with the terms of the contract, the board may include information about a licensee's participation in the IPHP in the statement of charges, settlement agreement and final order, or order following hearing. The IPHC is also authorized to communicate information about an IPHP participant to the board in the event the participant is under investigation by the board.

14.9(4) The IPHC is authorized to communicate information about ~~an~~ a current or former IPHP participant to the board if reliable information held by the IPHC reasonably indicates a significant risk to the public exists. If the board initiates disciplinary action based upon this information, the board may include information about a licensee's participation in the IPHP in the statement of charges, settlement agreement and final order, or order following hearing if necessary to address impairment issues related to the violations which are the subject of the disciplinary action.

14.9(5) and **14.9(6)** No change.

ITEM 8. Amend rule 653—14.11(272C) as follows:

653—14.11(272C) Board referrals to the Iowa physician health committee program.

14.11(1) Eligibility for board referral to IPHP. The board may refer to the IPHP a licensee or applicant for whom the following circumstances apply:

- a. The applicant or licensee has ~~an~~ a potential impairment as defined in rule 653—14.2(272C).
- b. The board determines that the applicant or licensee is an appropriate candidate for participation in the IPHP.

NOTE: A licensee who is the subject of a formal board disciplinary order relating to an impairment must demonstrate a sufficient period of compliance with the disciplinary order before referral to the ~~IPHC~~ IPHP.

c. No change.

14.11(2) Referral process.

- a. and b. No change.
- c. If the IPHC finds that the applicant or licensee is not an appropriate candidate for participation in the IPHP or if the applicant or licensee fails to sign the ~~health~~ initial agreement or contract in the time period specified by the IPHC, the IPHC shall notify the board promptly.
- d. When the referred applicant or licensee signs the contract, the IPHC shall notify the board ~~that the applicant or licensee is an appropriate candidate for participation in the IPHP and that the referral has been finalized.~~
- e. Upon notification that the ~~referral~~ contract has been finalized for a ~~licensee~~ participant who is the subject of a formal board disciplinary order relating to the impairment, the board shall file an order referring the licensee to the IPHP, and that order shall be a public record.
- f. The IPHC shall notify the board upon the ~~licensee's~~ participant's successful completion of the program. The board may file an order recognizing the ~~licensee's~~ participant's successful completion of the program in cases where the referral was included in a public record. An order recognizing completion of the program shall be a public record.
- g. No change.

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14.11(3) No change.

[Filed 10/28/13, effective 1/1/14]

[Published 11/27/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/27/13.

ARC 1192C

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 148F.3, the Iowa Board of Podiatry hereby amends Chapter 5, "Fees"; adopts Chapter 221, "Licensure of Orthotists, Prosthetists, and Pedorthists"; amends Chapter 224, "Discipline for Podiatrists"; and adopts Chapter 225, "Continuing Education for Orthotists, Prosthetists, and Pedorthists," Iowa Administrative Code.

The amendments in Item 1 make changes to Chapter 5 to increase the licensure fee for podiatrists to \$400 for a new license, \$200 for a temporary license, \$460 for a reactivation, and \$400 for a license renewal. These fee increases are required to make the Board of Podiatry self-sustaining. The licensure fee for the new professions of orthotics, prosthetics, and pedorthics is a two-tier licensure fee. The two-tier system allows the new professions to comply with a legislative mandate to reimburse \$28,000 to the general fund by July 1, 2015. After July 1, 2015, the initial licensure fee of \$600 will revert to a lower self-sustaining fee of \$400. Chapter 5 is common to all professions for which licensure is administered by the Division; however, the changes affect only the Board of Podiatry.

Item 2 adopts a new chapter that defines the licensure requirements for the new professions. In accordance with 2013 Iowa Acts, House File 486, section 7, new Chapter 221 includes language for a transition period for those practitioners currently practicing orthotics, prosthetics, or pedorthics.

Items 3 through 10 incorporate the new professions into the Board of Podiatry's discipline chapter.

Item 11 adopts new Chapter 225 that defines the continuing education requirements for renewal of an orthotic, prosthetic, or pedorthic license. The adopted rules require 30 hours of continuing education per biennium for prosthetists and orthotists and 20 hours for pedorthists.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 0942C** on August 7, 2013.

Five comments were received from the Board of Certification, International, in support of the rules. Two comments were received from current practitioners in support of the rules. The Iowa Prosthetics, Orthotics, and Pedorthics Association submitted comments requesting further clarification of the transition period rule, 645—221.2(148F), to more closely mirror 2013 Iowa Acts, House File 486, section 7, subsection 2 (new Iowa Code section 148F.9). The Iowa Prosthetics, Orthotics, and Pedorthics Association also recommended the addition of rules requiring that affidavits from three licensed physicians be included in the transition period rule.

Based on public comment, updated fiscal information, and discussion, the Board made changes to the transition period rule to more closely mirror the wording in 2013 Iowa Acts, House File 486. The new wording clarifies that, when utilizing the work experience provision, the applicant must have worked at least 30 hours per week and have practiced in an accredited facility, unless the facility is not required to be accredited by Medicare.

Based on updated fiscal data, the Board changed the proposed licensure fees in rule 645—5.15(147,148F,149). The proposed \$300 fees for initial licensure and renewal have been changed to \$400. The reactivation fee has been changed from \$360 to \$460, and the temporary fees for licensure and renewal have been changed from \$150 to \$200. The increase in fees is necessary to make the Board of Podiatry self-sustaining.

In addition, several nonsubstantive technical corrections have been made.

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

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These amendments are intended to implement Iowa Code chapters 17A, 147, 148F, and 272C and 2013 Iowa Acts, House File 486, section 7.

These amendments will become effective January 1, 2014.

The following amendments are adopted.

ITEM 1. Amend rule 645—5.15(147,149) as follows:

645—5.15(147,148F,149) Podiatry license fees. All fees are nonrefundable.

~~5.15(1)~~ License fee for license to practice podiatry, license by endorsement, or license by reciprocity ~~or temporary license~~ is ~~\$120~~ \$400.

~~5.15(2)~~ License fee for temporary license to practice podiatry is \$200.

~~5.15(3)~~ The fee for a license to practice orthotics, prosthetics, or pedorthics received on or before July 1, 2015, shall be \$600. The fee for a license to practice orthotics, prosthetics, or pedorthics received after July 1, 2015, shall be \$400.

~~5.15(2)~~ ~~5.15(4)~~ Biennial license renewal fee is ~~\$168~~ \$400 for each biennium.

~~5.15(5)~~ Reactivation fee is \$460.

~~5.15(6)~~ Temporary license renewal fee is \$200.

~~5.15(3)~~ ~~5.15(7)~~ Late fee for failure to renew before expiration is \$60.

~~5.15(4)~~ Reactivation fee is \$228.

~~5.15(5)~~ ~~5.15(8)~~ Duplicate or reissued license certificate or wallet card fee is \$20.

~~5.15(6)~~ ~~5.15(9)~~ Verification of license fee is \$20.

~~5.15(7)~~ ~~5.15(10)~~ Returned check fee is \$25.

~~5.15(8)~~ ~~5.15(11)~~ Disciplinary hearing fee is a maximum of \$75.

~~5.15(9)~~ Temporary license renewal fee is \$84 per year.

This rule is intended to implement Iowa Code section 147.8 and Iowa Code chapters 17A, 148F, 149 and 272C.

ITEM 2. Adopt the following **new** 645—Chapter 221:

CHAPTER 221

LICENSURE OF ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

645—221.1(148F) Definitions. For purposes of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Board*” means the board of podiatry.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Licensee*” means any person licensed to practice as an orthotist, prosthetist, or pedorthist in the state of Iowa.

“*License expiration date*” means June 30 of even-numbered years.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice orthotics, prosthetics, or pedorthics to an applicant who is or has been licensed in another state.

“*Mandatory training*” means training on identifying and reporting child abuse or dependent adult abuse required of orthotists, prosthetists, or pedorthists who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—221.8(17A,147,272C) by which an inactive license is restored to active status.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“Reciprocal license” means the issuance of an Iowa license to practice orthotics, prosthetics, or pedorthics to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of podiatry to license persons who have the same or similar qualifications to those required in Iowa.

“Reinstatement” means the process as outlined in rule 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

645—221.2(148F) Transition period. Current practitioners of orthotics, prosthetics, and pedorthics who submit a completed application and appropriate licensure fee to the board office on or prior to June 30, 2014, may be issued an initial license based on the following criteria:

1. Verification of current certification in good standing as an orthotist, prosthetist, or pedorthist from the American Board for Certification in Orthotics, Prosthetics, and Pedorthics, Incorporated. The verification must be submitted to the board directly from the accrediting body; or
2. Verification of current certification in good standing as an orthotist, prosthetist, or pedorthist from the Board of Certification, International. The verification must be submitted to the board directly from the accrediting body; or
3. Verification of continuous practice of at least 30 hours per week as an orthotist, prosthetist, or pedorthist for at least five of seven years in an accredited and bonded facility. The five years of continuous practice must occur between July 1, 2007, and June 30, 2014. The practice must occur in an accredited and bonded facility unless the facility is not required to be accredited and bonded by Medicare.

645—221.3(148F) Requirements for licensure. The following criteria shall apply to licensure:

221.3(1) An applicant shall complete a board-approved application packet. Application forms may be obtained from the board’s Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office. All applications shall be sent to the Board of Podiatry, Bureau of Professional Licensure, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

221.3(2) An applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

221.3(3) Each application shall be accompanied by the appropriate fees payable to the Board of Podiatry. The fees are nonrefundable.

221.3(4) No application will be considered complete until official copies of academic transcripts are received.

a. Applicants for licensure in orthotics or prosthetics must submit proof of graduation from an educational program approved by the Commission on Accreditation of Allied Health Education Programs.

b. Applicants for licensure in pedorthics must submit proof of graduation from an educational program approved by the National Commission on Orthotic and Prosthetic Education.

221.3(5) Transcripts must be sent directly from the school to the board.

221.3(6) Licensees who were issued their licenses within six months prior to the renewal date shall not be required to renew their licenses until the renewal date two years later.

221.3(7) Incomplete applications that have been on file in the board office for more than two years shall be:

- a.* Considered invalid and shall be destroyed; or
- b.* Retained upon written request of the applicant. The applicant is responsible for requesting that the file be retained.

221.3(8) The applicant shall ensure that the passing score from the appropriate professional examination is sent directly to the board from the examination service.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

221.3(9) Applicants for licensure in orthotics or prosthetics must provide documentation of successful completion of a residency program accredited by the National Commission on Orthotic and Prosthetic Education.

221.3(10) Applicants for licensure in pedorthics must provide documentation of successful completion of a qualified clinical experience program.

645—221.4(148F) Written examinations.

221.4(1) Prosthetists must have completed and passed the Board of Certification/Accreditation, International (BOC), or American Board for Certification in Orthotics, Prosthetics and Pedorthics, Incorporated (ABC), examination for prosthetists.

221.4(2) Orthotists must have completed and passed the BOC or ABC examination for orthotists.

221.4(3) Pedorthists must have completed and passed the BOC or ABC examination for pedorthists.

221.4(4) The applicant has responsibility for:

- a. Making arrangements to take the examinations; and
- b. Arranging to have the examination score reports sent directly to the board from the ABC or BOC.

221.4(5) A passing score as recommended by the administrators of the ABC or BOC examination shall be required.

645—221.5(148F) Educational qualifications.

221.5(1) An applicant for licensure to practice as an orthotist or prosthetist shall present official copies of academic transcripts, verifying completion of the following requirements:

a. A baccalaureate or higher degree from a regionally accredited college or university. Transcripts must be sent directly from the school to the board of podiatry; and

b. Verification of completion of an academic program in orthotics or prosthetics accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP). Transcripts must be sent directly from the school to the board of podiatry.

221.5(2) An applicant for licensure to practice as a pedorthist shall present official copies of academic transcripts, verifying completion of the following requirements:

a. A high school diploma or its equivalent; and

b. Verification of completion of an academic program in pedorthics accredited by the National Commission on Orthotic and Prosthetic Education. Verification must be sent directly from the school to the board of podiatry.

645—221.6(148F) Licensure by endorsement.

221.6(1) An applicant who has been a licensed orthotist, prosthetist, or pedorthist under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia, another state, territory, province or foreign country who:

a. Submits to the board a completed application;

b. Pays the licensure fee;

c. Shows evidence of licensure requirements that are similar to those required in Iowa;

d. For prosthetic or orthotic licensure, provides:

(1) A baccalaureate or higher degree from a regionally accredited college or university. Transcripts must be sent directly from the school to the board of podiatry; and

(2) Verification of completion of an academic program in orthotics or prosthetics accredited by CAAHEP. Transcripts must be sent directly from the school to the board of podiatry;

e. For pedorthic licensure, provides:

(1) A high school diploma or its equivalent; and

(2) Verification of completion of an academic program in pedorthics accredited by the National Commission on Orthotic and Prosthetic Education. Verification must be sent directly from the school to the board of podiatry;

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

f. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- (1) Licensee's name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license;

g. Submits a copy of the scores from the appropriate professional examination to be sent directly from the examination service to the board.

221.6(2) Individuals who were issued their licenses by endorsement within six months of the license renewal date will not be required to renew their licenses until the next renewal date two years later.

645—221.7(148F) License renewal.

221.7(1) The biennial license renewal period for a license to practice orthotics, prosthetics, or pedorthics shall begin on July 1 of an even-numbered year and end on June 30 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

221.7(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later.

221.7(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—225.2(148F,272C). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

221.7(4) Upon receipt of the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

221.7(5) A person licensed to practice orthotics, prosthetics, or pedorthics shall keep the license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

221.7(6) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 5.15(7). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

221.7(7) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice as an orthotist, prosthetist, or pedorthist in Iowa until the license is reactivated. A licensee who practices as an orthotist, prosthetist, or pedorthist in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—221.8(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

221.8(1) Submit a reactivation application on a form provided by the board.

221.8(2) Pay the reactivation fee that is due as specified in rule 645—5.15(147,148F,149).

221.8(3) Provide verification of current competence to practice by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of:

1. For orthotists or prosthetists, 30 hours of continuing education within two years of application for reactivation.
2. For pedorthists, 20 hours of continuing education within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of:

1. For orthotists or prosthetists, 60 hours of continuing education within two years of application for reactivation.
2. For pedorthists, 40 hours of continuing education within two years of application for reactivation.

645—221.9(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—221.8(17A,147,272C) prior to practicing as an orthotist, a prosthetist, or a pedorthist in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 148F, and 272C.

ITEM 3. Amend **645—Chapter 224**, title, as follows:

DISCIPLINE FOR PODIATRISTS, ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

ITEM 4. Amend rule 645—224.1(149) as follows:

645—224.1(148F,149) Definitions.

"Board" means the board of podiatry.

"Discipline" means any sanction the board may impose upon licensees.

"Licensee" means a person licensed to practice as a podiatrist, orthotist, prosthetist, or pedorthist in Iowa.

ITEM 5. Amend rule 645—224.2(149,272C), introductory paragraph, as follows:

645—224.2(148F,149,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—224.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

ITEM 6. Amend subrule 224.2(2) as follows:

224.2(2) Professional incompetency. Professional incompetency includes, but is not limited to:

- a.* to *c.* No change.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

d. Failure to conform to the minimal standard of acceptable and prevailing practice of a podiatrist, orthotist, prosthetist, or pedorthist in this state.

e. and *f.* No change.

ITEM 7. Rescind and reserve subrule **224.2(8)**.

ITEM 8. Amend subrules 224.2(24) and 224.2(26) as follows:

224.2(24) Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a podiatrist, orthotist, prosthetist, or pedorthist.

224.2(26) Representing oneself as a podiatrist, orthotist, prosthetist, or pedorthist when one's license has been suspended or revoked, or when one's license is on inactive status.

ITEM 9. Adopt the following **new** rule 645—224.6(148F,149,272C):

645—224.6(148F,149,272C) Indiscriminately prescribing, administering or dispensing any drug for other than a lawful purpose. The board may impose any of the disciplinary sanctions provided in rule 645—224.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

224.6(1) Self-prescribing or self-dispensing controlled substances.

224.6(2) Prescribing or dispensing controlled substances to members of the licensee's immediate family for an extended period of time.

a. Prescribing or dispensing controlled substances to members of the licensee's immediate family is allowable for an acute condition or on an emergency basis when the physician conducts an examination, establishes a medical record, and maintains proper documentation.

b. Immediate family includes spouse or life partner, natural or adopted children, grandparent, parent, sibling, or grandchild of the physician; and natural or adopted children, grandparent, parent, sibling, or grandchild of the physician's spouse or life partner.

224.6(3) Prescribing or dispensing controlled substances outside the scope of the practice of podiatry.

ITEM 10. Amend **645—Chapter 224**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 147, 148F, 149 and 272C.

ITEM 11. Adopt the following **new** 645—Chapter 225:

CHAPTER 225

CONTINUING EDUCATION FOR ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

645—225.1(148F) Definitions. For the purpose of these rules, the following definitions shall apply:

"*ABC*" means the American Board for Certification in Orthotics, Prosthetics and Pedorthics, Incorporated.

"*Active license*" means a license that is current and has not expired.

"*Approved program/activity*" means a continuing education program/activity meeting the standards set forth in these rules.

"*Audit*" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

"*Board*" means the board of podiatry.

"*BOC*" means the Board of Certification/Accreditation, International.

"*Continuing education*" means planned, organized learning acts acquired during licensure designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"*Hour of continuing education*" means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in the rules and includes a posttest.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as an orthotist, prosthetist, or pedorthist in the state of Iowa.

645—225.2(148F,272C) Continuing education requirements.

225.2(1) The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 of each even-numbered year and ending on June 30 of the next even-numbered year.

a. Each biennium, each person who is licensed to practice as an orthotist in this state shall be required to complete a minimum of 30 hours of continuing education.

b. Each biennium, each person who is licensed to practice as a prosthetist in this state shall be required to complete a minimum of 30 hours of continuing education.

c. Each biennium, each person who is licensed to practice as a pedorthist in this state shall be required to complete a minimum of 20 hours of continuing education.

225.2(2) Requirements for new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used.

a. The new orthotic licensee will be required to complete a minimum of 30 hours of continuing education per biennium for each subsequent license renewal.

b. The new prosthetic licensee will be required to complete a minimum of 30 hours of continuing education per biennium for each subsequent license renewal.

c. The new pedorthic licensee will be required to complete a minimum of 20 hours of continuing education per biennium for each subsequent license renewal.

225.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

225.2(4) No hours of continuing education shall be carried over into the next biennium.

225.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—225.3(148F,272C) Standards.

225.3(1) *General criteria.* A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters;

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, location, course title, and presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

225.3(2) *Specific criteria for licensees.*

a. Licensees may obtain continuing education hours of credit by attending workshops, conferences, symposiums, electronically transmitted courses, live interactive conferences, and academic courses which relate directly to the professional competency of the licensee. Official transcripts

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

indicating successful completion of academic courses which apply to the field of orthotics, prosthetics, or pedorthics will be necessary in order to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

b. Licensees may obtain continuing education hours of credit by teaching in an approved college, university, or graduate school. The licensee may receive credit on a one-time basis for the first offering of a course.

c. Continuing education hours of credit may be granted for any of the following activities not to exceed a maximum combined total of 15 hours for orthotists and prosthetists and 10 hours for pedorthists:

(1) Presenting professional programs which meet the criteria listed in this rule. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit.

(2) Authoring research or other activities, the results of which are published in a recognized professional publication. The licensee shall receive 5 hours of credit per page.

(3) Viewing videotaped presentations and electronically transmitted material that have a postcourse test if the following criteria are met:

1. There is a sponsoring group or agency;
2. There is a facilitator or program official present;
3. The program official is not the only attendee; and
4. The program meets all the criteria specified in this rule.

(4) Participating in home study courses that have a certificate of completion and a postcourse test.

(5) Participating in courses that have business-related topics: marketing, time management, government regulations, and other like topics.

(6) Participating in courses that have personal skills topics: career burnout, communication skills, human relations, and other like topics.

(7) Participating in courses that have general health topics: clinical research, CPR, child abuse reporting, and other like topics.

645—225.4(148F,272C) Audit of continuing education report. In addition to the requirements of 645—4.11(272C), proof of current BOC or ABC certification as an orthotist, prosthetist, or pedorthist shall be accepted in lieu of individual certificates of completion for an audit.

These rules are intended to implement Iowa Code section 272C.2 and chapter 148F.

[Filed 11/1/13, effective 1/1/14]

[Published 11/27/13]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/27/13.

ARC 1197C

REAL ESTATE APPRAISER EXAMINING BOARD[193F]

Adopted and Filed

Pursuant to the authority of Iowa Code section 543D.5, the Real Estate Appraiser Examining Board hereby amends Chapter 10, "Reciprocity," Iowa Administrative Code.

The rescission of subrule 10.1(5) creates a 100 percent open-door policy for certified appraisers in other states to become certified in Iowa. The Board has never used this subrule to request work product review. This rescission also allows Iowa to stay in compliance with the Appraisal Subcommittee's policy statements that went into effect July 1, 2013.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1035C** on October 2, 2013. No public comment was received. This amendment is identical to that published under Notice of Intended Action.

REAL ESTATE APPRAISER EXAMINING BOARD[193F](cont'd)

There is no fiscal impact to the State of Iowa.

After analysis and review of this rule making, a positive impact on jobs could exist by reducing the regulatory burden for job entry in the state of Iowa for qualified real estate appraisers.

This amendment is intended to implement Iowa Code section 543D.11.

This amendment shall become effective January 1, 2014.

The following amendment is adopted.

Amend rule 193F—10.1(543D) as follows:

193F—10.1(543D) Nonresident certification by reciprocity.

10.1(1) to 10.1(4) No change.

~~**10.1(5)** The board may, at its discretion, request work product from an applicant for certification by reciprocity for good cause shown, such as an applicant's having a prior history in Iowa that includes a disciplinary investigation or disciplinary action. If work product is requested, the appraiser shall be subject to the process set forth in 193F—subrule 3.5(2) and shall pay the appropriate fee as required in 193F—12.1(543D).~~

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ARC 1196C

REVENUE DEPARTMENT[701]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 421.17, the Department of Revenue hereby amends Chapter 71, "Assessment Practices and Equalization," Iowa Administrative Code.

The subject matter of subrule 71.1(3) is the valuation of agricultural real estate. The amendment to this subrule implements the amendments to Iowa Code sections 427A.1(4) and 441.21(12) pursuant to 2013 Iowa Acts, House File 632, which add real estate used directly in the cultivation and production of algae for harvesting as a crop for animal feed, food, nutritionals, or biofuel production to the definition of "agricultural property."

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 1042C** on October 2, 2013. One comment was received from the public. The comment, submitted by the Iowa Farm Bureau Federation, recommended an amendment to clarify that woodland, wasteland, and pastureland held in conjunction with vineyards as defined in paragraph "b" of subrule 71.1(3) qualify as agricultural real estate.

Paragraph 71.1(3)"a" as published under Notice of Intended Action has been revised to incorporate the change suggested by the Iowa Farm Bureau Federation.

After analysis and review of this rule making, no adverse impact on jobs has been found. The expansion of the definition of "agricultural property" may positively impact job and economic growth for businesses and individuals in the state of Iowa.

This amendment is intended to implement Iowa Code sections 427A.1(4) and 441.21(12) as amended by 2013 Iowa Acts, House File 632.

This amendment will become effective January 1, 2014.

The following amendment is adopted.

Amend subrule 71.1(3) as follows:

71.1(3) Agricultural real estate.

a. Generally. Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4).

REVENUE DEPARTMENT[701](cont'd)

Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit. Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in paragraph "a" or "b" of this subrule.

b. ~~Vineyards.~~ Vineyards Beginning with valuations established on or after January 1, 2002, vineyards and any buildings located on a vineyard and used in connection with the vineyard shall be classified as agricultural real estate if the primary use of the land and buildings is an activity related to the production or sale of wine.

~~Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in this subrule.~~

c. *Algae cultivation and production.* Beginning with valuations established on or after January 1, 2013, real estate used directly in the cultivation and production of algae for harvesting as a crop for animal feed, food, nutritionals, or biofuel production shall be classified as agricultural real estate if the real estate is an enclosed pond or land which contains a photobioreactor. Pursuant to 2013 Iowa Acts, House File 632, section 1, a photobioreactor is not attached to land upon which it sits and shall not be assessed and taxed as real property.

(1) Determining direct usage. To determine if real estate is used "directly" in the cultivation and production of algae, one must first ensure that the real estate is used to perform activities that cultivate and produce algae and is not used for activities that occur before or after the cultivation and production of algae. If the real estate is used to perform activities for the cultivation and production of algae, to be "directly" so used, the real estate must be used to perform activities that are integral and essential to the cultivation and production, as distinguished from activities that are incidental, merely convenient to, or remote from cultivation and production. The fact that real estate is used for activities that are essential or necessary to the cultivation and production of algae does not mean that the real estate is also "directly" used in production. Even if the real estate is used for activities that are essential or necessary to the cultivation and production of algae, if the activities are far enough removed from the cultivation or production of algae, the real estate would not qualify for the agricultural designation.

(2) Examples. The following are nonexclusive examples of real estate which would not be directly used in the cultivation and production of algae:

1. Real estate that is used to store, assemble, or repair machinery and equipment that is used for cultivation and production of algae.
2. Real estate that is used in the management, administration, advertising, or selling of algae.
3. Real estate that is used in the management, administration, or planning of the cultivation and production of algae.
4. Real estate that is used for packaging of the algae which has been produced and cultivated.

[Filed 11/6/13, effective 1/1/14]

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AGENCY	RULE	DELAY
Education Department[281]	97.7 [IAB 10/16/13, ARC 1119C]	Effective date of November 20, 2013, delayed until the adjournment of the 2014 General Assembly by the Administrative Rules Review Committee at its meeting held November 8, 2013. [Pursuant to §17A.8(9)]
Veterans Affairs, Iowa Department of[801]	amendments to ch 10 [IAB 10/30/13, ARC 1157C]	Effective date of December 4, 2013, delayed 70 days by the Administrative Rules Review Committee at its meeting held November 8, 2013. [Pursuant to §17A.4(7)]