



# IOWA ADMINISTRATIVE BULLETIN

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## PREFACE

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

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

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

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

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### CITATION of Administrative Rules

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

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

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

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

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

## Schedule for Rule Making 2009

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

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
9	Friday, October 2, 2009	October 21, 2009
10	Friday, October 16, 2009	November 4, 2009
11	Wednesday, October 28, 2009	November 18, 2009

**PLEASE NOTE:**

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, October 13, 2009, at 9 a.m. in Room 22, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

### ACCOUNTANCY EXAMINING BOARD[193A]

Professional Licensing and Regulation Bureau[193]  
COMMERCE DEPARTMENT[181]“umbrella”

Initial and renewal fees for firm permit to practice, 12.1 Notice **ARC 8089B** ..... 9/9/09

### ADMINISTRATIVE SERVICES DEPARTMENT[11]

Benefits, amendments to chs 50, 63, 64 Notice **ARC 8115B** ..... 9/9/09

### AGRICULTURAL DEVELOPMENT AUTHORITY[25]

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]“umbrella”

IADA loan participation program, 4.3(9), 4.6 Filed Emergency **ARC 8157B** ..... 9/23/09

### AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Weights and measures, 85.39 Notice **ARC 8092B** ..... 9/9/09

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

Financial assistance programs, amend chs 1, 23, 53, 57, 59 to 61, 68, 69, 165, 173 to 175,

187, 189; adopt chs 74, 75 Filed **ARC 8145B** ..... 9/23/09

Housing fund, 25.6(7), 25.6(8), 25.8(7) Notice **ARC 8149B** ..... 9/23/09

Enterprise zones—housing tax credits, 59.8(2)“a”(7) Notice **ARC 8148B** ..... 9/23/09

Targeted jobs withholding tax credit program, 71.1, 71.4 to 71.6 Filed **ARC 8147B** ..... 9/23/09

Aggregate tax credit limit for certain economic development programs, ch 76 Filed **ARC 8146B** ..... 9/23/09

### EDUCATIONAL EXAMINERS BOARD[282]

EDUCATION DEPARTMENT[281]“umbrella”

Debts to state or local government—noncompliance, ch 8 Filed **ARC 8135B** ..... 9/9/09

Filing complaints; service of complaint notices to respondents, 11.4 Notice **ARC 8143B** ..... 9/9/09

Applicants from recognized non-Iowa institutions, 13.3 Filed **ARC 8139B** ..... 9/9/09

Rescission of option to receive license before receiving degree, 13.10(4) Filed **ARC 8134B** ..... 9/9/09

Class B license—uniform expiration date, 13.11(5) Filed **ARC 8133B** ..... 9/9/09

Exchange licenses, 13.17 Filed **ARC 8138B** ..... 9/9/09

Highly qualified teacher (HQT) status, 13.26(2)“b”(4) Notice **ARC 8125B** ..... 9/9/09

Highly qualified teacher (HQT) status, 13.26(3)“b”(4) Notice **ARC 8121B** ..... 9/9/09

Highly qualified teacher (HQT) status, 13.26(4)“b”(4) Notice **ARC 8126B** ..... 9/9/09

Agriculture endorsement, 13.28(1) Notice **ARC 8129B** ..... 9/9/09

Agricultural sciences and agribusiness endorsement, 17.1(1)“a” Notice **ARC 8130B** ..... 9/9/09

Administrator exchange licenses—applicants from non-Iowa institutions, 18.3 Filed **ARC 8142B** ..... 9/9/09

Administrator exchange licenses, 18.6 Filed **ARC 8141B** ..... 9/9/09

Valid authorization for behind-the-wheel driving instructors, 23.2 Filed **ARC 8131B** ..... 9/9/09

Speech-language pathology (SLP) paraeducators, 24.4(6) Notice **ARC 8117B** ..... 9/9/09

Standards of professional conduct and ethics—Standard I, 25.3(1) Filed **ARC 8137B** ..... 9/9/09

Standards of professional conduct and ethics—Standard VII, 25.3(7) Filed **ARC 8136B** ..... 9/9/09

### ENERGY INDEPENDENCE, OFFICE OF[350]

Energy efficiency community grant program, ch 5 Filed **ARC 8102B** ..... 9/9/09

### ENVIRONMENTAL PROTECTION COMMISSION[567]

NATURAL RESOURCES DEPARTMENT[561]“umbrella”

E. coli effluent limits; nutrient monitoring, 62.8(2), ch 63 Table II Filed **ARC 8123B** ..... 9/9/09

Animal feeding operations—update of references, 65.1, 65.3(3), 65.17(6), 65.100, 65.101(6),  
65.104(7), 65.105(3), 65.112 Filed **ARC 8120B** ..... 9/9/09

Compensation for damages to natural resources—fish loss, 133.2, 133.6(3)“b”(3) Notice **ARC 8122B** ..... 9/9/09

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PUBLIC DEFENSE DEPARTMENT[601]“umbrella”

Continuing education requirements for local emergency management coordinators, 7.4(4)“a”  
Filed **ARC 8116B** ..... 9/9/09

E911 service board membership, 10.2, 10.3(1), 10.4(2), 10.7(2), 10.8(6), 10.11 Notice **ARC 8184B** ..... 9/23/09

Update of fees charged for division services, 11.6 Filed **ARC 8119B** ..... 9/9/09

**HUMAN SERVICES DEPARTMENT[441]**

State mental health institutes and resource centers, amend ch 28; adopt chs 29, 30	<u>Filed</u> <b>ARC 8094B</b>	9/9/09
Medicaid eligibility of newborns, 75.1(20)	<u>Filed</u> <b>ARC 8095B</b>	9/9/09
Medicaid—extension of coverage to all eligible children, 75.11(2)“a”	<u>Filed</u> <b>ARC 8096B</b>	9/9/09
Transitional Medicaid group—changes in eligibility requirements, 75.31(1)		
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Medicaid—covered nonprescription drugs, 78.2(5)	<u>Filed</u> <b>ARC 8097B</b>	9/9/09
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HAWK-I—conditions of eligibility, 86.2(7), 86.2(12)	<u>Notice</u> <b>ARC 8110B</b>	9/9/09
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<u>Notice</u> <b>ARC 8183B</b>		9/23/09

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General provisions for elder group homes, assisted living programs, and adult day services, ch 67	<u>Filed</u> <b>ARC 8174B</b>	9/23/09
Elder group homes, ch 68	<u>Filed</u> <b>ARC 8175B</b>	9/23/09
Assisted living programs, ch 69	<u>Filed</u> <b>ARC 8176B</b>	9/23/09
Adult day services, ch 70	<u>Filed</u> <b>ARC 8177B</b>	9/23/09

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Long-term care partnership program, amendments to chs 39, 72	<u>Notice</u> <b>ARC 8132B</b>	9/9/09
Third-party administrators, ch 58	<u>Notice</u> <b>ARC 8140B</b>	9/9/09

**IOWA FINANCE AUTHORITY[265]**

Iowa jobs program, 32.4(4), 32.4(7)	<u>Notice</u> <b>ARC 8108B</b> , also <u>Filed Emergency</u> <b>ARC 8103B</b>	9/9/09
Disaster recovery housing project tax credits, ch 34	<u>Notice</u> <b>ARC 8181B</b>	9/23/09

**LABOR SERVICES DIVISION[875]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]“umbrella”

OSHA regulations—adoption by reference, 10.20	<u>Filed</u> <b>ARC 8088B</b>	9/9/09
Child labor—civil penalties, permits, certificates of age, 32.1, 32.2, 32.11, 32.12	<u>Notice</u> <b>ARC 8167B</b>	9/23/09

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**PHARMACY BOARD[657]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Electronic transfer of prescriptions between pharmacies, 6.9(9)“b”	<u>Filed</u> <b>ARC 8169B</b>	9/23/09
Drug distribution and control—unit dose dispensing, use of patient-owned drugs, 7.8	<u>Filed</u> <b>ARC 8170B</b>	9/23/09
Transmission of new, refill or renewal orders; facsimile transmission of prescriptions, 8.19(2), 21.9	<u>Filed</u> <b>ARC 8171B</b>	9/23/09
Schedule II controlled substances—issuing multiple prescriptions, 10.25	<u>Filed</u> <b>ARC 8172B</b>	9/23/09

**PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]“umbrella”

Behavioral science—temporary licensure, supervised work experience, 5.3, 31.2, 31.5, 31.7	<u>Filed</u> <b>ARC 8152B</b>	9/23/09
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#### **PUBLIC HEALTH DEPARTMENT[641]**

Plumbing and mechanical systems board—waivers or variances from administrative rules,  
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 Supervision of fluoroscopy, 41.1(5) Notice **ARC 8161B** ..... 9/23/09  
 Qualifications of county medical examiner investigators, 127.7(2)“e” Notice **ARC 8162B** ..... 9/23/09

#### **PUBLIC SAFETY DEPARTMENT[661]**

Commercial explosive licensing, rescind 5.7, 5.851, 5.865, 5.866; adopt ch 235  
Notice of Termination **ARC 8154B** ..... 9/23/09  
 Commercial explosive licensing, rescind 5.7, 5.851, 5.865, 5.866; adopt ch 235 Notice **ARC 8155B** ..... 9/23/09  
 Fire marshal administration, fire safety requirements, rescind ch 5; adopt ch 200; amend chs  
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 Smoke detectors, 210.1 to 210.5 Notice **ARC 8150B** ..... 9/23/09  
 General requirements for smoke detectors, 210.2(1) to 210.2(3) Filed Emergency **ARC 8151B** ..... 9/23/09  
 Dispensing of blended biofuels, 221.4(2) Filed Emergency **ARC 8114B** ..... 9/9/09  
 Fire fighter certification, 251.202 Notice **ARC 8178B** ..... 9/23/09  
 Licensing of fire protection system installers and maintenance workers, ch 276 Notice **ARC 8153B** ..... 9/23/09  
 State building code, amendments to chs 300, 301, 303 Notice **ARC 8179B** ..... 9/23/09  
 State historic building code, 350.1(3) Notice **ARC 8180B** ..... 9/23/09  
 Electrician and electrical contractor licensing and electrical inspections, amend chs 500 to  
 503, 550 to 552; adopt ch 505 Notice **ARC 8160B** ..... 9/23/09

#### **STATE PUBLIC DEFENDER[493]**

INSPECTIONS AND APPEALS DEPARTMENT[481]“umbrella”

Court-appointed attorneys—appointment and fee claims, 11.5(4), 12.2  
Notice **ARC 8091B**, also Filed Emergency **ARC 8090B** ..... 9/9/09

#### **STATUS OF WOMEN DIVISION[435]**

HUMAN RIGHTS DEPARTMENT[421]“umbrella”

Iowans in transition, rescind ch 5 Filed **ARC 8182B** ..... 9/23/09

#### **VETERINARY MEDICINE BOARD[811]**

Board of veterinary medicine, amendments to chs 1, 8, 10 Notice **ARC 8168B** ..... 9/23/09

#### **VOLUNTEER SERVICE, IOWA COMMISSION ON[817]**

Iowa summer youth and green corps programs, adopt chs 9, 10  
Notice **ARC 8159B**, also Filed Emergency **ARC 8158B** ..... 9/23/09

## ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

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

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

Senator Merlin Bartz  
2081 410th Street  
Grafton, Iowa 50440

Senator Thomas Courtney  
2200 Summer Street  
Burlington, Iowa 52601

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

Senator John P. Kibbie  
P.O. Box 190  
Emmetsburg, Iowa 50536

Senator James Seymour  
901 White Street  
Woodbine, Iowa 51579

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

Representative Marcella R. Frevert  
P.O. Box 324  
Emmetsburg, Iowa 50536

Representative David Heaton  
510 East Washington  
Mt. Pleasant, Iowa 52641

Representative Tyler Olson  
P.O. Box 2389  
Cedar Rapids, Iowa 52406

Representative Nathan Reichert  
1155 Iowa Avenue  
Muscatine, Iowa 52761

Representative Linda Upmeyer  
2175 Pine Avenue  
Garner, Iowa 50438

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

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

Housing fund, 25.6, 25.8(7) IAB 9/23/09 <b>ARC 8149B</b>	ICN Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	October 14, 2009 3 p.m.
Enterprise zones—housing tax credits, 59.8(2) IAB 9/23/09 <b>ARC 8148B</b>	Second Floor NE Meeting Room 200 E. Grand Ave. Des Moines, Iowa	October 13, 2009 2 p.m.

**EDUCATIONAL EXAMINERS BOARD[282]**

Filing complaints; service of complaint notices to respondents, 11.4 IAB 9/9/09 <b>ARC 8143B</b> <b>(ICN Network)</b>	ICN Room, Second Floor Grimes State Office Bldg. East 14th & Grand Ave. Des Moines, Iowa	September 29, 2009 1 to 2 p.m.
	Room 818, Smith Wellness Center Iowa Lakes Community College 3200 College Dr. Emmetsburg, Iowa	September 29, 2009 1 to 2 p.m.
	Room 101, Guthrie Center High School 906 School St. Guthrie Center, Iowa	September 29, 2009 1 to 2 p.m.
	Turner Room, Green Valley AEA 14 1405 N. Lincoln Creston, Iowa	September 29, 2009 1 to 2 p.m.
	Room 206, Northwest AEA 1520 Morningside Ave. Sioux City, Iowa	September 29, 2009 1 to 2 p.m.
	Room 402, Building D Northwest Iowa Community College - 1 603 W. Park St. Sheldon, Iowa	September 29, 2009 1 to 2 p.m.
	Room 204, Library Building Prairie Lakes AEA 8 - Fort Dodge Iowa Central Comm. College Campus 1 Triton Circle Fort Dodge, Iowa	September 29, 2009 1 to 2 p.m.
	State Room, AEA 267 Regional Office - Clear Lake 9184B 265th St. Clear Lake, Iowa	September 29, 2009 1 to 2 p.m.
	Nishna Valley Jr-Sr High School 58962 380th St. Hastings, Iowa	September 29, 2009 1 to 2 p.m.
	State Board Room, Second Floor Grimes State Office Bldg. East 14th & Grand Ave. Des Moines, Iowa	September 30, 2009 1 to 2 p.m.
	ICN Room, Second Floor Grimes State Office Bldg. East 14th & Grand Ave. Des Moines, Iowa	October 1, 2009 1 to 2 p.m.

**EDUCATIONAL EXAMINERS BOARD[282]** (Cont'd)

<b>(ICN Network)</b>	Room 528, North Campus/Trustee Hall Southeastern Community College - 1 1500 West Agency West Burlington, Iowa	October 1, 2009 1 to 2 p.m.
	Great Prairie AEA - 1 2814 N. Court St. Ottumwa, Iowa	October 1, 2009 1 to 2 p.m.
	Central High School 425 E. 11th St. DeWitt, Iowa	October 1, 2009 1 to 2 p.m.
	Solon Public Library 320 West Main St. Solon, Iowa	October 1, 2009 1 to 2 p.m.
	Area Education Agency 267 Regional Office - Marshalltown 909 S. 12th St. Marshalltown, Iowa	October 1, 2009 1 to 2 p.m.
	West High School Baltimore & Ridgeway Waterloo, Iowa	October 1, 2009 1 to 2 p.m.
	Community Library 104 W. State St. Fayette, Iowa	October 1, 2009 1 to 2 p.m.
Highly qualified teacher (HQT) status, 13.26(2)“b”(4) IAB 9/9/09 <b>ARC 8125B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 30, 2009 1 p.m.
Highly qualified teacher (HQT) status, 13.26(3)“b”(4) IAB 9/9/09 <b>ARC 8121B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 30, 2009 1 p.m.
Highly qualified teacher (HQT) status, 13.26(4)“b”(4) IAB 9/9/09 <b>ARC 8126B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 30, 2009 1 p.m.
Agriculture endorsement, 13.28(1) IAB 9/9/09 <b>ARC 8129B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 30, 2009 1 p.m.
Agricultural sciences and agribusiness endorsement, 17.1(1)“a” IAB 9/9/09 <b>ARC 8130B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 30, 2009 1 p.m.
Speech-language pathology (SLP) assistant, 24.4(6) IAB 9/9/09 <b>ARC 8117B</b>	Room 3 Southwest, Third Floor Grimes State Office Bldg. Des Moines, Iowa	September 30, 2009 1 p.m.

**EDUCATION DEPARTMENT[281]**

Special education, amendments to ch 41 IAB 8/26/09 <b>ARC 8050B</b> <b>(ICN Network)</b>	ICN Room, Second Floor Grimes State Office Bldg. 400 E. 14th St. Des Moines, Iowa	October 13, 2009 2 to 4 p.m.
	Mississippi Bend Area Education Agency Louisa Room 729 21st St. Bettendorf, Iowa	October 13, 2009 2 to 4 p.m.

**EDUCATION DEPARTMENT[281] (Cont'd)****(ICN Network)**

Great Prairie Area Education Agency 3601 West Ave. Burlington, Iowa	October 13, 2009 2 to 4 p.m.
Area Education Agency 267 3712 Cedar Heights Dr. Cedar Falls, Iowa	October 13, 2009 2 to 4 p.m.
Kirkwood Community College Room 202, Linn Hall 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa	October 13, 2009 2 to 4 p.m.
Loess Hills Area Education Agency 24997 Hwy. 92 Council Bluffs, Iowa	October 13, 2009 2 to 4 p.m.
Keystone Area Education Agency Room 2 2310 Chaney Rd. Dubuque, Iowa	October 13, 2009 2 to 4 p.m.
Keystone Area Education Agency 1400 2nd Street NW Elkader, Iowa	October 13, 2009 2 to 4 p.m.
Great Prairie Area Education Agency 2814 N. Court St. Ottumwa, Iowa	October 13, 2009 2 to 4 p.m.
Area Education Agency 267 State Room 9184B 265th St. Clear Lake, Iowa	October 13, 2009 2 to 4 p.m.
Graphic Arts Technology Ctr. of Iowa Room 16 1951 Manufacturing Dr. Clinton, Iowa	October 13, 2009 2 to 4 p.m.
Green Valley Area Education Agency Turner Room 1405 N. Lincoln Creston, Iowa	October 13, 2009 2 to 4 p.m.
Prairie Lakes Area Education Agency 500 NE 6th St. Pocahontas, Iowa	October 13, 2009 2 to 4 p.m.
Northwest Area Education Agency Room 103 1382 4th Ave. NE Sioux Center, Iowa	October 13, 2009 2 to 4 p.m.
Department of Human Services Fourth Floor, Trospar-Hoyt Bldg. 822 Douglas St. Sioux City, Iowa	October 13, 2009 2 to 4 p.m.
Iowa Lakes Community College Room 118 1900 N. Grand Ave. Spencer, Iowa	October 13, 2009 2 to 4 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Compensation for damages to natural resources—fish loss, 133.2, 133.6(3)“b”(3) IAB 9/9/09 <b>ARC 8122B</b>	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 6, 2009 2 p.m.
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**HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]**

E911 service board membership, 10.2, 10.3(1), 10.4(2), 10.7(2), 10.8(6), 10.11 IAB 9/23/09 <b>ARC 8184B</b>	Division Conference Room Building - 4, Camp Dodge 7105 NW 70th Ave. Johnston, Iowa	October 15, 2009 10 a.m.
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**HUMAN SERVICES DEPARTMENT[441]**

Child care centers—record checks, licensing fees, 109.1, 109.2, 109.4, 109.6, 109.7(2), 109.9(1) IAB 9/9/09 <b>ARC 8118B</b>	Assembly Room, Dept. for the Blind 524 4th St. Des Moines, Iowa	September 29, 2009 1 to 3 p.m.
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**INSURANCE DIVISION[191]**

Consent for prohibited persons to engage in the business of insurance, ch 13 IAB 9/9/09 <b>ARC 8144B</b>	Insurance Division Offices 330 Maple St. Des Moines, Iowa	October 1, 2009 2 p.m.
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Long-term care partnership program, amendments to chs 39, 72 IAB 9/9/09 <b>ARC 8132B</b>	Insurance Division Offices 330 Maple St. Des Moines, Iowa	October 1, 2009 10 a.m.
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Third-party administrators, ch 58 IAB 9/9/09 <b>ARC 8140B</b>	Insurance Division Offices 330 Maple St. Des Moines, Iowa	October 1, 2009 1 p.m.
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**LABOR SERVICES DIVISION[875]**

Child labor—civil penalties, permits, certificates of age, 32.1, 32.2, 32.11, 32.12 IAB 9/23/09 <b>ARC 8167B</b>	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	October 14, 2009 1:30 p.m. (If requested)
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**NATURAL RESOURCE COMMISSION[571]**

Restitution for pollution causing injury to wild animals—valuation of fish, 113.2, 113.3, 113.4(2)“c” IAB 9/9/09 <b>ARC 8107B</b>	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 6, 2009 2 p.m.
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**PROFESSIONAL LICENSURE DIVISION[645]**

Respiratory care—accrediting organization, 261.1, 261.3(1), 263.2(11) IAB 9/9/09 <b>ARC 8100B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	September 29, 2009 9 to 9:30 a.m.
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Social work, amendments to chs 279 to 284 IAB 9/9/09 <b>ARC 8101B</b>	Fifth Floor Board Room 526 Lucas State Office Bldg. Des Moines, Iowa	September 29, 2009 9 to 9:30 a.m.
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**PROFESSIONAL LICENSURE DIVISION[645] (Cont'd)**

Discipline for sign language interpreters and transliterators, 363.2(11) IAB 9/9/09 <b>ARC 8111B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	October 20, 2009 9 to 9:30 a.m.
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**PUBLIC HEALTH DEPARTMENT[641]**

Plumbing and mechanical systems board—waivers, ch 31 IAB 9/23/09 <b>ARC 8173B (ICN Network)</b>	National Guard Armory 3200 2nd Mech Dr. Sioux City, Iowa	October 13, 2009 11 a.m. to 1 p.m.
	Iowa Western Community College – 3 2700 College Rd. Council Bluffs, Iowa	October 13, 2009 11 a.m. to 1 p.m.
	National Guard Armory 3306 Airport Blvd. Waterloo, Iowa	October 13, 2009 11 a.m. to 1 p.m.
	Ottumwa Regional Health Center 1001 E. Pennsylvania Ottumwa, Iowa	October 13, 2009 11 a.m. to 1 p.m.
	Mississippi Bend Area Education Agency 9 729 21st St. Bettendorf, Iowa	October 13, 2009 11 a.m. to 1 p.m.
	State Historical Building 600 E. Locust Des Moines, Iowa	October 13, 2009 11 a.m. to 1 p.m.
Supervision of fluoroscopy, 41.1(5) IAB 9/23/09 <b>ARC 8161B</b>	Fifth Floor Rooms 517 & 518 Lucas State Office Bldg. Des Moines, Iowa	October 28, 2009 1:30 to 3:30 p.m.

**PUBLIC SAFETY DEPARTMENT[661]**

Commercial explosive licensing, rescind 5.7, 5.851, 5.865, 5.866; adopt ch 235 IAB 9/23/09 <b>ARC 8155B</b>	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 13, 2009 9 a.m.
Fire marshal administration, fire safety requirements, rescind ch 5; adopt ch 200; amend chs 201, 202, 205 IAB 9/23/09 <b>ARC 8156B</b>	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 13, 2009 10:15 a.m.
	Carroll Recreation Center 716 N. Grant Rd. Carroll, Iowa	October 14, 2009 4 p.m.
	Iowa State Patrol Post #11 5400 16th Ave. SW Cedar Rapids, Iowa	October 15, 2009 4:30 p.m.
Smoke detectors, 210.1 to 210.5 IAB 9/23/09 <b>ARC 8150B</b>	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 13, 2009 8:30 a.m.
Fire fighter certification 251.202 IAB 9/23/09 <b>ARC 8178B</b>	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 15, 2009 9 a.m.

**PUBLIC SAFETY DEPARTMENT[661] (Cont'd)**

Licensing of fire protection system installers and maintenance workers, ch 276 IAB 9/23/09 <b>ARC 8153B</b>	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 15, 2009 8:30 a.m.
State building code, amendments to chs 300, 301, 303 IAB 9/23/09 <b>ARC 8179B</b>	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 13, 2009 10:15 a.m.
	Carroll Recreation Center 716 N. Grant Rd. Carroll, Iowa	October 14, 2009 4 p.m.
	Iowa State Patrol Post #11 5400 16th Ave. SW Cedar Rapids, Iowa	October 15, 2009 4:30 p.m.
State historic building code, 350.1(3) IAB 9/23/09 <b>ARC 8180B</b>	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 13, 2009 10 a.m.
Electrician and electrical contractor licensing and electrical inspections, amend chs 500 to 503, 550 to 552; adopt ch 505 IAB 9/23/09 <b>ARC 8160B</b>	First Floor Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	October 15, 2009 10 a.m.

**STATE PUBLIC DEFENDER[493]**

Court-appointed attorneys—appointment and fee claims, 11.5(4), 12.2 IAB 9/9/09 <b>ARC 8091B</b> (See also <b>ARC 8090B</b> )	Conference Room 424 Lucas State Office Bldg. Des Moines, Iowa	September 29, 2009 9 a.m.
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**VETERINARY MEDICINE BOARD[811]**

Board of veterinary medicine, amendments to chs 1, 8, 10 IAB 9/23/09 <b>ARC 8168B</b>	Auditorium, Wallace State Office Bldg. 502 E. 9th St. Des Moines, Iowa	October 19, 2009 10 a.m.
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**VOLUNTEER SERVICE, IOWA COMMISSION ON[817]**

Iowa summer youth and green corps programs, adopt chs 9, 10 IAB 9/23/09 <b>ARC 8159B</b> (See also <b>ARC 8158B</b> herein)	Main Conference Room, Second Floor 200 E. Grand Ave. Des Moines, Iowa	October 15, 2009 2 p.m.
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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

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

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

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

The following list will be updated as changes occur:

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

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

AGENCY	PROGRAM	ELIGIBLE APPLICANTS	TYPES OF PROJECTS
Iowa Homeland Security and Emergency Management Division (HSEMD)	Hazard Mitigation Grant Program (HMGP) DR 1854 Authorized by §203 of the Robert T. Stafford Disaster Assistance and Emergency Relief Act (Stafford Act), 42 U.S.C. 5133, as amended by §102 of the Disaster Mitigation Act of 2000 (DMA)	<ul style="list-style-type: none"> <li>• State Agencies and Local Governments</li> <li>• Federally recognized Indian Tribal governments, to include state recognized Indian Tribes, and Authorized Tribal Organizations.</li> <li>• Private Non Profit (PNP) Organizations or institutions which operate a PNP facility as defined in the 44 Code of Federal Regulations (CFR), Section 206.221 (e)</li> <li>• All applicants must be participating in the NFIP if they have been identified as having a Special Flood Hazard Area. The Community must not be on probation, suspended or withdrawn from the NFIP.</li> <li>• All Applicants for a project grant MUST have a FEMA approved local hazard mitigation plan.</li> </ul> <p><b>Application Process:</b></p> <ul style="list-style-type: none"> <li>- Potential <b>project &amp; planning</b> applicants must complete a Notice of Interest (NOI) Form located on the HSEMD website at: <a href="http://www.iowahomelandsecurity.org/">http://www.iowahomelandsecurity.org/</a></li> <li>- NOI Form must be emailed to <a href="mailto:hsemd.mitigation@iowa.gov">hsemd.mitigation@iowa.gov</a></li> <li>- NOI's will be selected for full application development based on funding availability, the State's priority, and an initial eligibility review.</li> <li>- Entities selected for full project application development will be provided a minimum of two months to complete the application.</li> </ul> <p><b>For additional information please contact:</b></p> <p><b>Rick Biondi 515-254-2147</b>  <b>John Wageman 515-253-2581</b></p> <p><b>Iowa Homeland Security and Emergency Management Division</b>  <b>7105 NW 70th Avenue</b>  <b>Camp Dodge, Bldg W4</b>  <b>Johnston, Iowa 50131</b></p>	<p><b>Eligible Project Types</b></p> <p>Projects may be of any nature that will result in protection to public or private property, including but not limited to:</p> <ul style="list-style-type: none"> <li>• Acquisition or relocation of hazard-prone property for conversion to open space in perpetuity</li> <li>• Construction of safe rooms (tornado and severe wind shelters)</li> <li>• Structural and non-structural retrofitting of existing buildings and facilities (including designs and feasibility studies when included as part of the construction project) for wildfire, seismic, wind or flood hazards (e.g., elevation, flood-proofing, storm shutters, hurricane clips)</li> <li>• Minor structural hazard control or protection projects that may include vegetation management, storm water management (e.g., culverts, floodgates, retention basins), or shoreline/landslide stabilization</li> <li>• Localized flood control projects, such as certain ring levees and floodwall systems, that are designed specifically to protect critical facilities and do not constitute a section of a larger flood control system</li> </ul> <p><b>Planning Application</b></p> <p>The outcome of a mitigation planning grant award must be a FEMA-approved hazard mitigation plan that complies with the requirements of 44 CFR Part 201. The planning grant deliverable can be a new hazard mitigation plan or an update of an already FEMA-approved hazard mitigation plan.</p>

**ARC 8149B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 25, "Housing Fund," Iowa Administrative Code.

The proposed amendments extend the time frame for waiver of a local match requirement for one additional year, increase the allowable interest rate on participating mortgages by 2 percent, and clarify the maximum dollar amounts allowable under the program for various activities, while retaining the same overall allowable maximum cost per unit.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on October 14, 2009. Interested persons may submit written or oral comments by contacting Terry Vestal, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3067.

A public hearing to receive comments about the proposed amendments will be held at 3 p.m. on October 14, 2009, at the above address in the ICN room on the second floor.

These amendments are intended to implement Iowa Code section 8.41.

ITEM 1. Amend subrule 25.6(7) as follows:

**25.6(7)** An application for a project located in a locally designated participating jurisdiction (PJ) must show evidence of a financial commitment from the local PJ at least equal to 25 percent of the total IDIED HOME funds requested. Sources of a local PJ financial commitment could include one or more of the following: HOME, CDBG, TIF, tax abatement, or general funds. This requirement is waived for awards made by the department during federal HOME program year ~~2009 (October 1, 2008 – September 30, 2009)~~ 2010 (October 1, 2009 – September 30, 2010).

ITEM 2. Amend subparagraph **25.6(8)"c"(1)** as follows:

(1) Loan interest rates may be no higher than ~~two~~ four percentage points above the federal prime interest rate at the time of loan closing;

ITEM 3. Amend paragraph **25.8(7)"a"** as follows:

a. The maximum per unit subsidy for all single-family activities involving rehabilitation is \$37,500. The \$37,500 per unit limit includes all applicable costs including, but not limited to, the hard costs of rehabilitation or the acquisition subsidy or both; home ownership assistance activities; technical services costs, including lead hazard reduction ~~or abatement~~ carrying costs; lead hazard reduction ~~or abatement~~ costs; and temporary relocation. All rehabilitation hard costs funded with housing funds are limited to \$24,999. All applicable technical services costs, including any lead hazard reduction ~~or abatement~~ carrying costs, are limited to \$4,500 per unit.

**ARC 8148B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF [261]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development gives Notice of Intended Action to amend Chapter 59, "Enterprise Zone Program," Iowa Administrative Code.

The proposed amendment allows the Department, at its discretion, to limit the amount of state housing investment tax credit awarded to projects also utilizing federal low-income housing tax credits to 30 percent of the total amount of housing tax credit allocated or awarded to housing by the Department during the fiscal year.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on October 13, 2009. Interested persons may submit written comments to Kent Powell, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone number (515)725-3037.

A public hearing to receive comments about the proposed amendment is scheduled for October 13, 2009, at 2 p.m. at the above address in the Second Floor NE Meeting Room.

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

This amendment is intended to implement Iowa Code section 15E.193B.

The following amendment is proposed.

Amend subparagraph **59.8(2)"a"(7)** as follows:

(7) If the approved housing business is using federal low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the project, the department shall issue a transferable tax credit certificate to the eligible housing business. The amount of any replacement tax credit certificates requested by the housing business will be based on documentation provided to the department by the applicant or by the Iowa finance authority and should be consistent with the amount contained in the project's 8609 CPA Certification on file with the Iowa finance authority. At the discretion of the department, the amount of housing enterprise zone tax credits awarded to approved housing businesses also using federal Section 42 low-income housing tax credits shall not exceed 30 percent of the current annual amount allocated or awarded by the department for all housing enterprise zone tax credits during that fiscal year.

**ARC 8184B****HOMELAND SECURITY AND EMERGENCY  
MANAGEMENT DIVISION[605]****Notice of Intended Action**

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

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

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

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

Additionally, the Division proposes to update and amend a definition to provide clarification on eligible recurring costs.

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

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

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before October 15, 2009. Such written materials should be sent to the E911 Program Manager, Iowa Homeland Security and Emergency Management Division, 7105 NW 70th Ave., Camp Dodge, Building W-4, Johnston, Iowa 50131; fax (515)725-3260.

There will be a public hearing on October 15, 2009, at 10 a.m. in the Homeland Security and Emergency Management Division Conference Room at Camp Dodge, Johnston, Iowa, Building W-4, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

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

The following amendments are proposed.

ITEM 1. Amend rule **605—10.2(34A)**, definition of "Recurring costs," as follows:

*"Recurring costs"* means repetitive charges incurred by a joint E911 service board or operating authority including, but not limited to, database management and personnel directly associated with addressing, lease of access lines, lease of equipment, network access fees, and applicable maintenance costs.

ITEM 2. Amend subrule 10.3(1) as follows:

**10.3(1) Membership.**

a. Each political subdivision of the state, having a public safety agency serving territory within the county E911 service area, is entitled to one voting membership. For the purposes of this paragraph, a township that operates a volunteer fire department providing fire protection services to the township, or a city that provides fire protection services through the operation of a volunteer fire department not financed through the operation of city government, shall be considered a political subdivision of the state having a public safety agency serving territory within the county.

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

b. Each private safety agency, such as privately owned ambulance services, airport security agencies, and private fire companies, serving territory within the county E911 service area, is entitled to a nonvoting membership on the board.

c. Public and private safety agencies headquartered outside but operating within ~~an~~ a county E911 service area are entitled to membership according to their status as a public or private safety agency.

d. A political subdivision that does not operate its own public safety agency but contracts for the provision of public safety services is not entitled to membership on the joint E911 service board. However, its contractor is entitled to one voting membership according to the contractor's status as a public or private safety agency.

e. The joint E911 service board elects a chairperson and ~~each~~ chairperson vice chairperson.

f. The joint E911 service board shall annually submit a listing of members, to include the political subdivision they represent and, if applicable, the associated 28E agreement, to the E911 program manager. A copy of the list shall be submitted within 30 days of adoption of the operating budget for the ensuing fiscal year and shall be on the prescribed form provided by the E911 program manager.

ITEM 3. Amend paragraph **10.4(2)“d”** as follows:

d. The name of the chairperson and ~~each~~ chairperson vice chairperson of the joint E911 service board.

ITEM 4. Amend subrule 10.7(2) as follows:

**10.7(2) Adoption by reference.** The “Wireless Enhanced 911 Implementation and Operation Plan,” effective February 1, 2000, and available from the Homeland Security and Emergency Management Division, ~~Hoover State Office Building, Des Moines, 7105 NW 70th Avenue, Camp Dodge, Bldg. W-4, Johnston, Iowa,~~ or at the Law Library in the Capitol Building, Des Moines, Iowa, is hereby adopted by reference with the following changes effective May 8, 2002: Section F, provide further clarification of eligible costs for public safety answering points and the Iowa department of public safety; Section G, provide further specification on the surplus payment process for local E911 service boards and the Iowa department of public safety; Attachment A, ensure that the application for surplus payments contains the language contained in Section G. Additional changes effective August 16, 2004: Sections A, D, E, I, J, K, and service area maps, update to reflect changes in the Code of Iowa and to represent the actual 911 operating conditions with the state; Sections F and G, provide further clarification of eligible costs and the payment of those costs.

ITEM 5. Amend subrule 10.8(6) as follows:

**10.8(6)** Remaining surcharge funds shall be remitted on a calendar-quarter basis within 20 days following the end of the quarter with a remittance form as prescribed by the E911 program manager. Providers shall issue their checks or warrants to the Treasurer, State of Iowa, and remit to the E911 Program Manager, Homeland Security and Emergency Management Division, ~~Hoover State Office Building, Des Moines, Iowa 50319~~ 7105 NW 70th Avenue, Camp Dodge, Bldg. W-4, Johnston, Iowa 50131.

ITEM 6. Amend paragraph **10.11(1)“c”** as follows:

c. For joint E911 service boards, withdrawal of moneys from the E911 service fund shall be made on warrants drawn by the county auditor, per Iowa Code section 331.506, supported by claims and vouchers approved by the chairperson or ~~each~~ chairperson vice chairperson of the joint E911 service board or the appropriate operating authority so designated in writing.

ITEM 7. Amend subrule 10.11(2) as follows:

**10.11(2)** The E911 service funds shall be subject to examination by the division at any time during usual business hours. E911 service funds are subject to the audit provisions of Iowa Code chapter 11. A copy of all audits of the E911 service fund shall be furnished to the division within 30 days of receipt. If through the audit or monitoring process the division determines that a joint E911 service board ~~or the department of public safety~~ is not adhering to an approved plan or does not have a valid board membership, or if the division determines that a joint E911 service board or the department of public safety is not using funds in the manner prescribed in these rules or Iowa Code chapter 34A, the administrator may, after notice and hearing, suspend surcharge imposition and order termination of

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

expenditures from the E911 service fund. The joint E911 service board or department of public safety is not eligible to receive or expend surcharge moneys until such time as the E911 program manager determines that the board or department is in compliance with the approved plan, board membership, and fund usage limitations.

**ARC 8183B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 204, "Subsidized Guardianship Program," Iowa Administrative Code.

The proposed amendments would rescind provisions for the five-year federal demonstration waiver project for guardianship subsidy and replace them with a permanent program.

The legislation authorizing the Department to operate the guardianship subsidy program specified that the Department could do so through an approved waiver to Title IV-E of the Social Security Act or through potential amendments to the Social Security Act that would allow federal funding under Title IV-E to be used for guardianship subsidies. With the passage of Public Law 110-351, the Fostering Connections to Success and Increasing Adoptions Act of 2008, federal funding is now available for an ongoing guardianship subsidy program.

These amendments remove the federal waiver requirement to have an experimental and control group of children. Under the waiver, only children in the experimental group are eligible for the guardianship subsidy benefit. These amendments will allow all qualifying children to receive this benefit. Guardianship subsidies awarded under the demonstration waiver will continue.

The amendments also:

- Add documentation requirements for the decision to pursue guardianship instead of adoption;
- Remove minimum age limits for the child and the current provision for extending the subsidy past the child's eighteenth birthday (a state may raise the maximum age of eligibility under the federal program beginning with federal fiscal year 2011);
- Remove the requirement that the child has been in foster care for at least 6 of the past 12 months;
- Require that the guardian be licensed as a foster parent and meet all of the requirements of 441—Chapter 113, including criminal and child abuse record checks and training.

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

Any interested person may make written comments on the proposed amendments on or before October 13, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code section 234.6 and 2006 Iowa Acts, chapter 1184, section 17, subsection 10.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 204**, Preamble, as follows:

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

## PREAMBLE

This chapter implements ~~a five-year demonstration waiver project for a~~ the subsidized guardianship program as authorized by Public Law 110-351, the Fostering Connections to Success and Increasing Adoptions Act of 2008. The purpose of the program is to provide financial assistance to guardians of eligible children who are not able to be adopted and who are not able to return home. ~~The purpose of the project is to test new approaches to service delivery for improving outcomes for children and families and to allow children a more permanent placement than they have in foster care.~~

~~Eligible children will be randomly assigned to a control group or to an experimental group. Children assigned to the control group will not be eligible to receive subsidized guardianship. Children assigned to the experimental group will be eligible to receive subsidized guardianship if all other conditions are met. This waiver project may be extended or renewed after the five years through reauthorization by the federal government.~~

ITEM 2. Rescind the definition of “Sibling group” in rule **441—204.1(234)**.

ITEM 3. Adopt the following new definitions of “Relative” and “Significant and meaningful contact” in rule **441—204.1(234)**:

“*Relative*” means, for this chapter, a person related to a child by blood, marriage, or adoption or a person with whom the child has resided, with whom the child has had significant and meaningful contact, or with whom the child has close emotional ties. For an Indian child, “relative” includes members of the extended family as defined by the law or custom of the Indian child’s tribe.

“*Significant and meaningful contact*” means that a person has maintained continued interest in the child, has made a genuine effort to maintain communication with the child, and has established and maintains a place of importance in the child’s life.

ITEM 4. Amend rule 441—204.2(234) as follows:

**441—204.2(234) Eligibility.** The guardian named in a permanency order under Iowa Code section 232.104(2)“d”(1) or Iowa Code chapter 633 for a child who was previously in the custody of the department is eligible for subsidy when all of the following conditions exist. The child’s eligibility for subsidized guardianship shall be documented in the child’s case permanency plan.

~~**204.2(1) General conditions of eligibility.** The guardian named in a permanency order under Iowa Code section 232.104(2)“d”(1) or Iowa Code chapter 633 for a child who was previously in the custody of the department is eligible for subsidy when all of the following conditions exist:~~

~~*a.* **204.2(1) Permanency plan.** The child has a documented permanency goal of: The child’s case permanency plan documents:~~

~~*a.* The steps taken to determine that reunification and adoption are not appropriate;~~

~~*b.* That adoption has been discussed with the proposed guardian;~~

~~*c.* The reason adoption by the proposed guardian was not pursued; and~~

~~*d.* That the child has a permanency goal of:~~

~~(1) Long term foster care;~~

~~(2) (1) Guardianship; or~~

~~(3) (2) Another planned permanent living arrangement.~~

~~*b.* The child has been in a licensed foster care placement and has lived in foster care for at least 6 of the last 12 months.~~

~~*e.* The child is either:~~

~~(1) 14 years of age or older and consents to the guardianship; or~~

~~(2) 12 years of age or older and guardianship has been determined to be in the child’s best interest;~~

~~or~~

~~(3) Under 12 years of age and part of a sibling group with a child aged 12 or older.~~

~~**204.2(2) Consent.** If the child is 14 years of age or older, the child consents to the guardianship.~~

~~*d.* **204.2(3) Placement.** The child has lived in continuous placement with the prospective guardian for the six months before initiation of the guardianship subsidy.~~

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

~~e. — The guardian is a person who has a significant relationship with the child and demonstrates a willingness to make a long-term commitment to the child's care.~~

~~(1) — The guardian may be a relative or nonrelative;~~

~~(2) — Placement with that guardian must be in the best interest of the child. The best interest determination must be documented in the case file.~~

~~f. — The child has been randomly selected to participate in the waiver demonstration project.~~

**204.2(4) Guardian.** The guardian is a person who:

a. Meets the definition of "relative" in rule 441—204.1(234);

b. Demonstrates a willingness to make a long-term commitment to the child's care; and

c. Meets all licensing requirements in 441—Chapter 113 and is licensed to operate a foster family home.

**204.2(5) Best interest.** Placement with that guardian is in the best interest of the child. When a sibling group is placed with the guardian, the placement must be appropriate for all of the siblings. The best-interest determination must be documented in the child's case permanency plan.

~~**204.2(2) 204.2(6) Residency.** The subsidized guardianship applicant or recipient need not reside in Iowa. The agreement shall remain in effect without regard to the guardian's state of residency.~~

~~**204.2(3) 204.2(7) Unearned income.** The family or the guardian shall provide to the department worker documentation from the source of the child's unearned income.~~

~~**204.2(4) Other services.** Rescinded IAB 10/11/06, effective 11/1/06.~~

ITEM 5. Amend rule 441—204.4(234) as follows:

**441—204.4(234) Negotiation of amount of subsidy.** The amount of subsidy shall be negotiated between the department and the guardian, and shall be based upon the needs of the child and the circumstances of the family.

~~**204.4(1) Subsidy agreement.** The amount of subsidy shall be negotiated between the department and the guardian, and shall be based upon the needs of the child, and the circumstances of the family. Each time negotiations are completed, the Guardianship Subsidy Agreement, Form 470-3631, shall be completed and signed by the guardian and the department worker. A copy of the agreement shall be provided to the guardian.~~

~~**204.4(2) Amount of subsidy.** The department shall enter into the agreement based upon available funds. Each time negotiations are completed, the department worker and guardian shall complete Form 470-3631, Guardianship Subsidy Agreement. The guardianship subsidy shall be based on a flat daily foster care rate adjusted according to the needs of the child and the circumstances of the family.~~

~~a. — The guardianship subsidy shall be based on a flat daily foster care rate adjusted according to the needs of the child and the circumstances of the family.~~

~~(1) a. The rate for the guardianship subsidy shall not exceed the state's current daily basic foster care rate as found at 441—subrule 156.6(1) plus any daily level 1 or level 2 special needs allowance or sibling allowance for which the child is eligible, as found at 441—subrule 156.6(1) and in accordance with 441—paragraphs 156.6(4) "b" and "f."~~

~~(2) — Rescinded IAB 1/3/07, effective 1/1/07.~~

~~b. No change.~~

~~**204.4(3) and 204.4(4)** No change.~~

ITEM 6. Amend rule 441—204.5(234) as follows:

**441—204.5(234) Parental liability.** These subsidy payments are considered foster care payments for purposes of child support recovery and as such create a support debt for the parents, unless parental rights have been terminated.

ITEM 7. Amend rule 441—204.6(234) as follows:

**441—204.6(234) Termination of subsidy.** The subsidy shall terminate when any of the following occur, and a notice shall be sent which states the reason for the termination:

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

1. The child reaches the age of 18, ~~unless the department determines that the subsidy may continue until the child reaches the age of 19 to facilitate the child's completion of high school or a high school equivalency diploma.~~
2. No change.
3. ~~The child no longer lives with the guardian, except for placement outside the home as limited by subrule 204.4(3) is no longer using the subsidy payments to support the child.~~
4. and 5. No change.
6. The guardian requests that the guardianship subsidy payment cease.
7. to 10. No change.

ITEM 8. Amend **441—Chapter 204**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 234.6 and 2006 Iowa Acts, ~~House File 2734~~ chapter 1184, section 17, subsection 10.

**ARC 8181B****IOWA FINANCE AUTHORITY[265]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.5(1)"r" and 2009 Iowa Acts, Senate File 457, division IV, the Iowa Finance Authority proposes to adopt new Chapter 34, "Disaster Recovery Housing Project Tax Credits," Iowa Administrative Code.

The purpose of these rules is to implement 2009 Iowa Acts, Senate File 457, division IV, by instituting and regulating the operation of a Disaster Recovery Housing Project Tax Credit program.

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

The Authority will receive written comments on the proposed rules until 4:30 p.m. on October 13, 2009. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to [mark.thompson@iowa.gov](mailto:mark.thompson@iowa.gov).

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

These rules are intended to implement Iowa Code section 16.5 (1)"r" and 2009 Iowa Acts, Senate File 457, division IV.

The following amendment is proposed.

Adopt the following **new** 265—Chapter 34:

## CHAPTER 34

## DISASTER RECOVERY HOUSING PROJECT TAX CREDITS

**265—34.1(16,83GA,SF457) Purpose.** A disaster recovery housing project tax credit (hereafter referred to as disaster tax credit) for construction or rehabilitation of housing on the property located in an area that the governor proclaimed a disaster emergency or the President of the United States declared a major disaster during the period of time beginning May 1, 2008, and ending August 31, 2008, is granted to approved projects, subject to availability of the credit, to apply against income tax imposed under Iowa Code chapter 422, divisions II and III. Eligible properties must have applied for and received an allocation of federal low-income housing tax credits under United States Internal Revenue Code Section 42.

## IOWA FINANCE AUTHORITY[265](cont'd)

**265—34.2(16,83GA,SF457) Definitions.** The following definitions apply:

“*Applicant*” means the person, business, or corporation applying for the tax credit.

“*Authority*” means the Iowa finance authority.

“*Disaster recovery housing project*” means an eligible property located in an area declared a disaster area by the governor of Iowa, or a major disaster area by the President of the United States, during the period of time beginning May 1, 2008, and ending August 31, 2008.

“*Educational services*” means training and educational offerings, including, but not limited to, public schools, job training, and financial literacy services.

“*Qualifying investment*” means costs incurred by the taxpayer that are directly related to a disaster recovery housing project, and which are incurred on or after May 12, 2009, and prior to July 1, 2010.

“*Tax basis*” means the same as defined in Internal Revenue Code Section 42(d).

“*Tax credit year*” means the tax year in which a tax credit certificate holder is eligible to redeem a tax credit certificate based on the availability of tax credits for an eligible project.

**265—34.3(16,83GA,SF457) Eligible properties.** A property shall be eligible for disaster tax credits if it meets all of the following conditions:

1. The property is owned by a taxpayer who is an individual, business, or corporation subject to taxation under Iowa Code chapter 422, division II or III;
2. A qualifying investment is made by the taxpayer;
3. The project involves the construction or rehabilitation of housing on the property;
4. The property is located in an area that the governor of Iowa proclaimed a disaster emergency or the President of the United States declared a major disaster during the period of time beginning May 1, 2008, and ending August 31, 2008;
5. An application for low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code has been submitted to the authority on behalf of the project and has been determined by the authority to meet the threshold requirement for an award of credits as set forth in the applicable qualified allocation plan;
6. The project meets the requirements relating to the density of residential housing in the area as established by the authority in the applicable qualified allocation plan;
7. The project meets the requirements relating to the availability of and the accessibility to educational services as established by the authority; and
8. The project is designed to avoid, prevent, or mitigate the effects of a future natural disaster.

**265—34.4(16,83GA,SF457) Eligible taxpayers.**

**34.4(1)** The following are eligible to receive a disaster tax credit:

*a.* An individual may claim a tax credit belonging to a partnership, limited liability company, S corporation, estate, or trust which elects to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual’s earnings from the partnership, limited liability company, S corporation, estate, or trust.

*b.* A business.

*c.* A corporation.

**34.4(2)** The taxpayer must attach one or more tax credit certificates to the taxpayer’s tax return.

**265—34.5(16,83GA,SF457) Application and review process.**

**34.5(1)** The authority shall issue tax credit certificates on a first-come, first-served basis. The taxpayer shall provide the authority with the following:

*a.* Information showing the total qualified investment made in the disaster recovery housing project.

*b.* Information about the financing sources that are directly related to the disaster recovery housing project for which the taxpayer is seeking approval for the tax credit.

**34.5(2)** Disaster recovery housing project tax credit certificates issued by the authority shall state:

*a.* The taxpayer’s name;

## IOWA FINANCE AUTHORITY[265](cont'd)

- b.* The taxpayer's address;
- c.* The taxpayer's tax identification number;
- d.* The amount of the credit;
- e.* The expiration date of the credit (the last day of the taxable year for which the taxpayer is claiming the tax credit); and
- f.* Any other information required by the department of revenue.

**265—34.6(16,83GA,SF457) Tax credit funds.** The tax credit shall not exceed 75 percent of the taxpayer's qualifying investment in a disaster recovery housing project. The maximum amount of tax credits issued by the authority shall not exceed \$3 million in each of the five consecutive tax years beginning in the 2011 calendar year.

**265—34.7(16,83GA,SF457) Abandonment and recapture of tax credit reservation.** The tax credit shall be void and the department of revenue shall seek recovery of the value of the tax credit received if a taxpayer who has received a tax credit fails to comply with either of the following:

1. The requirements of this chapter or of Iowa Code section 16.191, or
2. Local zoning and construction ordinances.

**265—34.8(16,83GA,SF457) Transfer of tax credit certificates.** Tax credit certificates shall not be transferable to any person or entity.

**265—34.9(16,83GA,SF457) Reduction in basis.** For purposes of individual and corporate income taxes, the increase in the tax basis of the property that would otherwise result from the disaster recovery housing investment shall be reduced by the amount of the tax credit allowed under this chapter.

**265—34.10(16,83GA,SF457) Redemption of tax credit certificate.** The amount of tax credit calculated under Section 42(m)(2) of the United States Internal Revenue Code shall be divided by five and an amount equal thereto shall be subtracted from the taxpayer's Iowa tax liability for five consecutive tax years commencing with the tax year beginning on January 1, 2011. Any tax credit in excess of the taxpayer's liability for the tax year shall not be refundable.

**265—34.11(16,83GA,SF457) Tax credits in excess of tax liability.** An applicant whose tax credits exceed the tax liability in the tax year for which the tax credit may be redeemed is not entitled to a refund of excess tax credit.

**265—34.12(16,83GA,SF457) Application processing fee.** A nonrefundable fee for application will be charged by the authority. The fee shall be 1 percent of the total five-year tax credit amount.

These rules are intended to implement Iowa Code section 16.5(1)"r" and 2009 Iowa Acts, Senate File 457, division IV.

**ARC 8167B**

**LABOR SERVICES DIVISION[875]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 92.21, the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 32, "Child Labor," Iowa Administrative Code.

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

The proposed amendments implement 2009 Iowa Acts, House File 618, and Iowa Code chapter 92 by establishing rules for child labor civil penalties; adopting new definitions; and setting forth procedures for obtaining work permits, migrant labor permits, certificates of age, and street trades permits.

The principal reasons for adoption of these amendments are to implement legislative intent and help people obtain required permits and certificates of age.

Written data, views, or arguments to be considered in adoption shall be submitted no later than October 14, 2009, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on October 13, 2009, a public hearing will be held on October 14, 2009, at 1:30 p.m. in the Stanley Room at Iowa Workforce Development, 1000 East Grand Avenue, Des Moines, Iowa. The public will be given the opportunity to make oral statements and submit documents. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

No variance provision is included in these rules. Variance procedures are set forth in 875—Chapter 1.

These amendments are intended to implement Iowa Code chapter 92 as amended by 2009 Iowa Acts, House File 618.

The following amendments are proposed.

ITEM 1. Adopt the following **new** rule 875—32.1(92):

**875—32.1(92) Definitions.**

“*Filing date*” means the date a document is postmarked by the U.S. Postal Service, if the document is filed by mailing and the U.S. postmark is legible. For a document filed via facsimile transmission, “filing date” means the date the document is transmitted. For any other document, “filing date” means the date the document is received by the labor commissioner.

“*Issuing officer*” means a person with a statutory obligation to issue work permits, migrant labor permits, street trade permits, and certificates of age. The school superintendent and the designated employees of the department of workforce development are issuing officers.

“*Migrant labor permit*” means an authorization to work as described in Iowa Code section 92.12.

“*Occupation or business operated by the child’s parents,*” as used in Iowa Code section 92.17(4), means a business operated by the child’s parent where the parent has control of the day-to-day operation of the business and is on the premises during the hours of the child’s employment.

“*Part-time,*” as used in Iowa Code section 92.17(3), means one-half of the maximum hours allowed under Iowa Code chapter 92.

“*Part-time, occasional, or volunteer work,*” as used in Iowa Code section 92.17(1), means work for which compensation is not usually given.

“*Serious injury or illness*” means an illness or injury requiring medical attention beyond first aid.

“*Street trade*” means an occupation performed on any street including but not limited to newspaper sales, newspaper delivery, and door-to-door sales.

“*Street trades permit*” means an authorization as described in Iowa Code section 92.2 to perform a street trade.

“*Superintendent,*” in a public school, means the superintendent or the superintendent’s designee. In a private school, “superintendent” means the superintendent, or another person with comparable responsibilities, or that person’s designee.

“*Week,*” as used in Iowa Code section 92.7, means Sunday through Saturday.

“*Working days,*” as used in rule 875—32.12(92), means Mondays through Fridays but shall not include Saturdays, Sundays or federal or state holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

“*Work permit*” means an authorization to work as described in Iowa Code section 92.10.

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

ITEM 2. Adopt the following **new** rule 875—32.2(92):

**875—32.2(92) Permits and certificates of age.**

**32.2(1)** *When permits and certificates of age are required.* A street trades permit is required for a child who is at least 10 years of age, who is less than 16 years of age, and who desires to work in a street trade. A migrant labor permit is required for a child who is at least 12 years of age, who is less than 16 years of age, and who desires to perform migratory labor as defined in Iowa Code section 92.18. A work permit is required for a child who is 14 or 15 years of age and who desires to perform work other than street trades and migratory labor. An employer may require a certificate of age for a child 16 or 17 years of age.

**32.2(2)** *How permits and certificates of age are issued.* The Iowa Child Labor Form, form number 62-2203, shall be completed for a street trade permit, a certificate of age, a migrant labor permit, or a work permit. The following procedure shall be used for completing the form:

*a.* After accepting an offer of employment and before beginning work, an applicant shall obtain an appropriate document establishing the applicant's age and shall personally take the document to the local superintendent or a department of workforce development office. Locations of workforce development offices are available at [www.iowaworkforce.org](http://www.iowaworkforce.org). The document establishing age shall be:

- (1) A certified copy of the applicant's birth certificate, if it is available.
- (2) If a certified copy of the applicant's birth certificate is not available, the applicant's passport or a certified copy of the applicant's baptismal record.
- (3) If none of the documents listed in (1) and (2) are available, one of the following documents shall be used:

1. A visa issued by the U.S. government.
2. A resident alien card issued by the U.S. government.
3. A physician's affidavit certifying the applicant's age. A sample physician's affidavit is available at <http://www.iowaworkforce.org/labor/childlabor.htm>.

*b.* The issuing officer shall provide the applicant a copy of the Iowa Child Labor Form along with instructions for completing the form.

*c.* The applicant shall follow all necessary steps to complete the applicable portions of the form and return the form to the issuing officer.

*d.* The issuing officer shall review the information on the form and, if appropriate, shall sign and date the form. The issuing officer shall make copies of the completed document and distribute them according to the labor commissioner's instructions.

ITEM 3. Rescind rule 875—32.11(92) and adopt the following **new** rule in lieu thereof:

**875—32.11(92) Civil penalty calculation.** The labor commissioner shall follow the provisions of this rule when calculating civil penalties for violations of this chapter or Iowa Code chapter 92 as amended by 2009 Iowa Acts, House File 618. The labor commissioner may refer a violation to the appropriate authority for criminal prosecution in addition to assessing a civil penalty.

**32.11(1)** *Counting the number of violations.* Each item of inaccurate information on each permit shall be a separate violation. Each day that each child works at a time not listed on the permit, works on a day not listed on the permit, works at an occupation not listed on the permit, works without a permit, works on a prohibited day, works at a prohibited time, or works in a prohibited occupation shall be a separate violation for the purpose of penalty calculation.

**32.11(2)** *Determining whether a violation is a repeat violation.* The higher penalty amounts outlined in subrules 32.11(3) through 32.11(5) for repeat instances may be assessed by the labor commissioner if citations regarding the earlier instance or instances are final action and occurred less than five years before.

**32.11(3)** *Permit violations.*

*a.* *Inaccurate information on a street trades permit, migrant labor permit, or work permit.* Insignificant misspellings and typographical errors shall not be considered inaccurate information. A repeated instance of inaccurate information may result in a higher penalty even if the

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

earlier instance or instances of inaccurate information involved a different fact. If a child is killed while working and the child's permit lists the wrong age for the child, the civil penalty shall be \$10,000 for each instance. Otherwise, the civil penalties for inaccurate information on the applicable permit are as set forth in the following schedule:

Instance	Penalty
First	Warning letter
Second	\$100 civil penalty
Third	\$200 civil penalty
Fourth	\$500 civil penalty
Fifth	\$1,000 civil penalty
Sixth	\$2,500 civil penalty
Seventh	\$5,000 civil penalty
Eighth	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

*b. Working outside a permit.* When a child is working outside the days, times or occupations listed on the street trades permit, migrant labor permit, or work permit, and the day, time or occupation the child is working are also prohibited, the labor commissioner may assess civil penalties under this subrule and subrule 32.11(4) or subrule 32.11(5) as applicable. If a child is killed while working outside the days, times or occupations listed on the applicable permit, the civil penalty shall be \$10,000 for each instance. Otherwise, the civil penalties for working outside the days, times or occupations listed on the applicable permit are as set forth in the following schedule:

Instance	Penalty
First	\$100 civil penalty
Second	\$250 civil penalty
Third	\$500 civil penalty
Fourth	\$1,000 civil penalty
Fifth	\$2,500 civil penalty
Sixth	\$5,000 civil penalty
Seventh	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

*c. Working without a permit.* When a child is working without a required permit, and the day, time or occupation the child is working is also prohibited, the labor commissioner may assess civil penalties under this subrule and subrule 32.11(4) or subrule 32.11(5) as applicable. If a child is killed while working without a required permit, the civil penalty shall be \$10,000 for each instance. Otherwise, the civil penalties for working without a required permit are as set forth in the following schedule:

Instance	Penalty
First	\$250 civil penalty
Second	\$500 civil penalty
Third	\$1,000 civil penalty
Fourth	\$2,500 civil penalty
Fifth	\$5,000 civil penalty
Sixth	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

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

**32.11(4) Time violations.** If a child is killed while working on a prohibited day or at a prohibited time, the civil penalty shall be \$10,000 for each instance. Otherwise, the penalties set forth in this subrule shall be applied.

*a.* The civil penalties for working less than 15 minutes before or after an allowed time are as set forth in the following schedule:

Instance	Penalty
First	Warning letter
Second	\$100 civil penalty
Third	\$200 civil penalty
Fourth	\$500 civil penalty
Fifth	\$1,000 civil penalty
Sixth	\$2,500 civil penalty
Seventh	\$5,000 civil penalty
Eighth	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

*b.* The civil penalties for working on a prohibited day or for working 15 minutes or more before or after an allowed time are as set forth in the following schedule:

Instance	Penalty
First	\$100 civil penalty
Second	\$250 civil penalty
Third	\$500 civil penalty
Fourth	\$1,000 civil penalty
Fifth	\$2,500 civil penalty
Sixth	\$5,000 civil penalty
Seventh	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

**32.11(5) Occupation violations.**

*a.* If no serious illness or injury results from the work, the civil penalties for allowing or permitting a child to perform prohibited work are as set forth in the following schedule:

Instance	Penalty
First	\$500 civil penalty
Second	\$1,500 civil penalty
Third	\$2,500 civil penalty
Fourth	\$5,000 civil penalty
Fifth	\$7,500 civil penalty
Each additional instance	\$10,000 civil penalty

*b.* If a nonfatal but serious illness or injury results from the work, the civil penalties for allowing or permitting a child to perform prohibited work are as set forth in the following schedule:

Instance	Penalty
First	\$2,500 civil penalty
Second	\$5,000 civil penalty
Each additional instance	\$10,000 civil penalty

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

c. If a fatality results from the work, the civil penalty for allowing or permitting a child to perform prohibited work is \$10,000 for each instance.

**32.11(6) *Penalty reduction factors.*** Except for violations related to the death of a child while working, the labor commissioner shall reduce the penalty calculated pursuant to subrules 32.11(1) through 32.11(5) by the appropriate penalty reduction percentages set forth in this subrule. However, if the labor commissioner requests information relevant to the penalty assessment and the employer does not provide responsive information, the labor commissioner shall not reduce the penalty.

a. *Penalty reduction for size of business.* The labor commissioner shall reduce the penalty amount by 25 percent if the employer has 25 or fewer employees. The labor commissioner shall reduce the penalty amount by 15 percent if the employer has 26 to 100 employees. The labor commissioner shall reduce the penalty amount by 5 percent if the employer has 101 to 250 employees.

b. *Penalty reduction for good faith.* The labor commissioner may reduce a penalty by 15 percent based upon evidence that the employer made a good faith attempt to comply with the requirements. If at any time the labor commissioner warned an employer in writing about a prohibited practice and a civil penalty is being assessed against the same employer for repeating the practice, the labor commissioner shall not reduce the penalty based on good faith.

c. *Penalty reduction for history.* The labor commissioner shall reduce a penalty by 10 percent if the labor commissioner has not assessed a civil penalty under this chapter within the past five years. If the labor commissioner has assessed a civil penalty under this chapter in the past five years but the civil penalty has not reached judicial or administrative finality, the civil penalty shall be reduced by 10 percent.

ITEM 4. Adopt the following **new** rule 875—32.12(92):

**875—32.12(92) Civil penalty procedures.**

**32.12(1) *Notice of civil penalty.*** The commissioner shall serve a notice of proposed civil penalty by certified mail or in a manner consistent with service of original notice under the Iowa Rules of Civil Procedure. The notice shall include the following:

- a. A statement that the notice proposes a civil penalty assessment for violation of child labor laws.
- b. Descriptions of the alleged violations including the provisions allegedly violated, the number of violations, and the proposed penalties.
- c. A statement that the employer has the right to request a hearing by filing a notice of contest with the labor commissioner within 15 working days from the receipt of the notice of proposed civil penalty and that if a notice of contest is not timely filed, the proposed civil penalty will become final agency action.
- d. A reference to the applicable procedural provisions.

**32.12(2) *Notice of contest.*** The civil penalty proposed by the labor commissioner shall become final agency action if the employer does not timely file a notice of contest. The filing date for a timely notice of contest shall be within 15 working days of the date the notice of proposed civil penalty was received by the employer. The notice of contest shall include the name, address, and telephone number of the employer's representative. If a notice of contest is filed by fax, the original shall be mailed to the labor commissioner.

**32.12(3) *Contested case procedures.*** Contested case procedures are set forth in 875—Chapter 1 and Iowa Code chapter 17A.

**ARC 8173B****PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 105.4, the Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 31, "Plumbing and Mechanical Systems Board—Waivers or Variances from Administrative Rules," Iowa Administrative Code.

These proposed rules describe the applicable standards and process for the granting of individual waivers from rules adopted by the Board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

Any interested person may make written comments or suggestions on the proposed rules on or before October 13, 2008. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4529 or by E-mail to [choulson@idph.state.ia.us](mailto:choulson@idph.state.ia.us).

There will be one public hearing held through the Iowa Communications Network (ICN) on the date and at the locations listed below, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Public Health and advise of specific needs.

National Guard Armory 3200 2nd Mech Drive Sioux City	October 13, 2009 11 a.m. to 1 p.m.
Iowa Western Community College – 3 2700 College Road Council Bluffs	October 13, 2009 11 a.m. to 1 p.m.
National Guard Armory 3306 Airport Boulevard Waterloo	October 13, 2009 11 a.m. to 1 p.m.
Ottumwa Regional Health Center 1001 E. Pennsylvania Ottumwa	October 13, 2009 11 a.m. to 1 p.m.
Mississippi Bend Area Education Agency 9 729 21st Street Bettendorf	October 13, 2009 11 a.m. to 1 p.m.
State Historical Building 600 E. Locust Des Moines	October 13, 2009 11 a.m. to 1 p.m.

These rules are intended to implement Iowa Code chapters 17A, 105, and 272C.  
The following amendment is proposed.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Adopt the following **new** 641—Chapter 31:

CHAPTER 31  
PLUMBING AND MECHANICAL SYSTEMS BOARD—WAIVERS OR VARIANCES FROM  
ADMINISTRATIVE RULES

**641—31.1(17A,105,272C) Definitions.** For purposes of this chapter:

“*Board*” means the Iowa plumbing and mechanical systems board.

“*Waiver or variance*” means action by the board which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term “waiver” shall include both a waiver and a variance.

**641—31.2(17A,105,272C) Scope of chapter.** This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

**641—31.3(17A,105,272C) Applicability of chapter.** The board may only grant a waiver from a rule if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or duties imposed by statute.

**641—31.4(17A,105,272C) Criteria for waiver or variance.** In response to a petition completed pursuant to rule 641—31.6(17A,105,272C), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

**641—31.5(17A,105,272C) Filing of petition.** A petition for a waiver must be submitted in writing to the board as follows:

**31.5(1) License application.** If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question and submitted to the board administrator.

**31.5(2) Contested cases.** If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case, and submitted to the board administrator.

**31.5(3) Other.** If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board’s administrator.

**641—31.6(17A,105,272C) Content of petition.** A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person or entity for which a waiver is being requested, and the case number of any related contested case.
2. A description and citation of the specific rule from which a waiver is requested.
3. The specific waiver requested, including the precise scope and duration.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in 641—31.4(17A,105,272C). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

5. A history of any prior contacts between the board and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

6. Any information known to the requester regarding the board's treatment of similar cases.

7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver.

8. The name, address, and telephone number of any person or entity that would be adversely affected by the grant of a petition.

9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

10. Signed releases of information authorizing persons with knowledge regarding the request to furnish the board with information relevant to the waiver.

**641—31.7(17A,105,272C) Additional information.** Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the board's administrator, a committee of the board, or a quorum of the board.

**641—31.8(17A,105,272C) Notice.** The board shall acknowledge a petition upon its receipt in the office of the board's administrator. The board shall ensure that notice of the pending petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided.

**641—31.9(17A,105,272C) Hearing procedures.** The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case, and shall otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

**641—31.10(17A,105,272C) Ruling.** An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

**31.10(1) Board discretion.** The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the board based on the unique, individual circumstances set out in the petition.

**31.10(2) Burden of persuasion.** The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

**31.10(3) Narrowly tailored.** A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**31.10(4) Administrative deadlines.** When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

**31.10(5) Conditions.** The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

**31.10(6) Time period of waiver.** A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

**31.10(7) Time for ruling.** The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

**31.10(8) When deemed denied.** Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

**31.10(9) Service of order.** Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains, and to any other person entitled to such notice by any provision of law.

**641—31.11(17A,105,272C) Public availability.** All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

**641—31.12(17A,105,272C) Summary reports.** Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

**641—31.13(17A,105,272C) Cancellation of a waiver.** A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

**641—31.14(17A,105,272C) Violations.** Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

**641—31.15(17A,105,272C) Defense.** After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**641—31.16(17A,105,272C) Judicial review.** Judicial review of a board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A. Any appeal to district court shall be taken within 30 days from the date of issuance of the decision by the board pursuant to Iowa Code section 17A.19.

These rules are intended to implement Iowa Code chapters 17A, 105, and 272C.

**ARC 8161B****PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 136C.3, the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials," Iowa Administrative Code.

These amendments propose changes to the rules governing the supervision of fluoroscopic procedures.

Any interested persons may make written comments or suggestions on the proposed changes on or before December 7, 2009. Such written comments should be directed to Melanie Rasmussen, Chief, Bureau of Radiological Health, Iowa Department of Public Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [mras muss@idph.state.ia.us](mailto:mras muss@idph.state.ia.us).

A public hearing is scheduled for October 28, 2009, from 1:30 to 3:30 p.m., 321 E. 12th Street, Lucas State Office Building, Fifth Floor, Rooms 517 and 518, Des Moines, Iowa 50319. At the hearing, persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Public Health and advise of specific needs.

These amendments are intended to implement Iowa Code section 691.6.

The following amendments are proposed.

ITEM 1. Rescind subparagraph **41.1(5)"1"(2)**.

ITEM 2. Renumber subparagraphs **41.1(5)"1"(3)** and **41.1(5)"1"(4)** as **41.1(5)"1"(2)** and **41.1(5)"1"(3)**.

ITEM 3. Adopt the following **new** paragraph **41.1(5)"n"**:

*n.* Supervision of fluoroscopy. The use of fluoroscopy by radiologic technologists and radiologic students shall be performed under the direct supervision of a licensed practitioner or an advanced registered nurse practitioner (ARNP), pursuant to 655—subrule 7.2(2), for the purpose of localization to obtain images for diagnostic or therapeutic purposes. The use of fluoroscopy by radiologist assistants shall be as defined in 641—42.6(136C).

**ARC 8162B****PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 691.6(6), the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 127, "County Medical Examiners," Iowa Administrative Code.

This amendment proposes changes to the rules governing the qualifications and supervision of the county medical examiner investigators.

Any interested persons may make written comments or suggestions on the proposed amendment on or before October 13, 2009. Such written comments should be directed to Jerri McLemore, M.D., Office of the State Medical Examiner, 2250 S. Ankeny Blvd., Ankeny, Iowa 50023. E-mail may be sent to [jmclemor@idph.state.ia.us](mailto:jmclemor@idph.state.ia.us).

This amendment is intended to implement Iowa Code section 691.6.

The following amendment is proposed.

Adopt the following **new** paragraph **127.7(2)"e"**:

*e.* If a CME-I is unable to meet the eligibility requirements for obtaining registry certification due to the small number of cases requiring investigation in the county of appointment, then a waiver shall be obtained from the state medical examiner in order for the investigator to continue his or her duties. The waiver must be submitted in writing with documentation of the number of deaths occurring in the county of appointment requiring investigation by the CME-I requesting the waiver. The waiver must be renewed every five years if the required number of investigations has still not been achieved.

**ARC 8154B****PUBLIC SAFETY DEPARTMENT[661]****Notice of Termination**

Pursuant to the authority of Iowa Code section 101A.5, the State Fire Marshal hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 7312B** on November 5, 2008, that proposed to amend Chapter 5, "Fire Marshal Administration," and to adopt new Chapter 235, "Commercial Explosive Licensing," Iowa Administrative Code.

During 2008, discussions were undertaken between the State Fire Marshal and the Iowa Limestone Association, which is the trade association representing most commercial explosive licensees in the state, to prepare to rewrite and more systematically codify requirements for commercial explosive licenses issued by the Fire Marshal. Pursuant to these discussions, the Notice of Intended Action referenced above was published in the Iowa Administrative Bulletin on November 5, 2008, proposing the adoption of a new chapter on commercial explosive licensing, and a public hearing on the proposed rules was held on December 9, 2008. As commercial explosive licenses expire on and are required to be renewed by January 1 each year, the plan had been to adopt the rules in an Emergency After Notice after the public comment period had ended, in order for the new rules to apply to licenses issued for calendar year 2009. However, after the public comment period had ended, it became apparent that additional work on the rules was needed before they were adopted. Consequently, the rules proposed during 2008 were never adopted. Because the Notice of Intended Action published on November 5, 2008, has now expired, that notice is hereby terminated.

**ARC 8155B****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 section 101A.5, the State Fire Marshal hereby gives Notice of Intended Action to amend Chapter 5, "Fire Marshal Administration," and to adopt new Chapter 235, "Commercial Explosive Licensing," Iowa Administrative Code.

During 2008, discussions were undertaken between the State Fire Marshal and the Iowa Limestone Association, which is the trade association representing most commercial explosive licensees in the state, to prepare to rewrite and more systematically codify requirements for commercial explosive licenses issued by the Fire Marshal. Pursuant to these discussions, Notice of Intended Action was published in the Iowa Administrative Bulletin on November 5, 2008, as **ARC 7312B** proposing the adoption of new Chapter 235, "Commercial Explosive Licensing," and a public hearing on the proposed rules was held on December 9, 2008. As commercial explosive licenses expire on and are required to be renewed by January 1 each year, the plan had been to adopt the rules Emergency After Notice after the public comment period had ended, in order for the new rules to apply to licenses issued for calendar year 2009. However, after the public comment period had lapsed, it became apparent that additional work on the rules was needed before they were adopted. Consequently, the rules proposed during 2008 were never adopted. Because the Notice of Intended Action published on November 5, 2008, has now expired, that notice is being terminated in a Notice of Termination published herein as **ARC 8154B** and replaced by this new Notice of Intended Action.

Iowa Code section 101A.2 establishes licensing of commercial explosives operations and users of explosives for commercial purposes. The rules for this program have been in the general rules of the Fire Marshal, 661—Chapter 5, and are now being moved to a separate chapter. This is part of a more general effort to reorganize and renumber the rules of the Department of Public Safety to make them more accessible and understandable to the public and to those subject to the provisions of the rules.

The rules proposed here differ significantly from those that are currently in effect, primarily in that the proposed rules provide for licensing of individual blasters as well as commercial explosive businesses. The statute authorizes the licensing of individual blasters, but this has not previously been implemented.

A public hearing on these proposed amendments will be held on October 13, 2009, at 9 a.m. in the First Floor Public Conference Room (Room 125) in the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Persons may present their views concerning these amendments at the public hearing orally or in writing. Persons who wish to make oral presentations at the hearing are requested to contact the Agency Rules Administrator, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319; or by telephone at (515)725-6185 at least one day prior to the hearing, although any person who appears at the hearing will be afforded an opportunity to speak.

Any interested persons may make oral or written comments concerning these proposed amendments to the Agency Rules Administrator by mail, by telephone, or in person at the above address by 4:30 p.m. on October 13, 2009. Comments may also be submitted by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us) by 4:30 p.m. on October 13, 2009.

These amendments are intended to implement Iowa Code chapters 101A, 252J and 272D.

The following amendments are proposed.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 1. Rescind and reserve rules **661—5.7(17A,101A)**, **661—5.851(101A)**, **661—5.865(101A,252J)** and **661—5.866(252J)**.

ITEM 2. Adopt the following **new** 661—Chapter 235:

CHAPTER 235  
COMMERCIAL EXPLOSIVE LICENSING

**661—235.1(101A) Licensing program established.** A commercial explosive licensing program is hereby established in the fire marshal division. The program shall issue licenses to commercial explosive firms and to individual blasters as provided in this chapter.

**235.1(1)** The commercial explosive licensing program is located at the following address:

Commercial Explosive Licensing Program

Fire Marshal Division

Iowa Department of Public Safety

215 East 7th Street

Des Moines, Iowa 50319

The program may be contacted by mail or in person at this address.

**235.1(2)** The program may be contacted by telephone at (515)725-6145, by fax at (515)725-6172, or by electronic mail at [fminfo@dps.state.ia.us](mailto:fminfo@dps.state.ia.us).

**661—235.2(101A) Licenses required.** Except as specifically exempted by another provision of state or federal law, any business whose employees are engaged in the manufacture, importation, distribution, sale, or commercial use of explosives in the course of their employment shall be required to hold a current commercial explosive business license issued pursuant to this chapter. Any individual, except as specifically exempted by another provision of law, who conducts blasting or is in charge of or responsible for the loading and firing of any explosive material shall be required to hold a current individual blaster license issued pursuant to this chapter. An individual blaster license shall not be required to authorize a person solely to transport explosives from one location to another, to assist a licensed blaster, to train under a licensed blaster, or to engage in the manufacture of explosives. An individual blaster license is not required for a person who is the owner of a sole proprietorship which holds a commercial explosive license in order for that person to engage in blasting.

**661—235.3(101A) License application process.**

**235.3(1)** Anyone wishing to obtain an application for a commercial explosive business license or an individual blaster license may obtain a copy of the required application by contacting the commercial explosive licensing program as specified in rule 661—235.1(101A).

**235.3(2)** A completed application for a license shall be submitted to the commercial explosive licensing program at the address specified in subrule 235.1(1). All information requested on the application shall be provided prior to the processing of the application.

**235.3(3)** Each license application shall be accompanied by a \$60 fee for each license for which application is being made, paid by check or money order made payable to the Iowa Department of Public Safety. If the application is being submitted later than January 31 of a given year, then the fee for each license shall be \$5 per month for each month remaining in the calendar year, including the month in which the application is submitted.

**235.3(4)** Each license issued shall expire on December 31 of the year in which it is issued, except that a license issued in December of any year shall expire on December 31 of the following year.

**661—235.4(101A) Issuance of commercial explosive business license.** A commercial explosive business license shall be issued only if all of the following conditions have been satisfied:

**235.4(1)** All items required on the application have been completed, and any items the fire marshal deems necessary to verify have been verified and found to be true.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

**235.4(2)** For purposes of this rule, “owner” means a person with an ownership interest in the commercial explosive business seeking a license who is either actively engaged in the business or has an ownership stake of 10 percent or more of the business, or both.

**235.4(3)** No owner or manager of the business for which commercial explosive licensure is sought nor any person who will have, at any time, possession of explosives in the course of employment with the prospective business licensee:

- a. Has been convicted of a felony or any offense involving explosives or firearms;
- b. Has been previously disqualified from being licensed to handle explosives in this or any other state. The fire marshal may grant a license to a person previously disqualified if the fire marshal is satisfied that the condition or conditions that led to the disqualification have been corrected;
- c. Is an unlawful user of or is addicted to controlled substances;
- d. Has been adjudged mentally incompetent at any time by any court, been committed by any court to any mental institution, received inpatient treatment for any mental illness in the past three years, or received treatment by a health care professional for a serious mental illness or disorder which impairs a person’s capacity to function normally and safely, both toward themselves and others.

**235.4(4)** The business has at least one owner or employee licensed as an individual blaster, unless the business is a sole proprietorship in which the owner is the only person involved in the business who will engage in blasting.

**661—235.5(101A) Issuance of individual blaster license.** An individual blaster license shall be issued only if all of the following conditions have been satisfied:

**235.5(1)** The applicant is an employee of a licensed commercial explosive business.

a. If, after an individual blaster license is issued, such employment ceases, the employing business and the individual blaster shall each notify the fire marshal within three business days of the final day of employment that the employment has ceased, and the individual blaster license shall be suspended until the individual blaster is again employed with a licensed commercial explosive business.

b. Upon reemployment, the employer shall notify the fire marshal that the individual blaster is again employed with a licensed commercial explosive business, and the fire marshal shall reinstate the individual blaster license as soon as practical, provided that the individual blaster is not disqualified from holding a license pursuant to any provision of this chapter.

c. If the fire marshal finds that an individual blaster is disqualified from holding a license, the fire marshal shall revoke the license.

**235.5(2)** All items required on the application have been completed and any items the fire marshal deems necessary to verify have been verified and found to be true.

**235.5(3)** The applicant is not or has not been:

- a. Convicted of a felony or any offense involving explosives or firearms;
- b. Previously disqualified from being licensed to handle explosives in this or any other state. The fire marshal may grant a license to a person previously disqualified if the fire marshal is satisfied that the condition or conditions that led to the disqualification have been corrected;
- c. An unlawful user of or addicted to controlled substances; or
- d. Adjudged mentally incompetent at any time by any court or committed by any court to any mental institution, or has not received inpatient treatment for any mental illness in the past three years or received treatment by a health care professional for a serious mental illness or disorder which impairs a person’s capacity to function normally and safely, both toward themselves and others.

**235.5(4)** The applicant has satisfactorily completed training approved by the fire marshal for the handling and use of explosives. The training may be provided by the employer or by a reputable third party knowledgeable about the storage, handling, and use of explosives. The fire marshal may accept related job experience of 640 hours or more in lieu of training if the experience is documented by a sworn affidavit provided by the employing commercial explosive business licensee.

EXCEPTION: The fire marshal may issue an individual blaster license to a person licensed or certified as a blaster in another state, provided that the fire marshal finds that the requirements for licensing or certification in the other state are comparable to those provided for in this rule.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

**235.5(5)** The applicant is 21 years of age or older.

**661—235.6(101A) Inventory and records.**

**235.6(1)** Each licensed commercial explosive business shall maintain records to show amounts of explosive material on hand at the beginning and end of each working day and quantities dispensed and to whom. The business shall conduct physical inventories at least once annually. Anytime a shortage appears that is in excess of limits established by the federal Bureau of Alcohol, Tobacco, Firearms and Explosives, the shortage shall be reported within 24 hours to the chief of police or sheriff having jurisdiction, who in turn shall cause a federal Form 4712 (Department of Treasury, Internal Revenue Service) to be completed, a copy of which shall be sent to the commercial explosive licensing program, as specified in rule 661—235.1(101A). Inventory records shall be retained for five years after the date for which the activity is recorded and shall be made available upon request of the fire marshal.

**235.6(2)** Each licensed individual blaster shall maintain a daily record of all explosive materials received and fired or otherwise disposed of by the individual blaster. Such records are the property of the business license holder, who shall retain them for five years and make them available to the fire marshal upon request.

**235.6(3)** Any loss, theft, or unlawful removal of explosive materials shall be reported within 24 hours to the Bureau of Alcohol, Tobacco, Firearms and Explosives, to the fire marshal and to the local law enforcement agency.

**235.6(4)** Any accident involving explosive materials that causes an injury to a person which requires medical attention or that causes damage to property beyond the limits of the property on which the blasting is being conducted or to property for which the owner has not provided a written waiver to the blasting operation shall be reported promptly to the fire marshal.

**661—235.7(101A,252J) Grounds for suspension, revocation, or denial of commercial explosive licenses; appeals.**

**235.7(1)** The fire marshal may refuse to issue a commercial license for the manufacture, importation, distribution, sale, and commercial use of explosives sought pursuant to Iowa Code section 101A.2 or may suspend or revoke such a license for any of the following reasons:

- a. Finding that the applicant or licensee is not of good moral character and sound judgment.
- b. Finding that the applicant or licensee lacks sufficient knowledge of the use, handling, and storage of explosive materials to protect the public safety.
- c. Finding that the applicant or licensee falsified information in the current or any previous license application.
- d. Finding that the applicant or licensee has been adjudged mentally incompetent at any time by any court or committed by any court to any mental institution or has received inpatient treatment for any mental illness in the past three years or received treatment by a health care professional for a serious mental illness or disorder which impairs a person's capacity to function normally and safely, both toward themselves and others.
- e. Proof that the licensee or applicant has violated any provision of Iowa Code chapter 101A, this chapter, or 661—Chapter 231.
- f. Receipt by the department of a certificate of noncompliance from the child support recovery unit of the Iowa department of human services, pursuant to the procedures set forth in Iowa Code chapter 252J.

**235.7(2)** An applicant or licensee whose application is denied or a licensee whose license is suspended or revoked for a reason other than receipt of a certificate of noncompliance from the child support recovery unit may appeal that action pursuant to 661—Chapter 10, except that wherever “commissioner of public safety” or “department of public safety” appears, “fire marshal” shall be substituted. Applicants or licensees whose licenses are denied, suspended, or revoked because of receipt by the department of a certificate of noncompliance issued by the child support recovery unit shall be subject to the provisions of rule 661—235.7(101A,252J). Procedures specified in 661—Chapter 10 for contesting department actions shall not apply in these cases.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

**235.7(3)** The fire marshal shall notify the employing commercial explosive business licensee of the denial, suspension, or revocation of an individual blaster license.

**661—235.8(101A,252J) Child support collection procedures.** The following procedures shall apply to actions taken by the fire marshal on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

**235.8(1)** The notice required by Iowa Code section 252J.8 shall be served upon the applicant or licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee or applicant may accept service personally or through authorized counsel.

**235.8(2)** The effective date of revocation or suspension of a license or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the licensee or applicant.

**235.8(3)** Licensees and applicants for licensure shall keep the fire marshal informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the department with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

**235.8(4)** All fees for applications, license renewal or reinstatement must be paid by the licensee or applicant before a license will be issued, renewed, or reinstated after the fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 252J.

**235.8(5)** In the event a licensee or applicant files a timely district court action following service of a department notice pursuant to Iowa Code sections 252J.8 and 252J.9, the fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the fire marshal to proceed. For the purpose of determining the effective date of revocation, suspension or denial of the issuance or renewal of a license, the fire marshal shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**661—235.9(101A,272D) Suspension or revocation for nonpayment of debts owed state or local government.** The following procedures shall apply to actions taken by the state fire marshal on a certificate of noncompliance received from the Iowa department of revenue pursuant to Iowa Code chapter 272D.

**235.9(1)** The notice required by Iowa Code section 272D.3 shall be served upon the licensee by regular mail.

**235.9(2)** The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 272D.3, shall be 20 days following service of the notice upon the licensee.

**235.9(3)** Licensees shall keep the board informed of all court actions and centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the board with copies, within 7 days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

**235.9(4)** All applicable fees for an application or reinstatement must be paid by the licensee before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 272D.

**235.9(5)** In the event the licensee files a timely district court action following service of a notice pursuant to Iowa Code section 272D.8, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For the purpose of determining the effective date of revocation or suspension of

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

the license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**235.9(6)** Suspensions or revocations imposed pursuant to this rule may not be appealed administratively to the board or within the department of public safety.

NOTE: The procedures established in rule 661—235.9(101A,272D) implement the requirements of Iowa Code chapter 272D. The provisions of Iowa Code chapter 272D establish mandatory requirements for an agency which administers a licensing program and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A, but must be appealed directly to district court.

**661—235.10(101A) Inspections and inspection fees.** Each permanent location at which a commercial explosive licensee stores explosives is subject to an inspection annually, and to reinspections if needed to ensure correction of any violations. The inspection fee shall be \$100 per site inspected, which shall cover the initial inspection and one reinspection, if needed. The fee for each additional reinspection shall be \$50.

These rules are intended to implement Iowa Code chapters 101A, 252J, and 272D.

**ARC 8156B****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 section 100.1, the State Fire Marshal hereby gives Notice of Intended Action to rescind Chapter 5, "Fire Marshal Administration," adopt new Chapter 200, "Fire Marshal Administration," and amend Chapter 201, "General Fire Safety Requirements," Chapter 202, "Requirements for Specific Occupancies," and Chapter 205, "Fire Safety Requirements for Hospitals and Health Care Facilities," Iowa Administrative Code.

The State Fire Marshal has authority for the following:

- To establish minimum requirements for fire safety for specific occupancies and for "all other buildings or structures in which persons congregate from time to time, whether publicly or privately owned";
- To establish requirements for storage, handling, and use of flammable liquids;
- To establish requirements for storage, handling, and use of explosive materials;
- To establish requirements for smoke detectors in residences;
- To investigate fires of unknown or suspicious origin;
- To establish minimum training requirements for fire fighters;
- To provide training to fire fighters;
- To license commercial explosive operations and blasting personnel;
- To certify fire extinguishing system contractors and alarm system contractors and installers; and
- To license fire suppression system installers and maintenance workers.

In addition, the Fire Marshal Division has been assigned responsibility for administration of the State Building Code, the Electrician and Electrical Contractor Licensing Program and the Electrical Inspection Program, as well as for providing administrative support to the Electrical Examining Board.

The amendments proposed herein establish the general administrative organization and procedures of the Fire Marshal Division and update general fire safety requirements established by the Fire Marshal and

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

requirements for specific occupancies. New editions of the International Fire Code and the International Building Code are adopted by reference.

A public hearing to accept comments on these amendments will be held in the First Floor Public Conference Room (Room 125) at the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa, at 10:15 a.m. on October 13, 2009. Additional public hearings will be held at 4 p.m. on October 14, 2009, at the Carroll Recreation Center, 716 N. Grant Road, Carroll, Iowa, and at 4:30 p.m. on October 15, 2009, at Iowa State Patrol Post #11, 5400 16th Avenue S.W., Cedar Rapids, Iowa. All three public hearings will be held jointly with public hearings considering proposals by the Building Code Commissioner to amend the State Building Code.

Persons wishing to speak at a public hearing should contact the Agency Rules Administrator by telephone at (515)725-6185 or E-mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us) at least one day prior to the hearing.

Comments on these proposed amendments may also be made by E-mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us), by telephone to (515)725-6185, or by mail to the Agency Rules Administrator, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319. Comments should be submitted by 4:30 p.m. on October 16, 2009.

The amendments proposed herein are subject to the general waiver provisions applicable to rules adopted by the State Fire Marshal. That rule is included in the amendments proposed here.

These amendments are intended to implement Iowa Code section 100.1, subsections 5 and 6, and section 100.35.

The following amendments are proposed.

ITEM 1. Rescind **661—Chapter 5**.

ITEM 2. Adopt the following **new** 661—Chapter 200:

CHAPTER 200  
FIRE MARSHAL ADMINISTRATION

**661—200.1(100) Description.** The fire marshal division is created within the department of public safety. The division headquarters is located in the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. The main telephone number for the division is (515)725-6145. The general E-mail address for the division is [fminfo@dps.state.ia.us](mailto:fminfo@dps.state.ia.us).

**200.1(1)** The director of the division is the state fire marshal, who is appointed by and reports to the commissioner of public safety. There is an assistant fire marshal, appointed by the fire marshal, who also serves as chief of the arson and explosives bureau. The assistant fire marshal may act in place of the state fire marshal if the state fire marshal position is vacant or the state fire marshal is absent or unavailable.

**200.1(2)** The division includes the following four bureaus:

- a. Arson and explosives bureau.
- b. Fire prevention bureau.
- c. Fire service training bureau.
- d. Building code bureau.

**661—200.2(100) General administrative procedures.** The provisions of 661—Chapter 10 are adopted by reference with the following amendments:

1. Wherever the term “department of public safety” appears, delete the term and replace it with “state fire marshal.”
2. Wherever the term “commissioner of public safety” appears, delete the term and replace it with “state fire marshal.”

**661—200.3(100) Building plan approval and plan review fees.** Plans for the proposed construction of certain new buildings or additions, alterations or changes to existing buildings require the approval of the fire marshal and shall be submitted to the building code bureau.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

**200.3(1)** Plans for initial construction or alterations, changes, additions, renovations or remodeling of the following shall be submitted to the building code bureau, unless the plans have been submitted to a local fire or building department for approval based upon compliance with the rules of the fire marshal or a local fire ordinance recognized in rule 661—201.4(100):

- a. Any educational building or facility serving kindergarten through twelfth grade,
- b. Any college or university building or facility,
- c. Any child care facility intended to serve seven or more children at one time,
- d. Any correctional facility,
- e. Any gaming facility,
- f. Any facility housing an adult day service,
- g. Any assisted living facility,
- h. Any residential care facility, or
- i. Any elder group home.

**200.3(2)** Plans for initial construction or alterations, changes, additions, renovations or remodeling of any building or facility subject to the provisions of 661—Chapter 205 shall be submitted to the building code bureau.

**200.3(3)** Building plan submittals.

a. *Working plans and specifications.* When approval of building construction projects is required by this chapter or when requested by the submitter for other building construction projects covered by this chapter, one complete set of the final working plans and specifications shall be submitted to the building code bureau. The submittal shall comply with Iowa Code chapters 542B and 544A. Each submittal shall be examined, and the submitter shall be notified of the findings. If the working plans and specifications comply with this chapter, an approval letter shall be sent to the submitter.

b. *Shop drawings.* Shop drawings, equipment specifications and supporting documentation for fire alarm and sprinkler systems may be submitted for review and approval. If the system is being installed as part of a project which has been designed by an engineer or architect, the submittal shall be approved by the responsible architect or engineer prior to submittal to the fire marshal. Each submittal shall be examined, and the submitter shall be notified of the findings. Only one copy of shop drawings, equipment specifications and supporting documentation is required. Staff of the building code bureau shall send a letter of approval to the submitter in lieu of returning approved shop drawings.

c. *Changes.* No changes shall be made to the approved final working plans and specifications or shop drawings unless the changes are submitted to and approved by the building code bureau.

**200.3(4)** If the blueprints and specifications are not acceptable, the building code bureau shall notify the submitter of the deficiencies and request that the submitter either forward changes or request a review of the blueprints and specifications with the building code bureau.

**200.3(5)** If, after such review, the submitter disputes the findings of the plan reviewer, the submitter may request that the disputed questions be reviewed by the building code commissioner and the chief of the fire prevention bureau.

**200.3(6)** If the submitter disputes the findings of the building code commissioner and the chief of the fire prevention bureau, the submitter may appeal to the fire marshal under the provisions of rule 661—200.2(100).

**200.3(7)** 661—subrule 300.4(2), paragraph “b,” is adopted by reference.

NOTE: 661—subrule 300.4(2) establishes fees for plan reviews.

**200.3(8)** The responsible design professional for a project shall schedule a preliminary meeting with the building code bureau to discuss code compliance issues early in the design development phase. The responsible design professional shall contact the bureau to schedule the preliminary meeting. There is no separate fee for a preliminary meeting. If the responsible design professional plans to request approval to bid the project as part of the preliminary meeting, the responsible design professional shall request a copy of the document “Preliminary Meeting Checklist” at the time the meeting is scheduled and shall be prepared to address all applicable issues identified on the checklist at the preliminary meeting. Approval to bid the project shall not be given unless all applicable issues identified on the checklist have been addressed to the satisfaction of the state fire marshal or the state fire marshal’s designee.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

**661—200.4(100,101,101A) Inspections and inspection fees.** Certain buildings, facilities, and installations as designated in the Iowa Code are required to comply with the Iowa Code and rules of the fire marshal. The fire marshal determines and enforces such compliance. To do so, the fire marshal or any employee of the fire marshal or local fire department authorized by the fire marshal may enter such building or premises at any time without notice to inspect it.

**200.4(1)** An inspection may be of a particular system in the building, facility, or installation, or the inspection may include the entire building, facility, or installation.

**200.4(2)** An inspection to evaluate compliance with the rules of the fire marshal shall be conducted by the fire marshal or by a consultant as requested by the fire marshal. A consultant is a person with the necessary degree of training, education or experience to examine a system within a building required to be in compliance with the law or rules and determine if such system or systems are in compliance with such requirements. If a consultant who is not employed by the fire marshal is engaged to conduct an inspection, the consultant shall be accompanied by an employee of the fire marshal or of a local fire department while conducting the inspection.

**200.4(3)** Inspections shall be conducted without announcement and occur on a random basis, upon request, in response to a complaint or to investigate a suspected fire hazard.

**200.4(4)** An employee of the fire marshal or an employee of a local fire department acting on behalf of the fire marshal, upon arriving at a building, facility, or installation in order to conduct an inspection, shall advise the owner or the person in control of the building, if that person is available. If a person in such a position cannot be contacted, the inspection shall commence in any event. If the owner or the owner's representative wishes to accompany the employee during the inspection, the owner or the owner's representative may do so, provided that the inspection is not delayed.

**200.4(5)** Upon completion of an inspection, the employee or consultant may complete a written inspection order if any violations or deficiencies are discovered. The order shall be signed by the employee and, if prepared by a consultant, shall also be signed by the consultant.

**200.4(6)** Upon completion of the inspection, if the building, facility, or installation does not comply with applicable laws or rules, the employee or consultant shall identify specific provisions with which the building, facility, or installation does not comply and shall notify the owner. The owner may be ordered to correct or repair the deficiency. The owner may order the building, facility, or installation removed or demolished, in lieu of correcting the deficiency.

*a.* Copies of the notice of deficiencies or order shall be distributed to the fire marshal's office and the fire department having jurisdiction. The employee or consultant signing the order shall retain a copy.

*b.* The time allowed to comply with the order shall be determined by the employee or consultant, who shall consider the likelihood that a fire may occur, the possibility of personal injury or property loss, the cost and availability of materials and labor to correct, repair, remove or demolish, and other relevant information.

*c.* If the owner of the building, facility, or installation does not agree with the deficiency findings and order, the owner may appeal the order to the fire marshal under rule 661—200.2(100).

**200.4(7)** Inspection fees. The following fees shall apply respectively to inspections of the facilities of the types listed where a certificate of inspection from the fire marshal is required in order to obtain licensure or certification under Iowa law. The inspection fee shall be paid by check made payable to the Fire Marshal Division, Iowa Department of Public Safety. If a certificate of occupancy is required for use of the building, facility, or installation, the certificate shall not be issued until the inspection fee has been paid.

*a.* The inspection fee for a health care facility licensed or seeking licensure pursuant to Iowa Code chapter 135C or a group home licensed or seeking licensure in this state is \$2.50 per bed.

*b.* The inspection fee for an elder group home certified or seeking certification pursuant to Iowa Code chapter 231B or an assisted living facility licensed or seeking licensure pursuant to Iowa Code chapter 231C is \$10 per bed.

*c.* The inspection fee for an adult day services program certified or seeking certification pursuant to Iowa Code chapter 231D is \$75 per facility.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

*d.* The inspection fee for a child care facility licensed or seeking licensure pursuant to Iowa Code chapter 237A is \$25 per facility.

*e.* When an initial inspection which requires a fee pursuant to paragraphs “*a*,” “*b*,” or “*c*” of this subrule results in a finding of a deficiency or deficiencies which require a reinspection, the initial reinspection shall be performed without the imposition of any additional fee. If the original deficiency or deficiencies have not been corrected at the time of the initial reinspection, then a fee of \$125 for each additional reinspection after the initial reinspection is required until the original deficiency or deficiencies have been corrected.

*f.* The fee for a suitability inspection of a prospective site for a building, facility, or installation which may seek licensure or certification from the state of Iowa is \$150.

**661—200.5(100) Certificates for licensure.** Several Iowa statutes provide that a license to conduct certain functions may not be issued until the fire marshal has approved the building, facility, or installation to be used for such function. Upon completion of an inspection showing the building, facility, or installation to be in compliance with applicable rules of the fire marshal, the owner or the owner’s agent may request the issuance of a certificate of occupancy specifying that the building, facility, or installation is approved for the specific use requiring licensure. Upon receipt of the request, provided that the building, facility, or installation is found to be in compliance with applicable rules of the fire marshal and all applicable fees have been paid, the fire marshal shall issue such a certificate. If the building, facility, or installation is found not to be in compliance, the person requesting the certificate may file a petition requesting a review, and the same procedure is used as if an order were being appealed. Upon completion of the appeal process, if the building, facility, or installation is found to be in compliance, a certificate will then be issued.

**661—200.6(100) Fire investigations.**

**200.6(1)** The fire marshal has the authority to investigate any fire in the state of Iowa.

*a.* The fire marshal may initiate an investigation of any fire at the discretion of the fire marshal.

*b.* Any local fire or law enforcement official may request the fire marshal to investigate any fire. Such investigation shall be undertaken at the discretion of the fire marshal.

**200.6(2)** Local fire officials have the primary responsibility to and shall investigate fires. A local fire official who investigates a fire shall file a report of each fire investigated with the fire marshal division within one week of the fire even if the fire marshal division participated in, assisted with, directed or supervised the fire investigation. Upon written request, the fire marshal may grant an extension of the time for filing this report for a period not to exceed 14 days. The request shall set forth compelling reasons for such extension.

**200.6(3)** A local fire official who investigates a fire shall immediately report a fire that involves death or suspected arson and shall do so by contacting the member of the fire marshal division assigned to that area or, if that member is not available, another member of the fire marshal division. If direct contact with the fire marshal division is impractical, the local fire official may request the county sheriff to relay the information to the fire marshal division via Iowa state patrol communications.

**200.6(4)** The notice of a fire involving death or arson shall contain the following information, if known:

*a.* The date, time, and address of the fire;

*b.* If death has occurred or is suspected, the name, age and address of the person or persons deceased or missing;

*c.* The suspected cause of the fire;

*d.* If arson is suspected, the reasons for suspecting arson, whether there is obvious evidence of arson, and if there is an arson suspect; and

*e.* Whether an explosion occurred.

**200.6(5)** The fire marshal may assist a local officer in the investigation of any fire. The fire marshal may direct, conduct, or assist in the investigation of a fire and may arrange for the participation of a consultant in the investigation.

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**661—200.7(100) Fire drills.** All public and private school officials and teachers shall conduct fire drills in all school buildings as specified in Iowa Code section 100.31 when school is in session. All doors and exits of their respective rooms and buildings shall remain unlocked during school hours or when such areas are being used by the public at other times.

**661—200.8(100) Inspection based on complaint.**

**200.8(1) Request for inspection.** A person requesting the inspection of a building, facility, or installation that is alleged to require repair, removal or demolition because it presents a significant fire hazard shall provide the following information, if known:

- a. The address of the building, facility, or installation;
- b. The name and address of the building's, facility's, or installation's owner;
- c. The requester's name, address and telephone number; and
- d. A general description of the alleged deficiencies for which the requester seeks remedy.

**200.8(2) Initial determination.** The fire marshal, upon receipt of the information, shall make an initial determination whether there are sufficient allegations to warrant an inspection.

a. If, in the fire marshal's opinion, the complaint fails to warrant an inspection, the fire marshal shall so advise the complainant.

b. If the fire marshal determines that an inspection is warranted, the fire marshal shall so advise the county attorney, the requester and the person(s) identified as the owner(s).

**200.8(3) Cause to be inspected.** After initial determination, the fire marshal shall cause the inspection of the building, facility, or installation to determine if:

a. By want of proper repair, or by reason of age and dilapidated condition, the building, facility, or installation is especially liable to fire and is so situated as to endanger other buildings, facilities, installations, property or persons, or

b. The building, facility, or installation contains combustibles, explosives or flammable materials dangerous to the safety of any buildings, premises or persons.

**200.8(4) Final decision.** Upon completion of the inspection, the fire marshal shall decide if the building, facility, or installation needs to be removed or repaired.

a. If the building, facility, or installation complies with applicable laws or rules and no deficiencies are found, the fire marshal shall accordingly notify the county attorney, the owner and the requester.

b. If any deficiencies are found, and the building, facility, or installation is within the corporate limits of a city, the fire marshal shall notify the mayor and clerk of said city of the deficiencies and the need for repairs or removal.

c. If any deficiencies are found, and the building, facility, or installation is outside the corporate limits of any city, the fire marshal shall identify specifically such deficiencies and prepare an order to correct or repair the deficiencies or remove or demolish the building, facility, or installation. Such notice and order should be sent to the county attorney with a request that the notice and order be examined by the county attorney.

NOTE: An owner who receives an order from the fire marshal may appeal the order using procedures established in rule 661—200.2(100).

**200.8(5) Verification of legal description.** The county attorney shall, upon receipt of the fire marshal's notice and order, verify the legal description and identification of the property owner and shall advise the fire marshal how to properly serve the order.

**200.8(6) Contents of order.** The order shall notify the owner of the building, facility, or installation that the order becomes effective upon its receipt or issuance. The order shall also notify the owner that, within five days after the order's effective date, the owner may file a petition for review of the order in accordance with Iowa Code section 100.14.

**200.8(7) Who shall be served.** If the county attorney deems it appropriate, any occupants, lienholders or lessees shall be served with a copy of the order.

**200.8(8) Reasonable time to comply.** The order shall give the owner a reasonable time to comply with its mandate(s). The fire marshal shall determine what constitutes a reasonable time by considering the likelihood of fires, the possibility of personal injury or property loss, the cost, availability of materials

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

and labor to correct, repair, remove or demolish the building, facility, or installation and other reasonable, relevant information.

**200.8(9) Reinspection.** If the owner of the building, facility, or installation elects not to challenge the fire marshal's order, the fire marshal shall, at the end of the period during which compliance was required, conduct another inspection of the building, facility, or installation.

*a.* If the fire marshal finds that the order has been complied with, the fire marshal shall notify the county attorney, owner and requester of this fact.

*b.* If the fire marshal finds that the order has not been complied with, the fire marshal shall notify the county attorney of noncompliance.

NOTE: An owner who receives a notice of noncompliance from the fire marshal may appeal the notice using procedures established in rule 661—200.2(100).

**200.8(10) Failure to comply.** Upon receipt from the fire marshal of notice of the owner's failure to comply, the county attorney shall:

*a.* Institute the procedure necessary to subject the owner to a penalty of \$10 for each day the owner fails to comply, and

*b.* Confirm the legal description of the property; the owner's name and address; the alleged deficiencies of the building, facility, or installation; that an inspection was conducted; that some deficiency was found; that the owner was properly served, notified and given an adequate opportunity to repair the deficiency; and that the deficiency has not been remedied and may, therefore, advise the fire marshal that the destruction is appropriate at that time.

**200.8(11) Final action taken.** The fire marshal, upon the advice of the county attorney, may repair, remove or destroy the building, facility, or installation. Such destruction may occur by:

*a.* Permitting the local fire service to burn the building, facility, or installation as a training exercise;

*b.* Asking for public bids on the building, facility, or installation; or

*c.* If significant costs are anticipated, the fire marshal may request funds from the Iowa executive council.

**661—200.9(100A) Sharing of insurance company information with the fire marshal.** Insurance companies shall provide specified information to the fire marshal as follows:

**200.9(1)** Whenever an insurance company has reason to believe that a fire loss insured by the company was caused by something other than an accident, the insurance company shall provide to the fire marshal, or some other agency authorized to receive such information under Iowa Code chapter 100A, all information and material possessed by the company relevant to an investigation of the fire loss or a prosecution for arson.

**200.9(2)** Whenever the fire marshal, or an agent or employee of the fire marshal, requests in writing that an insurance company provide information in its possession regarding a fire to the fire marshal, the insurance company shall provide all relevant information requested. Relevant information may include, but need not be limited to:

*a.* Insurance policy information relating to a fire loss under investigation, including information on the policy application.

*b.* Policy premium payment records.

*c.* History of previous claims made by the insured.

*d.* Material relating to the investigation of the loss, including the statement of any person, proof of loss, and other information relevant to the investigation.

**200.9(3)** Unless otherwise expressly limited, any request for information under this rule shall be construed to be a request for all information in the possession of an insurance company. Any information in the custody or control of any agent, employee, investigator, attorney or other person engaged, on a permanent or temporary basis, by an insurance company in the person's professional relationship to the insurance company shall be considered to be in the possession of the insurance company subject to this rule.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

**661—200.10(100A) Release of information to an insurance company.** An insurance company that has provided fire loss information to an authorized agency pursuant to Iowa Code section 100A.2 may request information relevant to the fire loss investigation from the fire marshal. If the insurance company has provided information to an authorized agency other than the fire marshal, the request shall include proof that information was provided. For purposes of this rule, the term “insurance company” shall include an attorney, adjuster or investigator engaged by the company in reference to the particular fire loss involved in the request even though the attorney, adjuster or investigator is not a full-time employee of the insurance company. The attorney, adjuster or investigator shall provide the fire marshal with proof of authorization from the insurance company to act as its representative relative to the loss.

**661—200.11(100A) Forms.** These rules require the use of the following forms that are available from the state fire marshal.

**200.11(1)** When an insurance company has reason to believe that a fire loss has occurred, the company shall notify the fire marshal on the form entitled Insurance Form Number One.

**200.11(2)** Requests for information by the fire marshal, the fire marshal’s agents or employees from an insurance company pursuant to Iowa Code section 100A.2 shall comply with the form entitled Insurance Form Number Two.

**200.11(3)** Material requested on Insurance Forms Number One and Two shall carry a cover form which complies with Insurance Form Number Three.

**200.11(4)** Requests for information by an insurance company from the fire marshal shall comply with Insurance Form Number Four.

These rules are intended to implement Iowa Code chapter 100.

ITEM 3. Rescind rule 661—201.1(100) and adopt the following **new** rule in lieu thereof:

**661—201.1(100) Scope.** The provisions of this chapter apply to all buildings, structures and facilities that are subject to the jurisdiction of the state fire marshal unless the building, structure, or facility is subject to the provisions of 661—Chapter 202, 661—Chapter 205, 661—Chapter 221, or 661—Chapter 231.

ITEM 4. Rescind rule 661—201.2(100) and adopt the following **new** rule in lieu thereof:

**661—201.2(100) General provisions.** The following publications or indicated portions thereof are hereby adopted by reference as general fire safety requirements and shall apply to all occupancies other than those to which provisions specific to an occupancy explicitly exclude these provisions or any individual provision contained therein.

**201.2(1)** International Fire Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, with the following amendments:

Delete section 301.2.

Delete section 307.2.

Delete section 307.3 and insert in lieu thereof the following new section:

**307.3 Extinguishment Authority.** The state fire marshal or an employee of the fire marshal division authorized to do so by the fire marshal, or local fire chief or member of the local fire department authorized to do so by the fire chief, is authorized to order the extinguishment by the permit holder, another person responsible or the fire department of open burning that creates or adds to a hazardous or objectionable situation.

Delete section 308.1.4 and insert in lieu thereof the following new section:

**308.1.4 Open Flame Cooking Devices.** Charcoal burners and ash- or coal-producing devices shall not be operated on combustible balconies or within 10 feet of combustible construction.

Exceptions:

1. One- and two-family dwellings.
2. LP-gas burners connected to one (1) 20-pound LP-gas container.
3. Where buildings, balconies and decks are protected by an automatic sprinkler system.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Delete section 315.2.3 and insert in lieu thereof the following new section:

**315.2.3 Equipment Rooms.** Combustible material shall not be stored in boiler rooms, mechanical rooms, or electrical equipment rooms.

Exception: In sprinklered equipment rooms that have sufficient space to allow a minimum of 10 feet between all combustible storage and the heating, mechanical or electrical equipment in the room.

Delete section 405.2 and table 405.2 and insert in lieu thereof the following new section and new table:

**405.2 Frequency.** Required emergency evacuation drills shall be held at the intervals specified in Table 405.2 or more frequently where necessary to familiarize all occupants with the drill procedure.

**TABLE 405.2  
FIRE AND EVACUATION DRILL FREQUENCY AND PARTICIPATION**

GROUP OR OCCUPANCY	FREQUENCY	PARTICIPATION
Group A	Quarterly	Employees
Group B <sup>(c)</sup>	Annually	Employees
Group E	See <sup>(a)</sup> below	All occupants
Group I	Quarterly on each shift	Employees
Group I <sup>(b)</sup> and Group R-4 (assisted living facilities)	Quarterly	All occupants
Group R-1	Quarterly on each shift	Employees
Group R-2 <sup>(d)</sup>	Four annually	All occupants
High-rise	Annually	Employees

Footnotes:

(a) The frequency shall be allowed to be modified in accordance with Section 408.3.2. Fire and severe weather drills shall be conducted in accordance with Iowa Code chapter 100.

(b) Fire and evacuation drills in assisted living facilities shall include complete evacuation of the premises in accordance with Section 408.10.5. Drills shall be conducted not less than six times per year on a bimonthly basis, with not less than two drills conducted during the night when residents could reasonably be expected to be sleeping. The drills shall be permitted to be announced in advance to the residents. Where occupants receive habilitation or rehabilitation training, fire prevention and fire safety practices shall be included as part of the training program.

(c) Group B buildings that have an occupant load of 500 or more persons or more than 100 persons above or below the lowest level of exit discharge.

(d) Applicable to Group R-2 college and university buildings in accordance with Section 408.3.

Delete section 609.1 and insert in lieu thereof the following new section:

**609.1 General.** Commercial kitchen exhaust hoods shall comply with the requirements of National Fire Protection Association (NFPA) 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2004 edition.

Delete section 807.4.3.1 and insert in lieu thereof the following new section:

**807.4.3.1 Storage in corridors and lobbies.** Clothing and personal effects shall not be stored in corridors and lobbies.

Exceptions:

1. Corridors protected by an approved automatic sprinkler system installed in accordance with Section 903.3.1.1.

2. Storage in metal lockers, provided the minimum required egress width is maintained.

Delete section 906.1 and insert in lieu thereof the following new section:

**906.1 Where Required.** Portable fire extinguishers shall be installed in the following locations:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.

2. Within 30 feet (9144 mm) of commercial cooking equipment.

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3. In areas where flammable or combustible liquids are stored, used or dispensed.
4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1.
5. Where required by the sections indicated in Table 906.1.
6. Special-hazard areas, including but not limited to laboratories, computer rooms and generator rooms.

Add the following new paragraph to section 907.2.2:

4. The Group B fire area that contains an educational occupancy for students above the twelfth grade with an occupant load of greater than 50 persons.

Delete section 907.2.3 and insert in lieu thereof the following new section:

**907.2.3 Group E.** In the absence of a complete automatic sprinkler system, a complete automatic detection system shall be installed throughout the entire Group E occupancy. A Group E occupancy with a complete automatic sprinkler system shall be provided with a fire alarm system with a minimum of corridor smoke detection, at a maximum spacing of 30 feet on center, and heat or smoke detection in any hazardous or nonoccupied areas. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

Exceptions:

1. Group E occupancies with an occupant load of less than 50.
2. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
  - 2.1. Interior corridors are protected by smoke detectors with alarm verification.
  - 2.2. Auditoriums, cafeterias, gymnasiums and the like are protected by heat detectors or other approved detection devices.
  - 2.3. Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.
  - 2.4. Off-premises monitoring is provided.
  - 2.5. The capability to activate the evacuation signal from a central point is provided.
  - 2.6. In buildings where normally occupied spaces are provided with a two-way communication system between such spaces and a constantly attended receiving station from which a general evacuation alarm can be sounded, except in locations specifically designated by the fire code official.
3. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system, the notification appliances will activate on sprinkler water flow, and manual activation is provided from a normally occupied location.

Add the following new section 1003.8:

**1003.8 Location of Preschool through Second Grade Students.** In Group E occupancies, rooms normally occupied by preschool, kindergarten or first grade students shall not be located above or below the level of exit discharge. Rooms normally occupied by second grade students shall not be located more than one story above the level of exit discharge.

Delete section 4603.6.1 and insert in lieu thereof the following new section:

**4603.6.1** Existing Group E occupancies shall be provided with a fire alarm system with a minimum of corridor smoke detection, at a maximum spacing of 30 feet on center, and heat or smoke detection in any hazardous or nonoccupied areas. Where smoke or heat detectors are installed, such detectors shall be connected to the building fire alarm system.

Exceptions:

1. A building with a maximum area of 1,000 square feet that contains a single classroom and is located no closer than 50 feet from another building.
2. Group E occupancy with an occupant load if less than 50.

Adopt Appendices B, C, and D.

**201.2(2)** The following Chapters and Section of the International Building Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041.

- a. Chapter 2.
- b. Chapter 3.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

- c. Chapter 4.
- d. Chapter 5.
- e. Chapter 6.
- f. Chapter 7.
- g. Section 804.

ITEM 5. Amend rule 661—201.4(100) as follows:

**661—201.4(100) Existing buildings or structures.** Additions or alterations to any building or structure shall comply with the requirements of this chapter for new construction. Additions or alterations shall not be made to an existing building or structure that will cause the existing building or structure to be in violation of any provisions of 661—Chapter 201. An existing building plus additions shall comply with the height and area provisions of Chapter 5 of the International Building Code, ~~2006~~ 2009 edition. Portions of the structure not altered and not affected by the alteration are not required to comply with the requirements established in 661—Chapter 201 for a new structure.

ITEM 6. Amend rule 661—201.5(100) as follows:

**661—201.5(100) Recognition of local fire ordinances and enforcement.** With the exception of a health care facility subject to the requirements of 661—Chapter 205, a building, structure, or facility shall be deemed to be in compliance with the requirements established in rules of the fire marshal if all of the following conditions are met:

- 1. to 4. No change.

Notwithstanding any conflicting provisions contained in any code adopted by reference in this chapter or by any local fire ordinance, compliance with the provisions of ~~661—Chapter 51~~ 661—Chapter 221 is required at any location or facility in which flammable or combustible liquids are stored, handled, or used, other than incidental use.

ITEM 7. Rescind and reserve rule ~~661—202.4(100)~~.

ITEM 8. Adopt the following **new** rule 661—202.5(100,135C):

**661—202.5(100,135C) General requirements for small group homes (specialized licensed facilities) licensed pursuant to Iowa Code section 135C.2.**

**202.5(1) Scope.** This rule applies to specialized facilities licensed under the provisions of Iowa Code section 135C.2 which have three to five beds and serve persons with mental retardation, chronic mental illness, developmental disabilities, or brain injuries.

**202.5(2) Exits.**

a. There shall be a minimum of two approved exits from the main level of the home and from each level with resident sleeping rooms.

b. Interior and exterior stairways shall have a minimum clear width of not less than 30 inches.

**202.5(3) Windows.** Every resident sleeping room shall have an outside window or outside door arranged and located to permit the venting of products of combustion and access to fresh air in the event of an emergency.

a. In new construction, windows shall have a minimum net clear openable area of 5.7 square feet, minimum net clear openable height of 24 inches, and minimum net clear openable width of 20 inches, and the finished sill height shall be not more than 44 inches above the floor.

b. In existing construction, the finished sill height shall be not more than 44 inches above the floor or may be accessible from a platform not more than 44 inches below the window sill.

**202.5(4) Interior finish.** Interior finish in an exit shall be Class A, B or C.

**202.5(5) Doors.** Doors to resident sleeping rooms shall be a minimum of 1<sup>3</sup>/<sub>8</sub>-inch solid core wood or equivalent.

**202.5(6) Vertical separations.** Basement stairs must be enclosed with one-hour rated partitions and 1<sup>3</sup>/<sub>4</sub>-inch solid core wood doors equipped with self-closers. These doors must be kept closed unless held

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

open by an approved electromagnetic holder, actuated by an approved smoke detection device located at the top of the stairwell and interconnected with the alarm system.

**202.5(7) Fire detection, fire alarms and sprinklers.**

*a.* The home shall have smoke detection installed on each occupied floor, including basements, in accordance with NFPA 72, 1999 edition, Chapter 11. Smoke detectors shall be interconnected so that activation of any detector will sound an audible alarm throughout. The system shall be tested by a competent person at least semiannually with date of test and name noted.

*b.* Homes in which exiting is restricted by special door-locking arrangements that prevent residents from free egress shall be equipped with sprinkler systems meeting the requirements of National Fire Protection Association Standard Number 13D, 1996 edition.

**202.5(8) Fire extinguishers.**

*a.* Approved fire extinguishers shall be provided on each floor, so located that a person will not have to travel more than 75 feet from any point to reach the nearest extinguisher. An additional extinguisher shall be provided in, or adjacent to, each kitchen or basement storage room.

*b.* Type and number of portable fire extinguishers shall be determined by the fire marshal.

**202.5(9) Mechanical, electrical and building service equipment.**

*a.* Air conditioning, ventilating, heating, cooking and other service equipment shall be in accordance with state regulations governing the same, or nationally recognized standards such as National Fire Protection Association standards governing the type of equipment, and shall be installed in accordance with the manufacturer's specifications. All hazardous areas normally found in one- and two-family dwellings, such as laundry, kitchen, heating units and closets, need not be separated with walls if all equipment is installed in accordance with the manufacturer's listed instructions.

*b.* Portable comfort heating devices are prohibited.

**202.5(10) Attendants; evacuation plan.**

*a.* Every home shall have at least one staff person on the premises at all times while residents are present. This staff person shall be at least 18 years of age and capable of performing the required duties of evacuation. No person other than management personnel or a person under management control shall be considered as an attendant.

*b.* Every facility shall formulate a plan for the protection of all persons in the event of fire and for their evacuation to areas of refuge and from the building when necessary. All employees shall be instructed and kept informed with respect to their duties under the plan. The plan shall be posted where all employees may readily study it. Fire drills shall be held at least once a month. Records must be kept available for inspection.

**202.5(11) Smoking.**

*a.* There shall be no smoking in resident sleeping areas, and smoking and no smoking policies shall be strictly enforced.

*b.* Ashtrays shall be constructed of noncombustible material with self-closing tops and shall be provided in all areas where smoking is permitted.

**202.5(12) Exit illumination.** Approved rechargeable battery-powered emergency lighting shall be installed to provide automatic exit illumination in the event of failure of the normal lighting system.

**202.5(13) Occupancy restrictions.**

*a.* Occupancies not under the control of, or not necessary to, the administration of residential care facilities are prohibited therein with the exception of the residence of the owner or manager.

*b.* Nonambulatory residents shall be housed only on accessible floors which have direct access to grade where the use of stairs or elevators is not required.

**202.5(14) Maintenance.**

*a.* All fire and life safety equipment or devices shall be regularly and properly maintained in an operable condition at all times in accordance with nationally recognized standards. Such equipment and devices include fire extinguishing equipment, alarm systems, doors and their appurtenances, cords and switches, heating and ventilating equipment, sprinkler systems and exit facilities.

*b.* Storerooms shall be maintained in a neat and proper manner at all times.

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c. Excessive storage of combustible materials such as papers, cartons, magazines, paints, sprays, old clothing, furniture and similar materials shall be prohibited at all times.

This rule is intended to implement Iowa Code section 135C.2, subsection 5, paragraph "b."

ITEM 9. Rescind rule **661—205.100(135C)**.

**ARC 8150B**

## **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 section 100.18, the State Fire Marshal hereby gives Notice of Intended Action to amend Chapter 210, "Smoke Detectors," Iowa Administrative Code.

Iowa Code section 100.18 requires the installation of smoke detectors in residences and delegates to the State Fire Marshal authority to regulate the devices used. Last year, the State Fire Marshal adopted a requirement that smoke detectors installed on or after October 1, 2008, would be required to be dual sensor smoke detectors, using both ionization and photoelectric sensors. The effective date of this requirement has twice been delayed and is now set at October 1, 2009. Further delays in the ready availability of the dual sensor smoke detectors are evident, and this rule making is being undertaken to delay the effective date again, until April 1, 2010. In addition, the amendments proposed herein change the reference in renumbered subrule 210.3(2) from the 2005 edition of the National Electrical Code to the 2008 edition, which is consistent with a previous rule making regarding requirements for electrical installations in Iowa. These provisions are also being adopted through an emergency rule making, published herein as **ARC 8151B**, which became effective September 1, 2009. In addition, the amendments proposed herein clarify that the requirement for use of dual sensor smoke detectors applies only to residential occupancies and not to those in which a commercial grade smoke detection system has been installed, modify the requirements for locations of smoke detectors to be consistent with the International Fire Code, and renumber various rules within the chapter.

Any interested party may submit comments on the proposed amendments to the Agency Rules Administrator, Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, by mail; by telephone to (515)725-6185; by fax to (515)725-6195; or by E-mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us). Comments must be received by 4:30 p.m. on October 13, 2009.

A public hearing on these proposed amendments will be held at 8:30 a.m. on October 13, 2009, in the First Floor Conference Room (Room 125), State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. The hearing room is fully accessible. Persons wishing to speak at the hearing should contact the Agency Rules Administrator by E-mail at [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us) or by telephone at (515)725-6185 at least one day prior to the hearing.

The amendments proposed herein are subject to the provisions for waivers of rules of the State Fire Marshal found in rule 661—5.15(100).

These amendments are intended to implement Iowa Code section 100.18.

The following amendments are proposed.

ITEM 1. Amend rule 661—210.1(100) as follows:

**661—210.1(100) Definitions.** The following definitions apply to rules 661—210.1(100) through ~~661—210.4(100)~~ **661—210.5(100)**:

"Approved" means that the equipment has been approved for a specific use by an independent testing laboratory or organization of national reputation.

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“Dual sensor smoke detector” means a smoke detector which contains both an ionization sensor and a photoelectric sensor and which is designed to detect and trigger an alarm in response to smoke detected through either sensing device.

ITEM 2. Renumber rules **661—210.2(100)** to **661—210.4(100)** as **661—210.3(100)** to **661—210.5(100)**.

ITEM 3. Adopt the following **new** rule 661—210.2(100):

**661—210.2(100) Scope.** The provisions of this chapter apply to single-family and two-family residences and to townhouses and to all other residential occupancies unless otherwise provided herein or by another provision of law. The provisions of this chapter do not apply to nonresidential occupancies.

ITEM 4. Amend renumbered rule 661—210.3(100) as follows:

**661—210.3(100) General requirements.**

**210.3(1)** Approved single station smoke detectors shall be acceptable in all areas covered by this chapter, unless other fire warning equipment or materials are required by any provision of 661—Chapter 201, 202, or 205 or if a commercial grade smoke detection system has been installed. Any single station smoke detector installed on or after ~~October 1, 2009~~ April 1, 2010, in compliance with this subrule, including a replacement of an existing detector, shall be a dual sensor smoke detector. If sufficient dual sensor smoke detectors have been installed to comply with the requirements of this chapter, additional smoke detectors which may be other than dual sensor detectors may be installed.

**210.3(2)** Any installation of wiring and equipment shall comply with NFPA 70, National Electrical Code, ~~2005~~ 2008 edition, and requirements established by the manufacturer of the equipment serviced by the wiring.

**210.3(3)** All devices, combinations of devices, and equipment to be installed in conformity with this chapter shall be approved and used for the purposes for which they are intended. Any smoke detector installed on or after ~~October 1, 2009~~ April 1, 2010, in compliance with this chapter, including a replacement of an existing detector, shall be a dual sensor smoke detector. If sufficient dual sensor smoke detectors have been installed to comply with the requirements of this chapter, additional smoke detectors which may be other than dual sensor detectors may be installed.

**210.3(4)** and **210.3(5)** No change.

**210.3(6)** Power source.

*a.* In new buildings and additions constructed after July 1, 1991, required smoke detectors shall receive their primary power from the building wiring when such wiring is served from a commercial source. Wiring shall be permanent and without a disconnecting switch other than that required for overcurrent protection. Smoke detectors may be solely battery operated when installed in existing buildings, or in buildings without commercial power, or in buildings which undergo alterations, repairs or additions subject to subrule ~~210.2(2)~~ 210.3(2).

*b.* No change.

**210.3(7)** No change.

**210.3(8)** Equipment shall be installed, ~~located and spaced~~ in accordance with the manufacturer’s recommendations.

**210.3(9)** and **210.3(10)** No change.

**210.3(11) Location within dwelling units.** Smoke detectors shall be located as follows:

*a.* ~~In dwelling units, detectors shall be mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to each separate sleeping area. When the dwelling unit has more than one story and in dwellings with basements, a detector shall be installed on each story and in the basement. In dwelling units where a story or basement is split into two or more levels, the smoke detector shall be installed on the upper level, except that when the lower level contains a sleeping area, a detector shall be installed on each level. When sleeping rooms are on an upper level, the detector shall be placed at the ceiling of the upper level in close proximity to the stairway. In dwelling units where the ceiling height of a room open to the hallway serving the bedrooms exceeds that of the hallway by 24 inches or more,~~

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~~smoke detectors shall be installed in the hallway and in the adjacent room. Detectors shall sound an alarm audible in all sleeping areas of the dwelling unit in which they are located.~~

~~*b.* — Location in efficiency dwelling units and hotels. In efficiency dwelling units, in hotel suites and in hotel sleeping rooms, detectors shall be located on the ceiling or wall of the main room or hotel sleeping room. When sleeping rooms within an efficiency dwelling unit or hotel suite are on an upper level, the detector shall be placed at the ceiling of the upper level in close proximity to the stairway. When actuated, the detector shall sound an alarm audible within the sleeping area of the dwelling unit, hotel suite or sleeping room in which it is located.~~

*a.* On the ceiling or wall outside of each separate sleeping area in the immediate vicinity of bedrooms.

*b.* In each room used for sleeping purposes.

*c.* In each story within a dwelling unit, including basements but not including crawl spaces and uninhabitable attics. In dwellings or dwelling units with split levels and without an intervening door between the adjacent levels, a smoke alarm installed on the upper level shall suffice for the adjacent lower level provided that the lower level is less than one full story below the upper level.

ITEM 5. Amend renumbered rule 661—210.4(100) as follows:

**661—210.4(100) Smoke detectors—notice and certification of installation.**

**210.4(1)** No change.

**210.4(2)** *Certification—single-family dwelling units.* A person who files for a homestead tax credit pursuant to Iowa Code chapter 425 shall certify that the single-family dwelling unit for which the credit is filed has a smoke detector(s) installed in accordance with subrule ~~210.2(6)~~ 210.3(6) and paragraph ~~210.2(11)“a.”~~ 210.3(11)“a.” or that such smoke detector(s) will be installed within 30 days of the date of filing for credit.

**210.4(3)** No change.

ITEM 6. Amend renumbered rule 661—210.5(100) as follows:

**661—210.5(100) Smoke detectors—new and existing construction.**

**210.5(1)** *New construction.* All multiple-unit residential buildings and single-family dwellings which are constructed after July 1, 1991, shall include the installation of smoke detectors meeting the requirements of rule ~~661—210.1(100)~~ and rule ~~661—210.2(100)~~ 661—210.3(100).

**210.5(2)** *Existing construction.* All existing single-family units and multiple-unit residential buildings shall be equipped with smoke detectors as required in paragraph ~~210.2(11)“a.”~~ 210.3(11)“a.”

**ARC 8178B**

**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 section 100B.10, the State Fire Marshal hereby gives Notice of Intended Action to amend Chapter 251, “Fire Fighter Training and Certification,” Iowa Administrative Code.

The Fire Service Training Bureau administers a certification program for fire fighters in Iowa. The certification process maintained by the Fire Service Training Bureau is accredited by the International Fire Service Accreditation Congress (IFSAC). While certification is not a state requirement to work

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as a career or volunteer fire fighter in Iowa, some fire departments do require such certification for employment or for continued employment.

Certification is based upon satisfactory completion of training and testing which is in turn based upon standards published by the National Fire Protection Association. These nationally recognized standards are periodically updated, and adoption of the new editions of the published standards is required for continued accreditation of the certification program by IFSAC. The amendment proposed herein updates various standards for certification in areas by the Fire Service Training Bureau to current editions of the relevant standards.

A public hearing on this proposed amendment will be held on October 15, 2009, at 9 a.m. in the First Floor Public Conference Room (Room 125), State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, by mail, by telephone at (515)725-6185, or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us), at least one day prior to the public hearing.

Any written comments or information regarding this proposed amendment may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated by 4:30 p.m. on October 14, 2009.

This amendment is intended to implement Iowa Code section 100B.6.

The following amendment is proposed.

Amend rule 661—251.202(100B) as follows:

**661—251.202(100B) Certification standards.** Standards for Iowa fire fighter certification are based upon nationally recognized standards established by the National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, Massachusetts 02269-9101. Certification at each level in the Iowa fire service certification system results in national certification as well.

**251.202(1)** No change.

**251.202(2) Driver/operator.**

*a. Driver/operator (pumper).* Certification as a driver/operator (pumper) is based upon the requirements for fire department vehicle driver/operator (pumper) certification established in NFPA 1002, "Standard on Fire Apparatus Driver/Operator Professional Qualifications," ~~2003~~ 2009 edition, chapter 5.

*b. Driver/operator (aerial).* Certification as a driver/operator (aerial) is based upon the requirements for fire department vehicle driver/operator (aerial) certification established in NFPA 1002, "Standard on Fire Apparatus Driver/Operator Professional Qualifications," ~~2003~~ 2009 edition, chapter 6.

**251.202(3) Fire officer.**

*a. Fire officer I.* Certification as a fire officer I is based upon the requirements for fire officer I certification established in NFPA 1021, "Standard for Fire Officer Professional Qualifications," ~~2003~~ 2009 edition, chapter 4.

*b. Fire officer II.* Certification as a fire officer II is based upon the requirements for fire officer II certification established in NFPA 1021, "Standard for Fire Officer Professional Qualifications," ~~2003~~ 2009 edition, chapter 5.

**251.202(4) Fire inspector.** Certification as a fire inspector I is based upon the requirements for certification as a fire inspector I established in NFPA 1031, "Standard for Professional Qualifications for Fire Inspector and Plans Examiner," ~~2003~~ 2009 edition, chapter 4.

**251.202(5) Fire investigator.** Certification as a fire investigator is based upon the requirements for certification as a fire investigator established in NFPA 1033, "Standard for Professional Qualifications for Fire Investigator," ~~2003~~ 2009 edition, chapter 4.

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**251.202(6)** No change.

**251.202(7)** *Responder to hazardous materials incidents.*

*a. Responder to hazardous materials incidents (awareness).* Certification as a responder to hazardous materials incidents (awareness) is based upon the requirements for certification as a responder to hazardous materials incidents (awareness) established in NFPA 472, "Standard for Professional Competence of Responders to Hazardous Materials Incidents/Weapons of Mass Destruction Incidents," 2008 edition, chapter 4.

*b. Responder to hazardous materials incidents (operations).* Certification as a responder to hazardous materials incidents (operations) is based upon the requirements for certification as a responder to hazardous materials incidents (operations) established in NFPA 472, "Standard for Professional Competence of Responders to Hazardous Materials Incidents/Weapons of Mass Destruction Incidents," 2008 edition, chapter 5, sections 6.2 through 6.2.5.1 and sections 6.4 through 6.4.6.1.

**ARC 8153B**

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### **Notice of Intended Action**

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

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

Pursuant to the authority of 2008 Iowa Acts, chapter 1094, the State Fire Marshal hereby gives Notice of Intended Action to adopt new Chapter 276, "Licensing of Fire Protection System Installers and Maintenance Workers," Iowa Administrative Code.

During its 2008 session, the Iowa General Assembly enacted House File 2646, which establishes a new licensing program for fire protection system installers and maintenance workers within the Fire Marshal Division of the Department of Public Safety. This law, which is now known as 2008 Iowa Acts, chapter 1094, was amended during the 2009 session by 2009 Iowa Acts, House File 400. The amended law requires that persons engaged in installation or maintenance of fire protection systems on or after January 1, 2010, be licensed under the program.

The rules proposed herein would provide for the establishment and administration of the licensing program, including licensing requirements, license fees, insurance and bonding requirements, disciplinary action against licensees, application forms, examination procedures, and procedures for reporting violations of these rules.

A public hearing on these proposed rules will be held on October 15, 2009, at 8:30 a.m. in the First Floor Conference Room (Room 125), State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. The building and conference room are fully accessible. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, Des Moines, Iowa 50319, by mail; by telephone at (515)725-6185; or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us), at least one day prior to the public hearing.

Any written comments or information regarding these proposed rules may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated by 4:30 p.m. on October 15, 2009, or submitted at the public hearing.

The rules proposed herein are subject to the general waiver provisions which apply to rules of the Fire Marshal.

These rules are intended to implement 2008 Iowa Acts, chapter 1094, as amended by 2009 Iowa Acts, House File 400.

The following amendment is proposed.

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Adopt the following **new** 661—Chapter 276:

#### CHAPTER 276

#### LICENSING OF FIRE PROTECTION SYSTEM INSTALLERS AND MAINTENANCE WORKERS

**661—276.1(100D) Establishment of program.** There is established within the fire marshal division a fire protection system installer and maintenance worker licensing program. The program is established pursuant to 2008 Iowa Acts, chapter 1094, as amended by 2009 Iowa Acts, House File 400.

**276.1(1) Licensing required.** No person shall act as a fire protection system installer and maintenance worker without being currently licensed as a fire protection system installer and maintenance worker by the fire marshal, except for the following as provided in 2008 Iowa Acts, chapter 1094, section 12, as amended by 2009 Iowa Acts, House File 400:

*a.* A person licensed as a professional engineer pursuant to Iowa Code chapter 542B who is providing consultation or develops plans or other work concerning the installation or design of fire protection systems shall not be required to be licensed pursuant to this chapter.

*b.* A person who is employed full-time by a school corporation, hospital, or public facility and who performs fire sprinkler maintenance work involving no more than one sprinkler head or nozzle shall not be required to be licensed pursuant to this chapter.

*c.* A person who is licensed as a plumber pursuant to Iowa Code chapter 105 who is performing work within the scope of that license shall not be required to be licensed pursuant to this chapter.

*d.* A person who is an employee of a fire extinguishing system contractor which is certified pursuant to Iowa Code chapter 100C and who is working as an apprentice sprinkler fitter under the direct supervision of a licensed fire sprinkler installer and maintenance worker who is on site while the work is being performed shall not be required to be licensed pursuant to this chapter.

*e.* A person who installs or demolishes walls, ceilings, insulation, or associated materials or a person who demolishes sprinkler pipe shall not be required to be licensed pursuant to this chapter, unless the work involves a complete sprinkler system.

*f.* A person who is a responsible managing employee of a fire extinguishing system contractor certified pursuant to Iowa Code chapter 100C shall not be required to be licensed pursuant to this chapter.

**276.1(2) Endorsement.** The license of each installer and maintenance worker shall carry an endorsement for one or more of the following:

*a.* Automatic sprinkler system installation and maintenance;

*b.* Special hazards fire suppression system installation and maintenance;

*c.* Installation and maintenance of preengineered dry chemical or wet agent fire protection systems;

*d.* Installation and maintenance of preengineered water-based fire protection systems in one- and two-family dwellings;

*e.* Any combination thereof.

Any person acting as a fire protection system installer and maintenance worker shall do so only in relation to systems covered by the endorsements on the person's license.

**276.1(3) Length of licensure.** Licensure shall normally be for two years and shall expire on December 31 of the year following the issuance of the license. A license which is effective on a date other than January 1 shall be effective on the date on which the license is issued and shall expire on December 31 of the year following the year in which the license is issued. The fee for licenses issued for less than a full two-year period shall be prorated on the basis of the number of quarters for which the license shall be in effect.

**276.1(4) Inquiries.** Inquires regarding the fire protection system installer and maintenance worker licensing program may be addressed to:

Fire Protection System Installer and Maintenance Worker Licensing Program  
Fire Marshal Division  
Iowa Department of Public Safety  
215 East 7th Street

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Des Moines, Iowa 50319

Inquiries may be addressed by electronic mail to [fesccp@dps.state.ia.us](mailto:fesccp@dps.state.ia.us); by telephone to (515)725-6145; or by facsimile to (515)725-6172.

**661—276.2(100D) Definitions.** The following definitions apply to rules 661—276.1(100D) through 661—276.6(100D):

*“Apprentice sprinkler fitter”* means a person who is engaged in learning the fire protection system industry trade under the direct supervision of a certified fire extinguishing system contractor or licensed fire sprinkler installer and maintenance worker and who is registered with the United States Department of Labor, Bureau of Apprenticeship Training.

*“Department”* means the department of public safety.

*“Fire extinguishing system contractor”* means a person or persons engaging in or representing oneself to the public as engaging in the activity or business of layout, installation, repair, service, alteration, addition, testing, maintenance, or maintenance inspection of automatic fire extinguishing systems in this state, as defined in Iowa Code section 100C.1, and who is certified pursuant to Iowa Code chapter 100C.

*“Fire protection system”* means a sprinkler, standpipe, hose system, special hazard system, dry systems, foam systems, or any water-based fire protection system, either manually or automatically activated, used for fire protection purposes that is composed of an integrated system of underground and overhead piping connected to a water source. For licensing purposes only, “fire protection system” does not include the water service piping to a structure or building from a city water main.

*“Fire protection system installation”* means to set up or establish for use in an indicated space a fire protection system.

*“Fire protection system maintenance”* means to provide repairs, including all inspections and tests, required to keep a fire protection system and its component parts in an operative condition at all times, and the replacement of the system or its component parts when they become undependable or inoperable.

*“Fire sprinkler installer and maintenance worker”* means a person who, having the necessary qualifications, training, experience, and technical knowledge, conducts fire protection system installation and maintenance, and who is licensed by the department.

*“Listed”* means equipment, materials, or services included in a list published by a nationally recognized independent testing organization concerned with evaluation of products or services that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose.

*“Temporary license”* means a license issued to a fire sprinkler protection system installer and maintenance worker who is licensed or certified in another state and who will perform work in Iowa only within areas covered by a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6.

**661—276.3(100D) Licensing requirements.** A fire protection system installer and maintenance worker shall meet all of the following requirements in order to receive a license from the fire marshal and shall continue to meet all requirements throughout the period of licensure. A licensee shall notify the fire marshal, in writing, on a form designated by the fire marshal, within 30 calendar days if the licensee fails to meet any requirement for certification.

**276.3(1)** The licensee shall maintain general and complete operations liability insurance covering any work that the licensee is authorized to perform pursuant to any endorsements on the license in the following amounts: \$500,000 per person, \$1,000,000 per occurrence, and \$1,000,000 property damage.

a. The carrier of any insurance coverage maintained to meet this requirement shall notify the fire marshal 30 days prior to the effective date of cancellation or reduction of the coverage.

b. The licensee shall cease work immediately if the insurance coverage required by this subrule is no longer in force and other insurance coverage meeting the requirements of this subrule is not in force. A licensee shall not initiate any work which requires licensure pursuant to this chapter or to 2008

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Iowa Acts, chapter 1094, as amended by 2009 Iowa Acts, House File 400, which cannot reasonably be expected to be completed prior to the effective date of the cancellation of the insurance coverage required by this subrule and of which the licensee has received notice, unless new insurance coverage meeting the requirements of this subrule has been obtained and will be in force upon cancellation of the prior coverage.

EXCEPTION: A licensee is not required to maintain insurance coverage provided that the licensee's employer maintains insurance coverage equivalent to the requirements of this subrule.

**276.3(2)** The licensee shall maintain compliance with all other applicable provisions of law related to operation in the state of Iowa and of any political subdivision in which the licensee is performing work.

**276.3(3)** An applicant for a license shall meet the following training and experience requirements:

*a.* For endorsement for automatic sprinkler system installation and maintenance, the applicant shall show evidence of the following:

(1) Satisfactory completion of an apprenticeship program in fire sprinkler installation and maintenance approved by the United States Department of Labor, including four years of employment as an apprentice sprinkler fitter, and

(2) A passing score on either the United Association Star Fire Sprinkler Mastery Exam or on another examination administered by a nationally recognized third-party testing organization and approved as equivalent by the state fire marshal.

EXCEPTION: An applicant who was employed as a fire protection system installer as of July 1, 2008, may receive endorsement for automatic sprinkler system installation and maintenance upon submitting evidence of having completed 8500 hours of employment as a fire protection system installer and maintenance worker and any of the following:

1. Satisfactory completion of an apprenticeship program in fire sprinkler installation and maintenance of four or more years in duration, approved by the United States Department of Labor.

2. Passing the United Association Star Fire Sprinkler Mastery Exam or another examination administered by a nationally recognized third-party testing organization and approved as equivalent by the state fire marshal.

3. Certification by the National Institute for Certification in Engineering Technologies in automatic sprinkler system layout at level I, or another form of certification or testing administered by a nationally recognized organization and approved as equivalent by the state fire marshal.

*b.* For endorsement for special hazards fire suppression system installation and maintenance, the applicant shall show evidence of the following:

(1) Satisfactory completion of an apprenticeship program in installation and maintenance of special hazards fire protection systems of four or more years in duration, approved by the United States Department of Labor.

(2) Certification by the National Institute for Certification in Engineering Technologies in special hazards protection systems at level I, or another form of certification or testing by a nationally recognized organization approved as equivalent by the state fire marshal.

EXCEPTION 1: If the state fire marshal determines that no appropriate apprenticeship program is readily available, the fire marshal may allow the substitution of documentation of 8500 hours or more of employment in installing and maintaining special hazards systems in lieu of meeting the apprenticeship requirement.

EXCEPTION 2: An applicant who was employed as a fire protection system installer as of July 1, 2008, may receive endorsement for automatic sprinkler system installation and maintenance upon submitting evidence of having completed 8500 hours of employment as a fire protection system installer and maintenance worker and either of the following:

1. Satisfactory completion of an apprenticeship program in installation and maintenance of special hazards fire protection systems of four or more years in duration, approved by the United States Department of Labor.

2. Certification by the National Institute for Certification in Engineering Technologies in special hazards systems installation and maintenance at level I, or another form of certification or testing

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administered by a nationally recognized organization and approved as equivalent by the state fire marshal.

c. For endorsement for installation and maintenance of preengineered dry chemical or wet agent fire protection systems, the applicant shall show evidence of the following:

(1) Satisfactory completion of an apprenticeship program in installation and maintenance of preengineered dry chemical or wet agent fire protection systems of four or more years in duration, approved by the United States Department of Labor, and

(2) Certification by the National Institute for Certification in Engineering Technologies in special hazards protection systems at level I, certification by the National Association of Fire Equipment Distributors in preengineered kitchen fire suppression systems or preengineered industrial fire suppression systems, or another form of certification or testing by a nationally recognized organization approved as equivalent by the state fire marshal.

EXCEPTION 1: If the state fire marshal determines that no appropriate apprenticeship program is readily available, the fire marshal may allow the substitution of documentation of 8500 hours or more of employment in installing and maintaining special hazards systems in lieu of meeting the apprenticeship requirement.

EXCEPTION 2: An applicant who was employed as a fire protection system installer as of July 1, 2008, may receive endorsement for installation and maintenance of preengineered dry chemical or wet agent fire protection systems upon submitting evidence of having completed 8500 hours of employment as a fire protection system installer and maintenance worker and either of the following:

1. Satisfactory completion of an apprenticeship program in installation and maintenance of preengineered dry chemical or wet agent fire protection systems of four or more years in duration, approved by the United States Department of Labor.

2. Certification by the National Institute for Certification in Engineering Technologies in special hazards protection systems at level I, certification by the National Association of Fire Equipment Distributors in preengineered kitchen fire suppression systems or preengineered industrial fire suppression systems, or another form of certification or testing by a nationally recognized organization approved as equivalent by the state fire marshal.

d. For endorsement for installation of preengineered water-based fire protection systems in one- and two-family dwellings, the applicant shall show evidence of the following:

(1) Satisfactory completion of an apprenticeship program covering preengineered water-based fire protection systems of four or more years in duration, approved by the United States Department of Labor, and

(2) Satisfactory completion of any training required by the manufacturer for installation of any system that the applicant will install.

EXCEPTION 1: If the state fire marshal determines that no appropriate apprenticeship program is readily available, the fire marshal may allow the substitution of documentation of 8500 hours or more of employment in installing and maintaining special hazards systems in lieu of meeting the apprenticeship requirement.

EXCEPTION 2: An applicant who was employed as a fire protection system installer as of July 1, 2008, may receive endorsement for installation of preengineered water-based fire protection systems in one- and two-family dwellings upon submitting evidence of having completed 8500 hours of employment as a fire protection system installer and maintenance worker and either of the following:

1. Satisfactory completion of an apprenticeship program covering preengineered water-based fire protection systems of four or more years in duration, approved by the United States Department of Labor.

2. Satisfactory completion of any training required by the manufacturer of any system which the applicant shall install.

**276.3(4)** Temporary license requirements. A person may be issued a temporary license upon submitting an application to the state fire marshal with proof of equivalent licensure or certification in another state, accompanied by the applicable fee. The state fire marshal may require the submission of any documentation of licensure or certification in another state that the state fire marshal deems necessary. A temporary license may only be used in an area which is or has been within the past 180

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

days subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6. A temporary license shall be in effect for 90 days from the date of issuance and may be renewed once for an additional 90 days.

**661—276.4(100D) Application and fees.**

**276.4(1) Application.** Any person seeking licensure as a fire protection system installer and maintenance worker shall submit a completed application form to the fire marshal. An application for an initial license shall be accompanied by a fingerprint card completed by the applicant and the fee for a national criminal history check, in addition to the applicable license fee. The application shall be filed no later than 30 days prior to the date on which licensure is required or on which an existing license expires. An application form may be obtained from the fire marshal or from the Web site of the fire protection system installer and maintenance worker licensing program. The application form shall be submitted with all required attachments and the required license fee established in subrule 276.4(2). An application shall not be considered complete unless all required information is submitted, including required attachments and fees, and shall not be processed until it is complete.

NOTE: The Web site for the fire protection system installer and maintenance worker program is: [insert Web address at time of adoption of rules].

**276.4(2) License fee.**

*a.* The fee for a permanent or provisional license shall be \$250. If an application is denied, all except \$25 of the fee may be refunded if the applicant applies to the fire marshal for a refund. No refund of the license fee shall be made if the license is revoked or if the denial of the license is based on the applicant's knowingly including false or misleading information on the application. If an application for a license provides for more than one endorsement as provided in subrule 276.1(2), there shall be an additional fee of \$25 for each endorsement beyond the first.

*b.* The fee for a temporary license shall be \$50. A temporary license may be renewed once; the renewal fee shall be \$50.

**276.4(3) Payment.** The license fee shall be submitted by draft, check, or money order in the applicable amount payable to the Iowa Department of Public Safety. The memo portion of the check should have the following notation: "Fire Protection System Installer and Maintenance Worker Licensing Program."

**276.4(4) Amended license fee.** The fee for issuance of an amended license is \$25. The fee shall be submitted with a request for an amended license. A licensee shall request and the fire marshal shall issue an amended license for any of the reasons listed in paragraphs "a," "b," and "c":

- a.* A change in employer;
- b.* A change in insurance coverage; or
- c.* A change in any other material information included in or with the initial or renewal application.

A change of address is a material change. However, if the request for an amended license is solely for a change of business address, the former address of the business is in an area subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6, and the relocation occurs as a result of flooding or storm damage or other conditions which form a basis for the issuance of the disaster emergency proclamation, the fee shall not apply, although an amended license shall be issued.

*d.* Other changes in the information required in the application form, including renewal of insurance coverage with a new expiration date, shall be reported to the fire marshal but shall not require issuance of an amended license or payment of the amended license fee.

**276.4(5) Attachments.** Required attachments to the application for a license include, but are not limited to, the following:

*a.* Documentation verifying that the applicant has in force the insurance coverage required by subrule 276.3(1). The documentation shall include an acknowledgment that the contractor's insurance coverage extends to any work performed by the licensee within the scope of licensure pursuant to this chapter. The documentation may consist of a letter from the insurance carrier, a copy of the insurance certificate with an endorsement showing the required information, or a signed statement from the

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applicant's employer attesting that the employer has insurance coverage in effect equivalent to the coverage required by subrule 276.3(1).

*b.* If the application requests licensure based on work experience, the applicant shall attach a notarized affidavit attesting that the applicant has the required experience.

NOTE: An applicant may contact the fire protection system installer and maintenance worker licensing program for assistance with the wording of the affidavit.

**661—276.5(100D) Complaints.**

**276.5(1)** Complaints regarding the performance of any licensed fire protection system installer and maintenance worker; failure of a licensee to meet any of the requirements established in 2008 Iowa Acts, chapter 1094, as amended by 2009 Iowa Acts, House File 400, or this chapter or any other provision of law; or persons operating as fire protection system installers and maintenance workers without licensure may be filed with the fire marshal. Complaints should be addressed as follows:

Fire Protection System Installer and Maintenance Worker Licensing Program  
Fire Marshal Division  
Iowa Department of Public Safety  
215 East 7th Street  
Des Moines, Iowa 50319

**276.5(2)** Complaints may be submitted by electronic mail to [fesccp@dps.state.ia.us](mailto:fesccp@dps.state.ia.us) or by facsimile to (515)725-6172.

**276.5(3)** Complaints should be as specific as possible and shall clearly identify the licensee or other person against whom the complaint is filed. Complaints shall be submitted in writing. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant will be notified of the disposition of the complaint.

NOTE: The Web site for the fire protection system installer and maintenance worker licensing program is: [insert Web address at time of adoption of rules].

**661—276.6(100D) Denial, suspension, or revocation of certification; civil penalties; appeals.** The fire marshal may deny, suspend or revoke a license or assess a civil penalty to a licensee or to a person who performs work requiring licensure pursuant to this chapter and who is not licensed if any provision of these rules or any other provision of law related to work requiring licensure pursuant to this chapter is violated.

**276.6(1) Denial.** The fire marshal may deny an application for licensure:

*a.* If the applicant makes a false statement on the application form or in any other submission of information required for licensure. "False statement" means providing false information or failing to include material information, such as a previous criminal conviction or action taken by another jurisdiction, when requested on the application form or otherwise in the application process.

*b.* If the applicant fails to meet all of the requirements for licensure established in this chapter.

*c.* If the applicant is currently barred for cause from licensure equivalent to that provided for in this chapter in another jurisdiction.

*d.* If an applicant has previously been barred for cause from operating in another jurisdiction as a fire protection system installer and maintenance worker and if the basis of that action reflects upon the integrity of the applicant in operating as a fire protection system installer and maintenance worker. If an applicant is found to have been previously barred for cause from operating as a fire protection system installer and maintenance worker in another jurisdiction and is no longer barred from doing so, the fire marshal shall evaluate the record of that action with regard to the likelihood that the applicant would operate with integrity as a licensee. If an applicant is denied licensure under this provision, the applicant shall be notified of the specific reasons for the denial.

*e.* If the applicant has been convicted of a crime which reflects upon the integrity of the applicant in operating as a fire protection system installer and maintenance worker. If an applicant is found to have a criminal record, the fire marshal shall evaluate that record with regard to the likelihood that the applicant

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

would operate with integrity as a licensee. If an applicant is denied licensure under this provision, the applicant shall be notified of the specific reasons for the denial.

**276.6(2) Suspension.** A suspension of a certification may be imposed by the fire marshal for any violation of these rules or 2008 Iowa Acts, chapter 1094, as amended by 2009 Iowa Acts, House File 400, or for a failure to meet any legal requirement to operate as a fire protection system installer and maintenance worker in this state. Failure to provide any notice to the fire marshal as required by these rules shall be grounds for suspension. An order of suspension shall specify the length of the suspension and shall specify that correction of all conditions which were a basis for the suspension is a condition of reinstatement of the license even after the period of the suspension.

**276.6(3) Revocation.**

*a.* A revocation is a termination of a license. A license may be revoked by the fire marshal for repeated violations or for a violation which creates an imminent danger to the safety or health of individuals protected by a fire protection system incorrectly installed by a licensee or when information comes to the attention of the fire marshal which, if known to the fire marshal when the application was being considered, would have resulted in denial of the license.

*b.* A new application for a license from an applicant whose license had previously been revoked shall not be considered for a new license for a period of one year after the effective date of the revocation and, in any event, until every condition which was a basis for the revocation has been corrected. The fire marshal may specify in the revocation order a period longer than one year before a new application for a license may be considered. When a new application for a license from a person whose license was previously revoked is being considered, the applicant may be denied a license based upon the same information which was the basis for revocation even after any such period established by the fire marshal has expired.

**276.6(4) Civil penalties.** The fire marshal may impose a civil penalty of up to \$500 per day during which a violation has occurred and for every day until the violation is corrected. A civil penalty may be imposed in lieu of or in addition to a suspension or may be imposed in addition to a revocation. A civil penalty shall not be imposed in lieu of a revocation.

**276.6(5) Suspension or revocation for nonpayment of child support.** The following procedures shall apply to actions taken by the fire marshal on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

*a.* The notice required by Iowa Code section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

*b.* The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the licensee.

*c.* Licensees shall keep the fire marshal informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the fire marshal with copies, within 7 days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

*d.* All applicable fees for an application or reinstatement must be paid by the licensee before a license will be issued, renewed, or reinstated after the fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 252J.

*e.* In the event a licensee files a timely district court action following service of a notice pursuant to Iowa Code sections 252J.8 and 252J.9, the fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the fire marshal to proceed. For the purpose of determining the effective date of revocation or suspension of the license, the fire marshal shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

*f.* Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively to the fire marshal or within the department of public safety.

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NOTE: The procedures established in subrule 276.6(5) implement the requirements of Iowa Code chapter 252J. The provisions of Iowa Code chapter 252J establish mandatory requirements for an agency which administers a licensing program, such as the one established in this chapter, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A but must be appealed directly to district court.

**276.6(6) *Suspension or revocation for nonpayment of debts owed state or local government.*** The following procedures shall apply to actions taken by the fire marshal on a certificate of noncompliance received from the Iowa department of revenue pursuant to Iowa Code chapter 272D.

*a.* The notice required by Iowa Code section 272D.3 shall be served upon the licensee by regular mail.

*b.* The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 272D.3, shall be 20 days following service upon the licensee.

*c.* Licensees shall keep the fire marshal informed of all court actions and centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the fire marshal with copies, within 7 days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

*d.* All applicable fees for an application or reinstatement must be paid by the licensee before a license will be issued, renewed, or reinstated after the fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 272D.

*e.* In the event the licensee files a timely district court action following service of a notice pursuant to Iowa Code section 272D.8, the fire marshal shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the fire marshal to proceed. For the purpose of determining the effective date of revocation or suspension of the license, the fire marshal shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

*f.* Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively to the fire marshal or within the department of public safety.

NOTE: The procedures established in subrule 276.6(6) implement the requirements of Iowa Code chapter 272D. The provisions of Iowa Code chapter 272D establish mandatory requirements for an agency which administers a licensing program, such as the one established in this chapter, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A but must be appealed directly to district court.

**276.6(7) *Appeals.*** Any denial, suspension, or revocation of a license, or any civil penalty imposed upon a licensee or other person under this rule, other than one imposed pursuant to subrule 276.6(5) or 276.6(6), may be appealed by the licensee or other person within 14 days of receipt of the notice. Appeals of actions taken by the fire marshal under this rule shall be to the commissioner of public safety and shall be treated as contested cases, following the procedures established in rules 661—10.301(17A) through 661—10.332(17A).

These rules are intended to implement 2008 Iowa Acts, chapter 1094, as amended by 2009 Iowa Acts, House File 400.

**ARC 8179B****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 section 103A.7, the Building Code Commissioner hereby gives Notice of Intended Action to amend Chapter 300, "State Building Code—Administration," Chapter 301, "State Building Code—General Provisions," and Chapter 303, "State Building Code—Energy Conservation in Construction," Iowa Administrative Code, with the approval of the Building Code Advisory Council.

Iowa Code section 103A.7 authorizes and requires the Building Code Commissioner to adopt the State Building Code, and Iowa Code chapter 103A provides for the adoption of a State Building Code. The amendments proposed herein update editions of national codes adopted by reference and revise administrative provisions of the State Building Code to make them clearer, easier to understand, and more tightly integrated with administrative provisions contained in nationally recognized codes adopted by reference.

While many of the changes made by adoption of new editions of the codes are likely not to be controversial, there is one change that has received a lot of attention. The new edition of the International Residential Code includes a provision that will require all new homes constructed on or after January 1, 2011, to be fully sprinklered. The State Fire Marshal convened an ad hoc advisory committee to provide input on this requirement prior to the preparation of this Notice. After consideration of the committee's input and other factors, such as the cost involved in installing residential sprinklers, the Building Code Commissioner is proposing in this Notice to retain the residential sprinkler requirement as included in the 2009 edition of the International Residential Code, but to delay its implementation by two additional years, until January 1, 2013. Consideration was given to other delays, especially considering the financial condition of the construction industry, but it was determined that the timely adoption of new editions of the nationally recognized codes adopted by reference as part of the State Building Code would minimize disruption to the industry and allow the earliest possible implementation of features of the new editions which enhance the safety of the public.

A public hearing to receive comments on the amendments proposed herein will be held in the First Floor Public Conference Room (Room 125) at the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, at 10:15 a.m. on October 13, 2009. Additional public hearings will be held at 4 p.m. on October 14, 2009, at the Carroll Recreation Center, 716 N. Grant Road, Carroll, Iowa, and at 4:30 p.m. on October 15, 2009, at Iowa State Patrol Post #11, 5400 16th Avenue S.W., Cedar Rapids, Iowa. All three public hearings will be held jointly with public hearings considering proposals by the State Fire Marshal to amend the rules of the State Fire Marshal, the core of which is the adoption of the 2009 edition of the International Fire Code.

Persons wishing to speak at a public hearing should contact the Agency Rules Administrator by telephone at (515)725-6185 or E-mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us) at least one day prior to the hearing.

Comments on these proposed amendments may also be made by E-mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us), by telephone to (515)725-6185, or by mail to the Agency Rules Administrator, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319. Comments should be submitted by 4:30 p.m. on October 16, 2009.

These amendments are not subject to waiver but instead are subject to provisions for requesting approval of "alternative materials or methods of construction," as provided in Iowa Code section 103A.13.

These amendments are intended to implement Iowa Code chapter 103A.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

The following amendments are proposed.

ITEM 1. Amend paragraphs **300.4(1)**“c,” “d” and “f” as follows:

c. Plans, specifications and other supporting information shall be sufficiently clear and complete to show in detail that the proposed work will comply with the requirements of the applicable provisions of the state building code ~~and with sections 106.1 and 106.1.1 of the International Building Code, 2006 edition.~~

d. In sections ~~106.1 and 106.1.1~~ 107.1 and 107.2.5 of the International Building Code, ~~2006~~ 2009 edition, the word “permit” shall be replaced by the words “plan review.”

f. No project for which a life cycle cost analysis is required to be completed pursuant to Iowa Code section 470.2 shall be approved for construction prior to receipt by the commissioner of the life cycle cost analysis, final approval of the life cycle cost analysis by the commissioner and the ~~department of natural resources~~ office of energy independence pursuant to Iowa Code section 470.7, and the completion of all applicable requirements established in Iowa Code section 470.7.

ITEM 2. Adopt the following new exception in subrule **300.5(1)**:

EXCEPTION: Construction which is limited to building renovations or repairs shall not be subject to inspection by the commissioner.

ITEM 3. Amend subrule **300.5(2)**, exception, as follows:

EXCEPTION: Construction which is limited to building ~~additions~~, renovations or repairs shall not be subject to inspection by the commissioner.

ITEM 4. Amend rule **661—301.2(103A)**, definition of “State plumbing code,” as follows:

“*State plumbing code*” means the state plumbing code adopted by the ~~Iowa department of public health~~ state plumbing and mechanical systems board, pursuant to Iowa Code ~~section 135.11, subsection 5~~ chapter 105.

NOTE: As of January 1, 2007, the state plumbing code is found in 641—Chapter 25.

ITEM 5. Adopt the following new definitions of “Responsible design professional” and “State fire code” in rule **661—301.2(103A)**:

“*Responsible design professional*” means a registered architect or licensed professional engineer who stamps and signs the documents submitted, pursuant to Iowa Code chapters 542B and 544A.

“*State fire code*” means the state fire code as adopted by the state fire marshal, pursuant to Iowa Code section 100.1, subsection 5.

ITEM 6. Amend rule 661—301.3(103A) as follows:

**661—301.3(103A) General provisions.** The provisions of the International Building Code, ~~2006~~ 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the general requirements for building construction, with the following amendments:

~~Delete sections 101 through 115 except for sections 106.1, 106.1.1, and 106.1.1.1.~~

~~Delete section 101.1.~~

~~Delete section 101.2 and insert in lieu thereof the following new section:~~

101.2 Scope. The provisions of this code shall apply to the construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, maintenance, removal and demolition of every building or structure or any appurtenances connected or attached to such buildings or structures.

Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories above grade plane in height with a separate means of egress and their accessory structures shall comply with the International Residential Code, as amended by rule 661—301.8(103A).

~~Delete section 101.4 and sections therein.~~

~~Delete section 102.6 and insert in lieu thereof the following new section:~~

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

102.6 Existing Structures. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as specifically covered in this code or the state fire code, or as deemed necessary by the building code commissioner for the general safety and welfare of the occupants and the public.

Delete sections 103, 104, 105 and sections therein.

Delete section 106.2.

Delete section 107.1 and insert in lieu thereof the following new section:

107.1 General. Submittal documents consisting of construction documents, statement of special inspections, geotechnical report and other data shall be submitted in one or more sets with each plan review application. The construction documents shall be prepared by a responsible design professional where required by the statutes of the jurisdiction in which the project is to be constructed. Where special conditions exist, the commissioner is authorized to require additional construction documents to be prepared by a responsible design professional.

Exception: The commissioner is authorized to waive the submission of construction documents and other data not required to be prepared by a responsible design professional if it is found that the nature of the work applied for is such that review of construction documents is not necessary to obtain compliance with this code.

Delete sections 107.3, 107.4, and 107.5 and sections therein.

Delete sections 109, 110, 111, 112, 113, 114, 115, and 116 and sections therein.

Delete section 906.1 and insert in lieu thereof the following new section:

906.1 Where required. Portable fire extinguishers shall be installed in the following locations:

1. In new and existing Group A, B, E, F, H, I, M, R-1, R-2, R-4 and S occupancies.
2. Within 30 feet (9144 mm) of commercial cooking equipment.
3. In areas where flammable or combustible liquids are stored, used or dispensed.
4. On each floor of structures under construction, except Group R-3 occupancies, in accordance with Section 1415.1.
5. Where required by the sections indicated in Table 906.1.
6. Special-hazard areas, including but not limited to laboratories, computer rooms and generator rooms, where required by the fire code official.

Delete section 907.2.2 and insert in lieu thereof the following new section:

907.2.2 Group B. A manual fire alarm system shall be installed in Group B occupancies where one of the following conditions exists:

1. The combined Group B occupant load of all floors is 500 or more.
2. The Group B occupant load is more than 100 persons above or below the lowest level of exit discharge.
3. The Group B fire area contains a Group B ambulatory health care facility.
4. The Group B fire area contains an educational occupancy for students above the twelfth grade with an occupant load of 50 or more persons.

Exception: Manual fire alarm boxes are not required where the building is equipped throughout with an automatic sprinkler system installed in accordance with Section 903.3.1.1 and the occupant notification appliances will activate throughout the notification zones upon sprinkler waterflow.

Delete section 907.2.3 and insert in lieu thereof the following new section:

907.2.3 Group E. In the absence of a complete automatic sprinkler system, a complete automatic detection system shall be installed throughout the entire Group E occupancy. A Group E occupancy with a complete automatic sprinkler system shall be provided with a fire alarm system with a minimum of corridor smoke detection, at a maximum spacing of 30 feet on center, and heat or smoke detection in any hazardous or nonoccupied areas. When automatic sprinkler systems or smoke detectors are installed, such systems or detectors shall be connected to the building fire alarm system.

Exceptions:

1. Group E occupancies with an occupant load of less than 50.
2. Manual fire alarm boxes are not required in Group E occupancies where all of the following apply:
  - 2.1. Interior corridors are protected by smoke detectors with alarm verification.

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2.2. Auditoriums, cafeterias, gymnasiums and the like are protected by heat detectors or other approved detection devices.

2.3. Shops and laboratories involving dusts or vapors are protected by heat detectors or other approved detection devices.

2.4. Off-premises monitoring is provided.

2.5. The capability to activate the evacuation signal from a central point is provided.

2.6. In buildings where normally occupied spaces are provided with a two-way communication system between such spaces and a constantly attended receiving station from which a general evacuation alarm can be sounded, except in locations specifically designated by the fire code official.

3. Manual fire alarm boxes shall not be required in Group E occupancies where the building is equipped throughout with an approved automatic sprinkler system, the notification appliances will activate on sprinkler water flow and manual activation is provided from a normally occupied location.

Add the following new section 1003.8:

1003.8 Location of Preschool through Second Grade Students. In Group E occupancies, rooms normally occupied by preschool, kindergarten or first grade students shall not be located above or below the level of exit discharge. Rooms normally occupied by second grade students shall not be located more than one story above the level of exit discharge.

Add the following new section 1100:

1100. Any building or facility which is in compliance with the applicable requirements of 661—Chapter 302 shall be deemed to be in compliance with any applicable requirements contained in the International Building Code concerning accessibility for persons with disabilities.

Delete chapter 29.

Amend section 3001.2 by adding the following new unnumbered paragraph after the introductory paragraph:

Notwithstanding the references in Chapter 35 to editions of national standards adopted in this section, any editions of these standards adopted by the elevator safety board in 875—Chapter 72 are hereby adopted by reference. If a standard is adopted by reference in this section and there is no adoption by reference of the same standard in 875—Chapter 72, the adoption by reference in this section is of the edition identified in Chapter 35.

Amend section 3401.3 by deleting “International Private Sewage Disposal Code” and inserting in lieu thereof “567 Iowa Administrative Code Chapter 69.”

Delete appendices A through K.

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete all references to the “ICC Electrical Code” and insert in lieu thereof “National Electrical Code, 2005 2008 edition as amended by rule 661—301.5(103A).”

Delete all references to the “International Fuel Gas Code” and insert in lieu thereof “rule 661—301.9(103A).”

**301.3(1)** No change.

**301.3(2)** Reserved.

ITEM 7. Amend rule 661—301.4(103A) as follows:

**661—301.4(103A) Mechanical requirements.** The provisions of the International Mechanical Code, 2006 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for the design, installation, maintenance, alteration, and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related processes within buildings, with the following amendments:

~~Delete chapter 1.~~

Delete section 101.1.

Delete sections 103, 104, 105, 106, 107, 108, 109, and 110 and sections therein.

Delete section 403 and insert in lieu thereof the following new section:

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SECTION 403  
MECHANICAL VENTILATION

Mechanical ventilation systems shall be designed in accordance with the provisions of ASHRAE Standard 62.1-~~2004~~ 2007, "Ventilation for Acceptable Indoor Air Quality," published by the American Society of Heating, Refrigerating and Air-Conditioning Engineers, 1791 Tullie Circle, N.E., Atlanta, GA 30329.

Delete appendices A and B.

Delete all references to the "International Plumbing Code" and insert in lieu thereof "state plumbing code."

Delete all references to the "ICC Electrical Code" and insert in lieu thereof "National Electrical Code, ~~2005~~ 2008 edition as amended by rule ~~661—301.5(103A)~~."

Delete all references to the "International Fuel Gas Code" and insert in lieu thereof "rule 661—301.9(103A)."

ITEM 8. Amend rule 661—301.6(103A) as follows:

**661—301.6(103A) Plumbing requirements.** Provisions of the state plumbing code, 641—Chapter 25, adopted by the ~~Iowa department of public health~~ state plumbing and mechanical systems board pursuant to Iowa Code chapter ~~135~~ 105, apply to plumbing installations in ~~cities or which are connected to municipal water systems or municipal wastewater treatment systems~~ this state.

EXCEPTION: Factory-built structures, as referenced by Iowa Code section 103A.10(3), that contain plumbing installations are allowed to comply with either the state plumbing code or with International Plumbing Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041. The manufacturer's data plate must indicate which plumbing code was utilized for compliance with this rule, as required by 661—paragraph 16.610(15) "e."

Private sewage disposal systems shall comply with 567—Chapter 69.

~~301.6(1) Plumbing installations which are not subject to the state plumbing code, 641—Chapter 25, and which are in buildings or facilities subject to the state building code shall comply either with the state plumbing code or with the International Plumbing Code, 2006 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, except that any assembly occupancy, restaurant, pub or lounge constructed on or after January 1, 1991, shall comply with the provisions of subrule 301.6(2) regarding the provision of minimum plumbing facilities.~~

~~If the International Plumbing Code, 2006 edition, is used, section 708.3.3 is deleted and the following new section is inserted in lieu thereof:~~

~~708.3.3 Changes of direction. Cleanouts shall be installed at each fitting with a change of direction greater than 45 degrees (0.79 rad) in the building sewer, building drain and horizontal waste or soil lines. Where more than one change of direction occurs in a run of piping, only one cleanout shall be required for each 40 feet (12 192 mm) of developed length of the drainage piping.~~

~~301.6(2)~~ **301.6(1)** Places of public assembly, restaurants, pubs and lounges constructed on or after January 1, 1991, shall provide at least the numbers of plumbing facilities required in the Uniform Plumbing Code, ~~2000~~ 2009 edition, Table 4-1, published by the International Association of Plumbing and Mechanical Officials, 5001 E. Philadelphia St., Ontario, CA 91761. Additions to, or adding seating capacity in, these types of occupancies shall require the installation of additional fixtures based upon the added number of occupants unless it can be shown that the existing facilities comply for the total number of occupants including the additional occupants.

All water closets installed pursuant to this subrule shall be water-efficient water closets complying with requirements of the U.S. Department of Energy.

This subrule is intended to implement Iowa Code section 104B.1.

~~301.6(3)~~ **301.6(2)** Fuel gas piping shall comply with the requirements established in rule 661—Chapter 51 301.9(103A).

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ITEM 9. Amend rule 661—301.7(103A) as follows:

**661—301.7(103A) Existing buildings.**

**301.7(1) Definition.** “Existing building” means a building erected prior to January 1, ~~2007~~ 2010, ~~or for which plans have received approval from the building code bureau of the fire marshal division of the department of public safety prior to January 1, 2007.~~

**301.7(2) Adoption.** The provisions of the International Existing Building Code, ~~2006~~ 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for repair, alteration, change of occupancy, addition, and relocation of existing buildings, with the following amendments:

~~Delete chapter 1.~~

~~Delete section 101.1.~~

~~Delete section 101.4.2 and insert in lieu thereof the following new section:~~

101.4.2 Buildings Previously Occupied. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as specifically covered in this code or the state fire code, or as deemed necessary by the building code commissioner for the general safety and welfare of the occupants and the public.

~~Delete section 101.5.4.~~

~~Delete section 101.5.4.1.~~

~~Delete section 101.5.4.2.~~

~~Delete section 101.7.~~

~~Delete sections 103, 104, and 105 and sections therein.~~

~~Delete sections 106.1, 106.3.1, 106.3.3, 106.5, and 106.6.~~

~~Delete sections 108, 109, 110, 112, 113, 114, 115, 116 and 117 and sections therein.~~

~~Delete section 605.~~

~~Delete section 706.~~

~~Delete section 806.~~

~~Delete section 912.8.~~

~~Delete chapters A1 through A5.~~

~~Adopt appendix B, with the following amendments:~~

~~Delete section B101 and insert in lieu thereof the following new section:~~

~~Any building or facility subject to this rule shall comply with the provisions of 661—Chapter 302.~~

~~Delete sections B102, B103, and B104.~~

~~Delete appendix B and insert in lieu thereof the following new section:~~

Any building or facility subject to this rule shall comply with the provisions of 661—Chapter 302.

~~Delete resource A.~~

~~Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”~~

~~Delete all references to the “ICC Electrical Code” and insert in lieu thereof “National Electrical Code, ~~2005~~ 2008 edition as amended by rule 661—301.5(103A).”~~

Delete all references to the “International Fuel Gas Code” and insert in lieu thereof “rule 661—301.9(103A).”

ITEM 10. Amend rule 661—301.8(103A) as follows:

**661—301.8(103A) Residential construction requirements.** The provisions of the International Residential Code, ~~2006~~ 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal, and demolition of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures, with the following amendments:

~~Delete chapters 1 and 11.~~

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Delete section R101.1.

Delete sections R103 to R114 and sections therein.

NOTE: The values for table R301.2(1) shall be determined by the location of the project and referenced footnotes from table R301.2(1).

Delete chapter 11.

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete section R310.1 and insert in lieu thereof the following new section:

R310.1 Emergency escape and rescue required. Basements and every sleeping room shall have at least one operable emergency and rescue opening. Such opening shall open directly into a public street, public alley, yard or court. Where basements contain one or more sleeping rooms, emergency egress and rescue openings shall be required in each sleeping room, but shall not be required in adjoining areas of the basement. Where emergency escape and rescue openings are provided they shall have a sill height of not more than 44 inches (1118 mm) above an adjacent permanent interior standing surface. The adjacent permanent interior standing surface shall be no less than 36 inches wide and 18 inches deep and no more than 24 inches high. Where a door opening having a threshold below the adjacent ground elevation serves as an emergency escape and rescue opening and is provided with a bulkhead enclosure, the bulkhead enclosure shall comply with section R310.3. The net clear opening dimensions required by this section shall be obtained by the normal operation of the emergency escape and rescue opening from the inside. Emergency escape and rescue openings with a finished sill height below the adjacent ground elevation shall be provided with a window well in accordance with section R310.2. Emergency escape and rescue openings shall open directly into a public way, or to a yard or court that opens to a public way.

EXCEPTION: Basements used only to house mechanical equipment and not exceeding total floor area of 200 square feet (18.58 m<sup>2</sup>).

Delete section R313.2 and insert in lieu thereof the following new section:

R313.2 One- and two-family dwellings automatic fire sprinkler systems. Effective January 1, 2013, an automatic fire sprinkler system shall be installed in one- and two-family dwellings.

EXCEPTION: An automatic residential fire sprinkler system shall not be required for additions or alterations to existing buildings that are not already provided with an automatic fire sprinkler system.

Amend section R324.1.6 by striking the words “Chapter 3 of the International Private Sewage Disposal Code” and inserting in lieu thereof “567 Iowa Administrative Code Chapter 69.”

Delete chapter 24 and sections therein and insert in lieu thereof the following new section:

All fuel gas piping installations shall comply with rule 661—301.9(103A).

Delete chapters 25 to 33 and sections therein, except for section P2904, and insert in lieu thereof the following new section:

All plumbing installations shall comply with the state plumbing code as adopted by the state plumbing and mechanical systems board pursuant to Iowa Code chapter 105.

EXCEPTION: Factory-built structures, as referenced by Iowa Code section 103A.10(3), that contain plumbing installations are allowed to comply with either the state plumbing code or with the International Plumbing Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041. The manufacturer’s data plate must indicate which plumbing code was utilized for compliance with this rule, as required by 661—paragraph 16.610(15)“e.”

Add the following new sections:

~~P2500. Chapter 25 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.~~

~~P2600. Chapter 26 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.~~

~~P2700. Chapter 27 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.~~

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

~~P2800. Chapter 28 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.~~

~~P2900. Chapter 29 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.~~

~~P3000. Chapter 30 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.~~

~~P3100. Chapter 31 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.~~

~~P3200. Chapter 32 shall not apply to construction of a residence if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.~~

Delete chapters 34 to 43 and sections therein and insert in lieu thereof the following new section:

All electrical installations shall comply with National Electrical Code, 2008 edition, as amended by rule 661—301.5(103A).

Delete appendices A through Q.

ITEM 11. Adopt the following **new** rule 661—301.9(103A):

**661—301.9(103A) Fuel gas piping requirements.** Fuel gas piping shall comply with the requirements of 661—Chapter 221. Liquefied petroleum gas facilities and appliances shall comply with rule 661—226.1(101).

ITEM 12. Adopt the following **new** rule 661—301.10(103A):

**661—301.10(103A) Transition period.** A construction project that is subject to the provisions of any rule in 661—Chapter 301 or 661—Chapter 303 which requires compliance with provisions of the 2009 edition of any code published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, may comply with the requirements established either in the edition of the code adopted herein or the requirements established in the edition of the same code previously in effect if the project is commenced between January 1, 2010, and March 31, 2010.

ITEM 13. Amend rule 661—303.2(103A) as follows:

**661—303.2(103A) Residential energy code.** The International Energy Conservation Code, ~~2006~~ 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, is adopted by reference as the residential energy code of the state of Iowa building code, applicable to residential construction limited to three or fewer stories throughout the state of Iowa, with the following amendments:

~~1. Delete sections 101, 103, 104, 105, and 106, and all sections contained within each of these.~~

Delete section 101.1.

Delete section 101.2.

Delete section 101.4.2.

Delete section 103.3.1.

Delete section 103.3.2.

Delete section 103.3.3.

Delete section 103.4.

Delete section 103.5.

Delete sections 104, 107, 108, and 109 and all sections contained within each of these.

~~2. Strike section 403.2.2 and adopt the following new section 403.2.2 in lieu thereof:~~

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

~~403.2.2 Sealing. All ducts, air handlers, filter boxes, and building cavities used as ducts shall be sealed. Joints and seams shall comply with Section M1601.3.1 of the International Residential Code. Air handlers with a manufacturer's designation for an air leakage of no more than 2 percent of the design air flow rate when tested at an air pressure of 1 inch water gauge when all air inlets, air outlets, and condensate drain port(s) are sealed shall be deemed sealed. Air handlers with filter boxes shall be tested with the filter box in place.~~

~~3. Delete chapter 5.~~

ITEM 14. Amend rule 661—303.3(103A) as follows:

**661—303.3(103A) Adoption of nonresidential energy code.** The International Energy Conservation Code, 2006 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, is hereby adopted by reference as the nonresidential energy code of the state building code, applicable to commercial construction or residential construction of four or more stories within the state of Iowa, with the following amendments:

~~1. Delete sections 101, 103, 104, 105, and 106, and all sections contained within each of these.~~

~~Delete section 101.1.~~

~~Delete section 101.2.~~

~~Delete section 101.4.2.~~

~~Delete section 103.3.1.~~

~~Delete section 103.3.2.~~

~~Delete section 103.3.3.~~

~~Delete section 103.4.~~

~~Delete section 103.5.~~

~~Delete sections 104, 107, 108, and 109 and all sections contained within each of these.~~

~~2. Delete chapter 4.~~

ITEM 15. Amend subrule 303.4(2) as follows:

**303.4(2) Notification by state agency.** Any public agency which is a state agency as defined in Iowa Code section 7D.34 shall, within 60 days of final selection of a design architect or engineer, notify the commissioner and the ~~department of natural resources~~ office of energy independence of the methodology to be used to perform the life cycle cost analysis. Notice shall be given on the forms provided by the ~~department of natural resources~~ office of energy independence for this purpose. A life cycle cost analysis prepared by a state agency shall be submitted in sufficient time ahead of the release of plans for bids to allow for revisions or additions which may be made to the plans. Public funds shall not be used for the construction or renovation of a facility unless the design for the work is prepared in accordance with Iowa Code chapter 470 and the actual construction or renovation is consistent with the design.

ITEM 16. Amend paragraphs **303.4(3)“b,” “c” and “d”** as follows:

*b.* The public agency shall implement all recommendations of the life cycle cost analysis except those which have been approved for exemption by the commissioner and the director of ~~natural resources~~ the office of energy independence.

EXCEPTION: The public agency is not required to implement any recommendation which would result in a violation of any other provision of law. If the public agency determines that compliance with any recommendation of the life cycle cost analysis would result in a violation of law, the public agency shall so notify the commissioner.

*c.* The commissioner and the director of ~~natural resources~~ the office of energy independence shall evaluate each request for an exemption on a case-by-case basis.

*d.* The commissioner and the director of ~~natural resources~~ the office of energy independence shall consider the following factors in determining whether or not to grant an exemption:

(1) to (6) No change.

**ARC 8180B****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 section 103A.41, the Building Code Commissioner hereby gives Notice of Intended Action to amend Chapter 350, "State Historic Building Code," Iowa Administrative Code, with the approval of the State Historical Society Board of Trustees.

Iowa Code section 103A.41 authorizes and requires the Building Code Commissioner, with the approval of the State Historical Society Board of Trustees, to adopt the State Historic Building Code. The State Historic Building Code provides an "alternative" building code for qualified historical buildings that meet the requirements for inclusion in the National Register of Historic Places.

This Notice proposes to update references to the International Existing Building Code from the 2006 edition to the 2009 edition. The 2006 edition of the International Existing Building Code was adopted as the basis of the State Historic Building Code in 2006 and became effective on January 1, 2007. A separate Notice of Intended Action published herein as **ARC 8179B** proposes to update references to codes adopted by reference in the State Building Code to the latest editions of those codes, and the amendment proposed herein coordinates with the proposed update of the State Building Code.

A public hearing on this proposed amendment will be held on October 13, 2009, at 10 a.m. in the First Floor Public Conference Room, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Persons may present their views concerning this amendment at the public hearing orally or in writing. Persons who wish to make oral presentations at the hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, Des Moines, Iowa 50319, by mail; or by telephone at (515)725-6185 at least one day prior to the hearing. Written comments may also be submitted by mail at the above address or electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us) by 4:30 p.m. on October 15, 2009.

This amendment is intended to implement Iowa Code sections 103A.41 to 103A.45.

The following amendment is proposed.

Amend subrule 350.1(3) as follows:

**350.1(3) Adoption.** The provisions of the International Existing Building Code, ~~2006~~ 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted as the alternative requirements for rehabilitation, preservation, restoration, and relocation of historic buildings, with the following amendments:

~~Delete chapter 1.~~

~~Delete section 101.1.~~

~~Delete section 101.4.2 and insert in lieu thereof the following new section:~~

101.4.2 Buildings previously occupied. The legal occupancy of any structure existing on the date of adoption of this code shall be permitted to continue without change, except as specifically covered in this code or the state fire code, or as deemed necessary by the building code commissioner for the general safety and welfare of the occupants and the public.

~~Delete section 101.5.4.~~

~~Delete section 101.5.4.1.~~

~~Delete section 101.5.4.2.~~

~~Delete section 101.7.~~

~~Delete sections 103, 104, and 105 and sections therein.~~

~~Delete sections 106.1, 106.3.1, 106.3.3, 106.5, and 106.6.~~

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Delete sections 108, 109, 110, 112, 113, 114, 115, 116 and 117 and sections therein.

Delete the definition of “historic building.”

~~Delete section 503.3.1.~~

Delete section 605.

Delete section 706.

Delete section 806.

Delete section 912.8.

Delete appendix A, chapters A1 through A5, and appendix B.

Delete resource A.

Delete all references to the “International Fuel Gas Code” and insert in lieu thereof “rule 661—301.9(103A).”

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete all references to the “ICC Electrical Code” and insert in lieu thereof “National Electrical Code, ~~2005~~ 2008 edition as amended by rule 661—301.5(103A).”

EXCEPTION: A construction project subject to the provisions of this rule may comply with either the requirements adopted herein or the provisions of this rule as it was previously published if the project is commenced on or before March 31, 2010.

NOTE 1: International Existing Building Code, ~~2006~~ 2009 edition, Resource A, provides guidelines for evaluating fire ratings of archaic materials and assemblies which may be used by designers and code officials when evaluating compliance with provisions of this chapter.

NOTE 2: Except for elevators excluded from the jurisdiction of the Iowa division of labor services by the provisions of Iowa Code section 89A.2, each elevator is required to comply with any applicable requirements established by the Iowa division of labor services and is subject to enforcement of any applicable regulations by the Iowa division of labor services.

NOTE 3: Except for boilers and pressure vessels excluded from the jurisdiction of the Iowa division of labor services by the provisions of Iowa Code section 89.4, each boiler or pressure vessel is required to comply with any applicable requirements established by the Iowa division of labor services and is subject to enforcement of any applicable regulations by the Iowa division of labor services.

Any boiler which is subject to requirements established by the Iowa department of natural resources is required to comply with any such requirements and is subject to enforcement of any applicable regulations by the Iowa department of natural resources.

**ARC 8160B****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 section 103.6, the Electrical Examining Board hereby gives Notice of Intended Action to amend Chapter 500, “Electrician and Electrical Contractor Licensing Program—Organization and Administration,” Chapter 501, “Electrician and Electrical Contractor Licensing Program—Administrative Procedures,” Chapter 502, “Electrician and Electrical Contractor Licensing Program—Licensing Requirements, Procedures, and Fees,” and Chapter 503, “Electrician and Electrical Contractor Licensing Program—Complaints and Discipline,” to adopt new Chapter 505, “Electrician and Electrical Contractor Licensing Program—Continuing Education,” and to amend Chapter 550, “Electrical Inspection Program—Organization and Administration,”

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

Chapter 551, “Electrical Inspection Program—Definitions,” and Chapter 552, “Electrical Inspection Program—Permits and Inspections,” Iowa Administrative Code.

The Electrical Examining Board is authorized to adopt administrative rules governing all aspects of licensing electricians and electrical contractors and of the state electrical inspection program. The proposed amendments update rules previously adopted, make changes to comply with statutory changes enacted during the 2009 Session of the Iowa General Assembly, and codify Board policies.

A public hearing on these proposed amendments will be held on October 15, 2009, at 10 a.m. in the First Floor Public Conference Room (Room 125), State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa. Persons may present their views orally or in writing at the public hearing. Persons who wish to make oral presentations at the public hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319, by mail; by telephone at (515)725-6185; or by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us), at least one day prior to the public hearing.

Any written comments or information regarding these proposed amendments may be directed to the Agency Rules Administrator by mail or electronic mail at the addresses indicated by 4:30 p.m. on October 14, 2009, or submitted at the public hearing.

Rules adopted by the Electrical Examining Board are subject to the waiver provisions of rule 661—501.5(17A).

These amendments are intended to implement Iowa Code chapter 103 as amended by 2009 Iowa Acts, Senate File 159, and 2009 Iowa Acts, Senate File 478.

The following amendments are proposed.

ITEM 1. Strike “82GA,ch197” wherever it appears in **661—Chapter 500 to Chapter 503** and insert “103” in lieu thereof.

ITEM 2. Adopt the following **new** definitions of “Emergency installation” and “Farm” in rule **661—500.2(103)**:

“*Emergency installation*” means an electrical installation necessary to restore power to a building or facility when existing equipment has been damaged due to a natural or man-made disaster or other weather-related cause. Emergency installations may be performed by persons properly licensed to perform the work, and may be performed prior to submission of a request for permit or request for inspection. A request for permit and request for inspection, if required by rule 661—552.1(103), shall be made as soon as practicable and, in any event, no more than 72 hours after the installation is completed.

“*Farm*” means land, buildings and structures used for agricultural purposes including but not limited to the storage, handling, and drying of grain and the care, feeding, and housing of livestock.

ITEM 3. Amend subrule 501.5(2) as follows:

**501.5(2)** Strike any reference to the address of the department of public safety or any unit thereof and replace it with “State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319 Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319.”

ITEM 4. Amend rule 661—502.1(103) as follows:

**661—502.1(103) License categories and licenses required.**

**502.1(1)** The following categories of license are established:

- a. Electrical contractor.
- b. Master electrician, class A.
- c. Master electrician, class B.
- d. Journeyman electrician, class A.
- e. Journeyman electrician, class B.
- f. Apprentice electrician.
- g. Special electrician.
- h. Unclassified person.
- i. Inactive master electrician.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

**502.1(2)** A person who holds any class of license issued by the board, other than a class B license, may perform the work authorized by that license anywhere within the state of Iowa. A person who holds a special electrician license may perform the work which is authorized by that license endorsement. A person who holds a class B license may perform the work authorized by that license except in a political subdivision which, by local ordinance, has, pursuant to Iowa Code section 103.29, subsection 4, as amended by 2009 Iowa Acts, Senate File 159, restricted or barred such work by a person who holds a class B license.

**502.1(3)** A person who does not have a current valid license shall not perform work as an electrician or as an unclassified person. A person shall not perform work which requires licensing and which is not specifically authorized under the license issued.

EXCEPTION 1: A person who holds a current valid license issued by a political subdivision may perform work as an electrician or unclassified person within the corporate limits of the political subdivision which issued the license.

EXCEPTION 2: A person who has submitted a completed application and the applicable fee to the board may perform work authorized by the license applied for, provided (a) that the person is not clearly unqualified for the license applied for, (b) that the person has, prior to January 1, 2008, been performing work equivalent to work authorized under the license being applied for, and (c) that, prior to the actual issuance of licenses by the board, a person may not perform work in a political subdivision which issues electrician licenses unless the person holds a current and valid license issued by that political subdivision.

~~NOTE: Exception 2 is temporary and will be rescinded when licenses are issued by the board. The rescission may occur as early as April 1, 2008, and is expected to occur no later than July 1, 2008.~~

EXCEPTION 3: A person may work for up to 100 continuous days as an unclassified person prior to obtaining a license. Any documented time during which a person has worked as an unclassified person prior to January 1, 2008, or any time during which a person has worked as a licensed unclassified person shall be credited to any applicable experience requirement. Any time during which a person works as an unclassified person without a license on or after January 1, 2008, shall not be counted toward any such experience requirement, except that a person may receive credit for time worked as an unclassified person on or after January 1, 2008, without a license if the person has applied for a license.

EXCEPTION 4: Electrical installations in buildings, including residences or facilities which are being constructed as part of a course of instruction by an accredited educational institution, may be performed by a person who is not licensed. Such installations are subject to the requirements for permits and inspections pursuant to 661—Chapter 552.

ITEM 5. Amend subrule 502.2(1) as follows:

**502.2(1)** An electrical contractor license may be issued to a person who submits to the board the required application with the applicable fee, who holds or employs a person who holds a master electrician license, who is registered as a contractor with the labor services division of ~~the Iowa department of~~ workforce development, and who is not disqualified pursuant to rule 661—502.4(103). An electrical contractor license issued to a person who holds a class B master electrician license is subject to the same restriction of use as is the class B master electrician license.

ITEM 6. Adopt the following **new** subrule 502.2(9):

**502.2(9)** An inactive master electrician license may be issued to a holder of a master electrician license who surrenders the master electrician license and requests placement in inactive status. The license holder shall receive a refund of the license fee paid for the master electrician license, prorated by the number of years remaining prior to the expiration of the license, minus the applicable fee for the inactive license. A holder of an inactive license shall maintain all requirements which would apply for an active master electrician license, except for payment of the fee required for an active license, during the term of the inactive license. If the license holder fails to meet any such requirement during the term of the inactive license, the license holder shall not be entitled to reinstatement of an active license. If the license holder continues to meet all such requirements while holding an inactive license, the license holder may obtain an active master electrician license by surrendering the inactive master license, filing an application for reinstatement, and paying the applicable license fee. The holder of an inactive license

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

who seeks reinstatement of an active license shall not receive any refund of the fee paid for the inactive license. A person who holds an inactive license may not perform work which requires the person to be a holder of that license, but may perform work authorized by any active license issued by the board which the person holds.

ITEM 7. Amend rule 661—502.3(103) as follows:

**661—502.3(103) License terms and fees.** The following table sets out the length of term of each license and the fee for the license.

License Type	Term	Fee
Electrical Contractor	3 years	\$375
Master Electrician, Class A	3 years	\$375
Master Electrician, Class B	3 years	\$375
Journeyman Electrician, Class A	3 years	\$75
Journeyman Electrician, Class B	3 years	\$75
Special Electrician	3 years	\$75
Apprentice Electrician	1 year	\$25
Unclassified Person	1 year	\$20
<u>Inactive Master Electrician</u>	<u>3 years</u>	<u>\$75</u>

**502.3(1) and 502.3(2)** No change.

**502.3(3)** If a license is issued for less than the period of time specified in the table above, the fee shall be prorated according to the number of months for which the license is issued.

ITEM 8. Amend rule 661—502.6(103) as follows:

**661—502.6(103) Restriction of use of class B licenses by political subdivisions.** A political subdivision may disallow or restrict the use of a class B license to perform electrical work within the geographic limits of that subdivision through adoption of a local ordinance. A copy of any such ordinance shall be filed with the board office prior to the effective date of the ordinance. If a class B license holder held a license issued or recognized by a political subdivision on December 31, 2007, that political subdivision may not restrict the license holder from performing work which would have been permitted under the terms of the license issued or recognized by the political subdivision.

EXCEPTION 1: An ordinance restricting or disallowing electrical work by holders of class B licenses shall not apply to work which is not subject to the issuance of permits by the political subdivision.

EXCEPTION 2: An ordinance restricting or disallowing electrical work by holders of class B licenses which was passed prior to January 1, 2008, shall be filed with the board as soon as practicable and, in any case, no later than April 1, 2008.

ITEM 9. Adopt the following **new** rule 661—503.6(103,272D):

**661—503.6(103,272D) Suspension or revocation for nonpayment of debts owed state or local government.** The following procedures shall apply to actions taken by the board on a certificate of noncompliance received from the Iowa department of revenue pursuant to Iowa Code chapter 272D.

**503.6(1)** The notice required by Iowa Code section 272D.3 shall be served upon the licensee by regular mail.

**503.6(2)** The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 272D.3, shall be 20 days following service upon the licensee.

**503.6(3)** Licensees shall keep the board informed of all court actions and centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the board with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

to Iowa Code section 272D.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the centralized collection unit.

**503.6(4)** All applicable fees for an application or reinstatement must be paid by the licensee before a license will be issued, renewed, or reinstated after the board has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 272D.

**503.6(5)** In the event the licensee files a timely district court action following service of a notice pursuant to Iowa Code section 272D.8, the board shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the board to proceed. For the purpose of determining the effective date of revocation or suspension of the license, the board shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

**503.6(6)** Suspensions or revocations imposed pursuant to this rule may not be appealed administratively to the board or within the department of public safety.

NOTE: The procedures established in rule 661—503.6(103,272D) implement the requirements of Iowa Code chapter 272D. The provisions of Iowa Code chapter 272D establish mandatory requirements for an agency which administers a licensing program, such as the electrician and electrical contractor licensing program established in 661—Chapters 501 through 503, and provide that actions brought under these provisions are not subject to contested case procedures established in Iowa Code chapter 17A but must be appealed directly to district court.

ITEM 10. Amend **661—Chapter 503**, implementation sentence, as follows:

These rules are intended to implement ~~2007 Iowa Acts, chapter 197, and Iowa Code chapter chapters~~ 103, 252J, and 272D.

ITEM 11. Adopt the following **new** 661—Chapter 505:

CHAPTER 505  
ELECTRICIAN AND ELECTRICAL CONTRACTOR  
LICENSING PROGRAM—CONTINUING EDUCATION

**661—505.1(103) General requirements.**

**505.1(1)** Each holder of a three-year license shall complete 18 hours of continuing education approved by the board between the time of issuance of the license and prior to issuance of a renewal license.

EXCEPTION: A holder of a license in a category which may be issued for a three-year period whose license is issued for less than a three-year period shall complete at least 6 hours of continuing education prior to renewal of the license for each year or portion of a year for which the license has been issued.

**505.1(2)** Each holder of a one-year license shall complete 6 hours of continuing education approved by the board between the time of issuance of the license and prior to issuance of a renewal license. Information about approved continuing education courses may be obtained by contacting the board office.

**661—505.2(103) Course approval.** Any person or institution that offers continuing education courses to meet the requirements of rule 661—505.1(103) shall submit an application to the board office on a form specified by the board. Approval by the board shall be obtained prior to a course's being offered to a licensee in order to meet the requirements of rule 661—505.1(103).

These rules are intended to implement Iowa Code chapter 103.

ITEM 12. Adopt the following **new** subrule 550.5(8):

**550.5(8)** No fee shall be assessed for the issuance of a permit or the performance of an inspection of a temporary electrical installation if the installation is intended to provide electrical service to an event benefitting a nonprofit association representing volunteer emergency service providers.

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 13. Adopt the following **new** definitions of “Emergency installation” and “Farm” in rule **661—551.2(103)**:

“*Emergency installation*” means an electrical installation necessary to restore power to a building or facility when existing equipment has been damaged due to a natural or man-made disaster or other weather-related cause. Emergency installations may be performed by persons properly licensed to perform the work, and may be performed prior to submission of a request for permit or request for inspection. A request for permit and request for inspection, if required by rule 661—552.1(103), shall be made as soon as practicable and, in any event, no more than 72 hours after the installation is completed.

“*Farm*” means land, buildings and structures used for agricultural purposes including but not limited to the storage, handling, and drying of grain and the care, feeding, and housing of livestock.

ITEM 14. Amend rule 661—552.1(103) as follows:

**661—552.1(103) Required permits and inspections.**

**552.1(1)** Permits and inspections are required for any of the following electrical installations that are initiated on or after February 1, 2009:

1- a. All new electrical installations for commercial or industrial applications, including installations both inside and outside buildings, and for public-use buildings and facilities and any installation at the request of the owner.

2- b. All new electrical installations for residential applications in excess of single-family residential applications.

3- c. All new electrical installations for single-family residential applications requiring new electrical service equipment.

4- d. Any existing electrical installation observed during inspection which constitutes an electrical hazard. Existing installations shall not be deemed to constitute electrical hazards if the wiring was originally installed in accordance with the electrical code in force at the time of installation and has been maintained in that condition.

5- e. ~~Installations~~ Inspections of alarm systems or alarm system components installations, as provided in rules for which are intended to be adopted as new 661—Chapter 560.

EXCEPTION 1: Installations in political subdivisions which perform electrical inspections and which are inspected by the political subdivision are not required to be inspected by the state electrical inspection program. Any installation which is subject to inspection and is on property owned by the state or an agency of the state shall be inspected by the state electrical inspection program. An electrical installation on a farm which is located outside the corporate limits of any municipal corporation (city) shall not be inspected by a political subdivision, shall require a state electrical permit, and may be subject to a state electrical inspection, unless the installation is subject to Exception 2 or Exception 3.

EXCEPTION 2: Any electrical work which is limited to routine maintenance shall not require an inspection.

EXCEPTION 3: Neither a permit nor an inspection is required for an electrical installation which meets all of the following criteria:

1. The installation is legally performed by a master electrician, journeyman electrician, or apprentice electrician working under the direct supervision of a master or journeyman electrician.

2. The installation to be performed does not in any way involve work within an existing or new switchboard or panel board.

3. The installation to be performed does not involve over-current protection of more than 30 amperes.

4. The installation to be performed does not involve any electrical line-to-ground circuit of more than 277 volts, single phase.

**552.1(2)** The owner of a property on which multiple electrical installations may be performed during a 12-month period may apply for an annual permit to cover all such installations. The holder of an annual permit shall maintain a log of all installations performed pursuant to the annual permit. The owner shall cause the electrical inspection program to be notified of any such installation requiring an inspection and shall be subject to fees for such inspections as though an individual permit had been issued for each

PUBLIC SAFETY DEPARTMENT[661](cont'd)

installation requiring an inspection. The fee for an annual permit shall be \$100. The log shall be available to an electrical inspector on the request of the inspector.

ITEM 15. Amend rule 661—552.2(103), introductory paragraph, as follows:

**661—552.2(103) Request for inspection.** Prior to commencement of any electrical installation, the person making such installation shall notify the electrical inspection section of the installation by applying for a permit, unless the installation is covered by an annual permit issued pursuant to subrule 552.1(2), and shall request an inspection of the installation through one of the following methods:

**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 James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for September is 5.50%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

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

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

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

New official state interest rates, effective September 9, 2009, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TIME DEPOSITS

7-31 days .....	Minimum 0.20%
32-89 days .....	Minimum 0.40%
90-179 days .....	Minimum 0.20%
180-364 days .....	Minimum 0.45%
One year to 397 days .....	Minimum 0.80%
More than 397 days .....	Minimum 1.40%

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 8168B****VETERINARY MEDICINE BOARD[811]****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 169.5, the Iowa Board of Veterinary Medicine hereby gives Notice of Intended Action to amend Chapter 1, "Description of Organization and Definitions," Chapter 8, "Auxiliary Personnel," and Chapter 10, "Discipline," Iowa Administrative Code.

The proposed amendments revise and adopt new definitions, set out categories and requirements for veterinary auxiliary personnel, and update the implementation statutes in the Chapter 10 rules regarding discipline standards. The changes provide for additional classifications of non-veterinarian employees who are employed by veterinarians. The amendments include additional education, testing and continuing education requirements for these personnel. In addition, the amendments define for each class of personnel the level of supervision by a licensed veterinarian that is required for assisting the veterinarian in the treatment of animals and for performing laboratory work in a veterinary practice. The amendments also increase the fees in Chapter 8.

Any interested persons may make written comments or suggestions on the proposed amendments on or before 4:30 p.m. on October 19, 2009. Written comments should be sent to Dr. David Schmitt, Executive Secretary, Iowa Board of Veterinary Medicine, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319; or faxed to (515)281-4282. E-mail comments may be sent to [David.Schmitt@IowaAgriculture.gov](mailto:David.Schmitt@IowaAgriculture.gov).

A public hearing will be held on October 19, 2009, at 10 a.m. in the Wallace Auditorium at the address listed above, 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 amendments. Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

No waiver provision is included in the proposed amendments. However, the Board's general waiver provisions, found at 811—Chapter 14, apply.

These amendments are intended to implement Iowa Code chapters 169 and 272C.

The following amendments are proposed.

ITEM 1. Adopt the following **new** definition of "Supervision" in rule **811—1.4(17A,169)**:

"*Supervision*" means the following, as applicable:

1. "Immediate supervision" means that a licensed veterinarian is on the premises and within eyesight or hearing range.
2. "Direct supervision" means that a licensed veterinarian is on the premises and is readily available.
3. "Indirect supervision" means that a licensed veterinarian is not necessarily on the premises but is able to perform the duties of a licensed veterinarian by maintaining direct communication.

ITEM 2. Amend rule 811—8.1(169,17A) as follows:

**811—8.1(169,17A) Definitions.** As used in ~~these rules~~ this chapter, the following terms shall mean:

"*Accredited school of veterinary technology*" means a ~~two-year~~ college level training program ~~providing basic training leading to a certificate of completion of a two-year program~~ recognized and approved accredited by the AVMA ~~committee on accreditation of training for veterinary technicians~~ or recognized and approved by the board.

## VETERINARY MEDICINE BOARD[811](cont'd)

*“Board”* means board of veterinary medicine.

*“Certified veterinary assistant”* means an individual who has successfully passed examinations prescribed by the board.

*“Department”* shall mean means the Iowa department of agriculture and land stewardship.

*“Non-credentialed veterinary assistant”* means an individual employed by a veterinarian who is not a registered veterinary technician or certified veterinary assistant or a veterinary assistant.

*“Registered veterinary technician”* means an individual who is a graduate of an accredited school of veterinary technology or is currently registered in the state of Iowa as a veterinary technician and who has successfully passed examinations prescribed by the board.

*“Veterinary assistant”* means an assistant employed by a licensed veterinarian for a purpose other than performing diagnosis, issuing prescriptions or performing surgery and includes, among other assistants, registered veterinary technicians.

*“Veterinary technician”* means any citizen of the United States who shall have graduated in veterinary technology from a two-year AVMA accredited school of veterinary technology; or in lieu thereof has assisted a licensed veterinarian for five years prior to 1980, or worked under the direction of a licensed veterinarian for at least three years, including at least one year of formal training approved by the board, in veterinary technology prior to 1981; and who shall have successfully passed an examination prescribed by the board.

ITEM 3. Amend rule 811—8.2(169) as follows:

**811—8.2(169) Registration of veterinary technicians Certification and registration.**

**8.2(1) Registration of veterinary technicians.** All veterinary technicians shall be registered by and under the direct control of the board and shall be registered with the state veterinarian, bureau of animal industry, Iowa department of agriculture and land stewardship. Each registered veterinary technician must pass both a written and practical test examinations as approved by the board. Applications for registration shall be obtained from and remitted. A person seeking to apply for the registration examination shall obtain an application form from the board and submit the application with the applicable fees to the board. Successful candidates A successful candidate shall be issued a certificate registration by the board stating that the named candidate is registered as a veterinary technician.

**8.2(2) Certification of veterinary assistants.** All certified veterinary assistants shall be certified by and under the direct control of the board. Each certified veterinary assistant must pass examinations as prescribed by the board. A person seeking to apply for the certification examination shall obtain an application form from the board and submit the application with the applicable fees to the board. A successful candidate shall be issued a certificate by the board stating that the named candidate is certified as a veterinary assistant.

ITEM 4. Amend rule 811—8.3(169) as follows:

**811—8.3(169) Examination.**

**8.3(1) Veterinary technician.** An application fee of \$25 shall accompany the application to take the examination; and both A completed veterinary technician examination application with the applicable fees must be received by the board at least 60 days before the examination. An additional fee shall be submitted for the national board written examination as provided by the professional examination service, when utilized by the board as part of their examination process, which shall be the fees charged for the examination by the professional examination service plus \$10 for the costs of administration. Applicable fees shall include the fee charged by the AAVSB for the VTNE as well as an administrative fee as set by the board. Examinations shall be given annually in June at a site to be designated by the board at least 30 days before the date of the examination. Additional examinations may be authorized by the board.

**8.3(2) Certified veterinary assistant.** A completed certified veterinary assistant examination application with the applicable fees must be received by the board at least 60 days before the examination. Applicable fees shall include the fee as set by the board for the certified veterinary

## VETERINARY MEDICINE BOARD[811](cont'd)

assistant examination as well as an administrative fee of \$25 for the board. Examinations shall be given annually in June at a site to be designated by the board at least 30 days before the date of the examination.

This rule is intended to implement Iowa Code sections 169.5(8), 169.9 and 169.12.

ITEM 5. Adopt the following **new** rule 811—8.4(169):

**811—8.4(169) Registration and certificate renewal.**

**8.4(1)** A veterinary technician registration shall be issued for a three-year period, except that a new registration issued during a triennium shall be issued for the balance of that triennium and the registration fee shall be prorated. A veterinary assistant certificate shall be issued for a three-year period, except that new certificates issued during a triennium shall be issued for the balance of the triennium and the certificate fee shall be prorated. A registration or certificate shall expire on December 31 of the third year of the triennium.

**8.4(2)** At least two months before the end of a triennium, a renewal notice will be sent to each registrant and certificate holder at the last-known address in the board's file. Failure to receive the notice shall not relieve the registrant or certificate holder of the obligation to pay triennial renewal fees on or before December 31.

**8.4(3)** The renewal application shall include a statement which identifies the jurisdictions in which the registrant or certificate holder is or has ever been registered or certified.

**8.4(4)** Renewal fees shall be received by the board on or before the end of the triennium on December 31. Whenever renewal fees are not received as specified, the registration or certificate shall lapse, and the privileges granted by the registration or certificate shall cease until all renewal fees and penalty fees are received by the board.

**8.4(5)** If the renewal fee has not been received by the board before the registration or certificate has lapsed, an application for late renewal must be filed with the board with a renewal fee, a reactivation fee, and the late renewal penalty fee.

**8.4(6)** A person may renew an expired registration or certificate within five years of the date of its expiration by making written application for renewal and paying the current renewal fee plus all delinquent renewal fees. After five years have elapsed since the date of expiration, a registration or certificate may not be renewed, and the holder must make application for a new registration or certificate and pass the appropriate registration or certificate examination.

ITEM 6. Amend rule 811—8.5(169) as follows:

**811—8.5(169) Supervision.** All ~~veterinary assistants, including registered~~ registered veterinary technicians, ~~and certified veterinary assistants~~ shall be ~~employed by and receive compensation from and be~~ under the ~~direct~~ supervision of a licensed or license exempt (hereafter referred to as licensed) veterinarian, and shall function at the same place of business as the veterinarian. ~~Such supervision shall include, but not be limited to, the availability of the veterinarian on the premises.~~

**8.5(1) ~~Veterinarian's responsibility:~~** For the purpose of this rule, the definition of "supervision" contained in rule 811—1.4(169) shall apply.

~~a. —To personally examine the animal within 12 hours before the assistant carries out any procedures.~~

~~b. —To direct, control and supervise the conduct of the assistant in the assistant's work.~~

**8.5(2) ~~Veterinary assistant's responsibility:~~** The following table sets forth the minimum levels of supervision for registered veterinary technician (RVT), certified veterinary assistant (CVA), and non-credentialed veterinary assistant (NCVA) by task and level of supervision:

<u>Patient Care and Therapeutics</u>	<u>RVT</u>	<u>CVA</u>	<u>NCVA</u>
<u>Administer subcutaneous medications</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Indirect</u>
<u>Administer intramuscular medications</u>	<u>Indirect</u>	<u>Direct</u>	<u>Immediate</u>
<u>Administer intradermal medications</u>	<u>Indirect</u>	<u>Immediate</u>	<u>Not allowed</u>

## VETERINARY MEDICINE BOARD[811](cont'd)

<u>Patient Care and Therapeutics</u>	<u>RVT</u>	<u>CVA</u>	<u>NCVA</u>
<u>Administer intraperitoneal medications</u>	<u>Indirect</u>	<u>Immediate</u>	<u>Not allowed</u>
<u>Administer intramammary medications for mastitis therapy</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Immediate</u>
<u>Administer intravenous medications</u>	<u>Indirect</u>	<u>Direct</u>	<u>Not allowed</u>
<u>Administer intravenous medications via open fluid line</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Direct</u>
<u>Administer enteral medications by balling gun, dose syringe, and hand pilling</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Direct</u>
<u>Administer enteral medications by gastric intubation or gastric lavage</u>	<u>Direct</u>	<u>Immediate</u>	<u>Immediate</u>
<u>Perform ocular diagnostic tests including tonometry, fluorescein stain and Schirmer tear test</u>	<u>Indirect</u>	<u>Immediate</u>	<u>Not allowed</u>
<u>Administer enema</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Indirect</u>
<u>Collect and evaluate skin scrapings</u>	<u>Indirect</u>	<u>Direct</u>	<u>Immediate</u>
<u>Administer subcutaneous fluids</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Direct</u>
<u>Place intravenous catheters (cephalic, saphenous, jugular)</u>	<u>Indirect</u>	<u>Direct</u>	<u>Immediate</u>
<u>Maintain and care for intravenous and urinary catheters</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Direct</u>
<u>Determine and maintain fluid infusion rate</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Direct</u>
<u>Monitor patient hydration status</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Direct</u>
<u>Apply and remove bandages and splints</u>	<u>Indirect</u>	<u>Direct</u>	<u>Immediate</u>
<u>Remove casts</u>	<u>Indirect</u>	<u>Direct</u>	<u>Immediate</u>
<u>Maintain chest, tracheostomy and pharyngostomy tubes</u>	<u>Indirect</u>	<u>Direct</u>	<u>Immediate</u>
<u>Collect, crossmatch and administer blood transfusions</u>	<u>Indirect</u>	<u>Immediate</u>	<u>Not allowed</u>
<u>Perform routine dental prophylaxis</u>	<u>Direct</u>	<u>Direct</u>	<u>Not allowed</u>
<u>Extract teeth not requiring sectioning of the root</u>	<u>Direct</u>	<u>Not allowed</u>	<u>Not allowed</u>
<u>Clip teeth on animals (excluding livestock defined in Iowa Code chapter 717B)</u>	<u>Indirect</u>	<u>Direct</u>	<u>Immediate</u>
<u>Administer pre-anesthetics</u>	<u>Indirect</u>	<u>Immediate</u>	<u>Immediate</u>
<u>Administer anesthetic agents by injection, mask, induction chamber or endotracheal tube</u>	<u>Indirect</u>	<u>Immediate</u>	<u>Not allowed</u>
<u>Place endotracheal tubes</u>	<u>Indirect</u>	<u>Direct</u>	<u>Immediate</u>
<u>Implement and evaluate pain management protocols</u>	<u>Indirect</u>	<u>Direct</u>	<u>Immediate</u>
<u>Prepare surgical site using appropriate aseptic techniques</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Direct</u>
<u>Provide surgical assistance</u>	<u>Immediate</u>	<u>Immediate</u>	<u>Immediate</u>
<u>Perform basic suturing of skin</u>	<u>Direct</u>	<u>Not allowed</u>	<u>Not allowed</u>
<u>Obtain specimens for laboratory analysis</u>			
<u>Voided urine</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Indirect</u>
<u>Place urinary catheter</u>	<u>Indirect</u>	<u>Immediate</u>	<u>Not allowed</u>
<u>Cystocentesis</u>	<u>Indirect</u>	<u>Immediate</u>	<u>Not allowed</u>
<u>Venipuncture</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Immediate</u>
<u>Skin scraping</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Immediate</u>
<u>Fine needle tissue aspirate</u>	<u>Indirect</u>	<u>Immediate</u>	<u>Not allowed</u>
<u>Impression smear preparation</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Immediate</u>
<u>Vaginal smears</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Immediate</u>
<u>Semen collection (excluding livestock defined in Iowa Code chapter 717B)</u>	<u>Indirect</u>	<u>Direct</u>	<u>Immediate</u>
<u>Assist in collecting, preparing and evaluating transudates, exudates and cytologic specimens (joint, cerebrospinal, airway, body cavity, bone marrow)</u>	<u>Immediate</u>	<u>Immediate</u>	<u>Immediate</u>

## VETERINARY MEDICINE BOARD[811](cont'd)

<u>Patient Care and Therapeutics</u>	<u>RVT</u>	<u>CVA</u>	<u>NCVA</u>
Analyze laboratory specimens			
<u>Urinalysis</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Direct</u>
<u>Hematology</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Direct</u>
<u>Clinical chemistry</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Direct</u>
<u>Coagulation tests</u>	<u>Indirect</u>	<u>Direct</u>	<u>Immediate</u>
<u>Parasitologic procedures</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Direct</u>
<u>Microbiologic procedures</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Direct</u>
<u>Cytology, semen</u>	<u>Indirect</u>	<u>Direct</u>	<u>Immediate</u>
<u>Collect specimens from necropsy</u>	<u>Indirect</u>	<u>Indirect</u>	<u>Immediate</u>
Perform humane euthanasia	<u>Indirect</u>	<u>Direct</u>	<u>Not allowed</u>
Observe radiation safety measures	<u>Indirect</u>	<u>Indirect</u>	<u>Indirect</u>

~~a. — The veterinary assistant, including registered veterinarian technicians, shall not perform surgery; shall not make a diagnosis and prognosis of animal diseases; shall not prescribe drugs, medicine and appliances, and shall not administer rabies vaccine.~~

~~b. **8.5(3) Emergencies.** Under conditions of an emergency, a veterinary assistant including a registered veterinary technician may render without supervision such lifesaving aid and treatment as follows: administration of oxygen; maintenance of airways including the nonsurgical insertion of an endotracheal tube; and control of hemorrhage. Under conditions of emergency, a registered veterinary technician and a certified veterinary assistant but not an unregistered a non-credentialed veterinary assistant may render such additional lifesaving aid and treatment as follows: placement of an IV catheter and the administration of fluids; external cardiac massage; and the administration of corticosteroids. Emergency aid and treatment, if rendered to an animal not in the presence of a licensed veterinarian, shall only be continued under the direction of a licensed veterinarian, which in the case of emergency may include telephone or radio contact by a veterinarian en route to the site, until the veterinarian arrives in a timely manner. “Emergency” for the purpose of this rule means that the animal has been placed in a life-threatening condition where immediate treatment is necessary to sustain life.~~

~~**8.5(4) Nothing in this chapter shall be construed to permit a registered veterinary technician or a certified veterinary assistant to make any diagnosis or prognosis; to prescribe any treatments, drugs, medications, or appliance; to perform surgery; or to administer rabies vaccination to a dog.**~~

ITEM 7. Rescind rule 811—8.6(169) and adopt the following **new** rule in lieu thereof:

**811—8.6(169) Disciplinary actions and procedures.** A disciplinary action against a registered veterinary technician or a certified veterinary assistant, including grounds for disciplinary action, is governed by 811—Chapter 10.

ITEM 8. Rescind and reserve rules **811—8.7(169) to 811—8.9(169,272C)**.

ITEM 9. Amend rule 811—8.10(169,272C) as follows:

**811—8.10(169,272C) Continuing education.**

**8.10(1)** At least 30 hours of continuing education in courses approved by the board of veterinary medicine shall be completed ~~triennially~~ within the last three licensing years by each registered veterinary technician. At least 15 hours of continuing education in courses approved by the board shall be completed within the last three years by each certified veterinary assistant. The registrant or certificate holder has the responsibility for ~~financing~~ the cost of continuing education. ~~These Continuing education credit hours~~ may be obtained by attending approved scientific seminars and meetings on the basis of one credit hour for each hour of attendance. Attendance at any board-approved national, state or regional meeting will be acceptable. Credit for qualified graduate college courses may be approved on the basis of multiplying each college credit hour by 10, to a maximum of ~~45 hours~~ one-half of the required hours during any one triennial licensing period. A maximum of 10 hours during any one triennial licensing period may be achieved by the completion of approved ~~home study~~ distance education courses.

## VETERINARY MEDICINE BOARD[811](cont'd)

**8.10(2)** Each ~~registrant~~ registered veterinary technician shall obtain the 30 credit hours between the registrant's ~~certificate~~ anniversary date of registration and the last day of the following three-year period. Each certified veterinary assistant shall obtain the 15 required credit hours between the anniversary date of certification and the last day of the three-year licensing period. However, a ~~registrant~~ registered veterinary technician who graduated from an accredited college of veterinary technology within three years of the issuance of an Iowa ~~certificate~~ registration is required to obtain only 20 credit hours for the first triennial registration period. ~~Continuing~~ For registered veterinary technicians, continuing education credits in excess of 30 hours for any three-year period may be carried over to the next triennial period, but the total number of credits credit hours carried over shall not exceed 10 hours. For certified veterinary assistants, continuing education credits in excess of 15 hours for any three-year period may be carried over to the next triennial period, but the total number of credit hours carried over shall not exceed 5 hours.

**8.10(3)** Triennial licensing continuing education hours requirements.

a. *New graduates.* Applicants, within one year after the date of graduation, are exempt from continuing education requirements for initial licensing.

b. *Registered veterinary technicians.* Applicants who are registered veterinary technicians who apply more than one year but less than two years after the date of graduation must have completed at least 10 hours of approved continuing education. Applicants who apply more than two years but less than three years after the date of graduation must have completed at least 20 hours of approved continuing education.

c. *Certified veterinary assistants.* During the first year of the credentialing triennium, the credentialed certified veterinary assistant is required to complete 10 hours of continuing education for the first credentialed renewal. If a recently credentialed certified veterinary assistant is credentialed during the second year of the credentialing triennium, the credentialed certified veterinary assistant is required to complete 5 hours of continuing education for the first credentialed renewal. If a recently credentialed certified veterinary assistant is credentialed during the third year of the credentialing triennium, the credential holder is exempt from meeting continuing education requirements for the first credentialed renewal.

**8.10(4)** Completion of the continuing education will be reported to the secretary of the board of veterinary medicine on forms provided by the board by December 31 of the triennial anniversary year. The reporting form must be signed by the registrant and accompanied by an administration fee of \$15.

~~Compliance with this rule and subrule 8.6(7) is waived until January 1, 1993. Registrants whose certificate triennial anniversary dates fall in the year 1993 shall complete and report 10 credit hours. Registrants whose certificate triennial anniversary dates fall in the year 1994 shall complete and report 20 credit hours. All registrants whose certificate triennial anniversary dates fall in the year 1995 and subsequent years shall complete and report the full 30 credit hours.~~

ITEM 10. Adopt the following new rules 811—8.11(169) to 811—8.13(169):

**811—8.11(169) Temporary veterinary technician permit.** The board may issue a temporary veterinary technician permit to an applicant who is certified in another jurisdiction and who has met all of the requirements for a veterinary technician registration except for passing the state veterinary technician examination. A temporary veterinary technician permit is not available to a person who has previously taken and failed the state veterinary technician examination.

**8.11(1)** An application for a temporary veterinary technician permit shall be made on a form provided by the board. The applicant shall provide a statement indicating all jurisdictions in which the applicant is or has ever been licensed, registered or certified to practice as a veterinary technician. The applicant shall provide information and consent to the release of information to the board from jurisdictions in which the applicant is or has ever been licensed, registered or certified.

**8.11(2)** The board may require from an applicant or obtain from other sources such other information pertinent to character and education of the applicant as the board may deem necessary in order to evaluate the applicant's qualifications.

## VETERINARY MEDICINE BOARD[811](cont'd)

**8.11(3)** The applicant shall provide evidence of approved continuing education totaling at least 30 hours obtained within the last three licensing years.

**8.11(4)** The temporary permit fee and the application fee shall accompany the application.

**8.11(5)** Holders of a temporary veterinary technician permit shall establish and maintain an association with an Iowa-licensed veterinarian. The licensed veterinarian shall be in a position to regularly observe the activities of the permit holder.

**8.11(6)** The temporary veterinary technician permit shall expire upon the board's receipt and issuance of a veterinary technician registration or upon notification of failure of the examination by the applicant. The temporary veterinary technician permit is valid for one year from the date of issue but is no longer valid if the test candidate failed the examination or became registered upon passing the examination.

**811—8.12(169) Reactivation of registration.** A registered veterinary technician or certified veterinary assistant whose registration has lapsed or who has been placed on inactive status shall, prior to engaging in activities for which a registration is required in the state of Iowa, make application for reactivation by doing all of the following:

1. Submit written application for reactivation to the board upon a form provided by the board;
2. Furnish evidence of completion of compliance with the continuing education requirements specified in rule 811—8.10(169,272C); and
3. Successfully complete the examination procedures specified in rule 811—8.2(169,17A) within one year of reactivation.

**811—8.13(169) Fee schedule for registered veterinary technicians and certified veterinary assistants.**

**8.13(1)** The fees listed in subrule 8.13(2) shall be collected by the board and shall not be refunded except by board action in unusual instances such as documented illness of the applicant, death of the applicant, inability of the applicant to comply with the rules of the board, or withdrawal of the application for examination provided that the request for withdrawal is received in writing 45 days prior to the examination date. Examination fees shall be nontransferrable from one examination to another.

**8.13(2)** Registered veterinary technician and certified veterinary assistant. The fee for the VTNE, which is utilized by the board as a part of the examination process, shall be the fee charged that year by the AAVSB plus an administrative fee of \$25 set by the board for administration of the examination. Based on the board's anticipated financial requirements, the following fees are hereby adopted:

Registration or certificate—application fee.....	\$15
VTNE examination fee.....	set by AAVSB
VTNE administrative fee.....	\$25
Triennial registration or certificate.....	\$15
Late renewal penalty.....	\$50
Temporary veterinary technician permit—application fee .....	\$15
Temporary permit fee.....	\$15
Reactivation fee for inactive or lapsed registration.....	\$15
Duplicate registration or certificate.....	\$15
Official verification of registration or certificate.....	\$15
Charge for insufficient funds or returned checks.....	\$25
State veterinary technician examination fee.....	\$50
State veterinary assistant examination fee.....	Set by IBVM
State veterinary technician administrative fee.....	Set by IBVM

VETERINARY MEDICINE BOARD[811](cont'd)

State veterinary assistant administrative fee.....	\$25
Reinstatement administrative fee.....	\$25
Reactivation administrative fee.....	\$25

ITEM 11. Amend rules **811—10.1(17A,169,272C)** to **811—10.11(17A,169,272C)** and **811—10.13(17A,169,272C)**, parenthetical implementation statutes, by adding “272D.”

**ARC 8159B**

**VOLUNTEER SERVICE, IOWA COMMISSION ON[817]**

**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 17A.3 and 2009 Iowa Acts, Senate File 482, the Iowa Commission on Volunteer Service hereby gives Notice of Intended Action to adopt Chapter 9, “Iowa Summer Youth Corps,” and Chapter 10, “Iowa Green Corps,” Iowa Administrative Code.

These chapters establish procedures for the certification of summer youth and green corps programs to ensure that certifications are handled in a fair and orderly manner.

Any interested person may make written suggestions or comments on these proposed rules on or before October 13, 2009, by 5 p.m. CDT. Such written materials should be directed to Adam Lounsbury, Iowa Commission on Volunteer Service, 200 East Grand Avenue, Des Moines, Iowa 50309; fax (515)725-3010. Persons wishing to convey their views orally should contact Adam Lounsbury at (515)725-3099.

Also, there will be a public hearing on October 15, 2009, at 2 p.m. in the Iowa Department of Economic Development’s Main Conference Room, Second Floor, 200 East Grand Avenue, 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 rules.

Any persons who will attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact and advise Adam Lounsbury of specific needs.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 8158B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2009 Iowa Acts, Senate File 482.

## ARC 8157B

## AGRICULTURAL DEVELOPMENT AUTHORITY[25]

## Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 175.6, the Agricultural Development Authority (IADA) hereby amends Chapter 4, "IADA Loan Participation Program," Iowa Administrative Code.

These amendments increase the maximum loan participation amount to better reflect the current prices for real estate. In addition, these amendments change the underwriting criteria for those operations which have a guaranteed source of repayment. These changes allow more highly leveraged transactions to be eligible when an assignment of payment can be secured.

The amendments also provide for a fixed interest rate on the participation which is less than the current rate offered to eligible producers. Finally, all participations regardless of the equity position will be amortized over 20 years with a 10-year balloon, unless the Loan Participation Program is being utilized in conjunction with federal programs at which point the amortization will be consistent with federal rules.

Pursuant to Iowa Code section 17A.4(3), the Agricultural Development Authority finds that notice and public participation are unnecessary because these amendments will allow the Loan Participation Program to remain relevant in today's agricultural environment. The increased loan amount is necessary due to ever-increasing land prices. The change to a 30-year amortization when FSA programs are involved is needed to comply with federal regulations, which went into effect in July 2008.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Agricultural Development Authority further finds that the normal effective date of these amendments, 35 days after publication, should be waived and these amendments be made effective upon filing, as they confer a benefit upon Iowa's low-income and beginning farmers.

These amendments are intended to implement Iowa Code chapter 175 as amended by 2006 Iowa Acts, Senate File 2268.

The Authority adopted these amendments on March 28, 2007, and August 27, 2009.

These amendments became effective September 2, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule 4.3(9) as follows:

**4.3(9) Farm debt-to-asset ratio.** Borrower must have a farm debt-to-asset ratio of no more than 80 percent upon completion of loan closing. If the farm debt-to-asset ratio is greater than 60 percent, borrower's projected term debt coverage ratio must be 120 percent or greater. This requirement may be waived if:

- a. The project has a guaranteed source of repayment; and
- b. An assignment of payment is obtained.

ITEM 2. Amend rule 25—4.6(175) as follows:

**25—4.6(175) Program maximums.**

**4.6(1) Purchase price impact.** Maximum participation amount is the lesser of:

- a. Thirty percent of the purchase price; or
- b. One hundred fifty thousand dollars.

**4.6(2) Net worth factor.** The aggregate amount of the participated loan can be no more than ~~two~~ three times the net worth of the borrower. This requirement may be waived if:

- a. The project has a guaranteed source of repayment; and
- b. An assignment of payment is obtained.

**4.6(3) Real estate collateral issues.** A participated loan for real estate:

a. Cannot exceed ~~90~~ 100 percent of the appraised value of the real estate collateral, ~~unless additional collateral is provided so that the total value of the collateral pledged has an appraised value of at least 125 percent of the amount of the participated loan.~~

b. — ~~If additional collateral does not have an appraised value of at least 125 percent, the participation will be evenly amortized and paid in full in seven years.~~

## AGRICULTURAL DEVELOPMENT AUTHORITY[25](cont'd)

~~e. b.~~ Any guarantee of repayment or pledge of additional collateral required by the lender to secure the participated loan shall secure the entire participated loan including the participation (by the authority).

**4.6(4) Loan terms.** The authority has established the following with respect to participation terms:

a. The maximum amortization period for the participation is seven years for depreciable agricultural property. When a participated loan is made for livestock, the length of the participation is restricted to the expected useful life of the animal being purchased. The following expected useful life schedules have been approved for livestock: cattle (including beef and dairy) equal 7 years; swine equal 3 years; and sheep equal 7 years.

b. IADA participation loan payments on participated real estate loans will be equally amortized for ~~either 7 or 20 years over~~ the term of the participation, ~~depending upon the amount of down payment provided by the applicant.~~ but shall not exceed a 20-year amortization, including a 10-year term with balloon payment and the balance of the participation paid in full by the end of the tenth year. If utilized in conjunction with federal programs, the amortization will be consistent with federal rules.

(1) ~~No down payment, 7 year amortization, 7 year term, no balloon payment, and will be paid in full by the end of the seventh year.~~

(2) ~~Ten percent down payment, 20 year amortization, 10 year term with balloon payment, paying the balance of the participation in full by the end of the tenth year.~~

c. The interest rate on the participated loan ~~may shall~~ be a fixed rate, ~~a variable rate, or a combination thereof.~~ If the rate of interest adjusts during the life of the participated loan, the interest rate on the participated loan cannot exceed the initial interest rate by more than 500 basis points. The fixed interest rate shall be reviewed by the board on a quarterly basis and adjusted as needed.

**4.6(5) Loans outstanding.** Loans under the program may be issued more than once, ~~providing provided that~~ the outstanding participation totals do not exceed ~~\$50,000~~ \$150,000 to any single borrower.

[Filed Emergency 9/2/09, effective 9/2/09]

[Published 9/23/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/23/09.

**ARC 8151B**

**PUBLIC SAFETY DEPARTMENT[661]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 100.18, the State Fire Marshal hereby amends Chapter 210, "Smoke Detectors," Iowa Administrative Code.

Iowa Code section 100.18 delegates to the State Fire Marshal authority to require smoke detectors in residences and to regulate the devices used. Last year, the State Fire Marshal adopted a requirement that smoke detectors installed on or after October 1, 2008, would be required to be dual sensor smoke detectors, using both ionization and photoelectric sensors. The effective date of this requirement has twice been delayed and is now set at October 1, 2009. Further delays in the ready availability of the dual sensor detectors are evident, and this rule making is being undertaken to delay the effective date again, until April 1, 2010. In addition, the amendment adopted herein changes the reference in subrule 210.2(2) from the 2005 edition of the National Electrical Code to the 2008 edition, which is consistent with a previous rule making regarding requirements for electrical installations in Iowa.

Pursuant to Iowa Code section 17A.4(3), the State Fire Marshal finds that notice and public participation are unnecessary because confusion will likely result if the current rule is not amended promptly, as it is likely that compliance will be impractical or impossible.

Pursuant to Iowa Code section 17A.5(2), the State Fire Marshal further finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment made effective September 1, 2009. The public will benefit from a delay in implementation of the requirement for use

PUBLIC SAFETY DEPARTMENT[661](cont'd)

of dual sensor smoke detectors, as compliance with the requirements on the date set by the current rule is likely to be impractical.

This amendment is also being proposed in a Notice of Intended Action, published herein as **ARC 8150B**. In addition, the Notice of Intended Action contains amendatory language regarding the circumstances under which the dual sensor smoke detector requirement will apply, as well as language regarding the required locations of dual sensor smoke detectors.

This amendment is intended to implement Iowa Code section 100.18.

This amendment became effective September 1, 2009.

The following amendment is adopted.

Amend subrules 210.2(1) to 210.2(3) as follows:

**210.2(1)** Approved single station smoke detectors shall be acceptable in all areas covered by this chapter, unless other fire warning equipment or materials are required by any provision of 661—Chapter 201, 202, or 205. Any single station smoke detector installed on or after ~~October 1, 2009~~ April 1, 2010, in compliance with this subrule, including a replacement of an existing detector, shall be a dual sensor smoke detector. If sufficient dual sensor smoke detectors have been installed to comply with the requirements of this chapter, additional smoke detectors which may be other than dual sensor detectors may be installed.

**210.2(2)** Any installation of wiring and equipment shall comply with NFPA 70, National Electrical Code, ~~2005~~ 2008 edition, and requirements established by the manufacturer of the equipment serviced by the wiring.

**210.2(3)** All devices, combinations of devices, and equipment to be installed in conformity with this chapter shall be approved and used for the purposes for which they are intended. Any smoke detector installed on or after ~~October 1, 2009~~ April 1, 2010, in compliance with this chapter, including a replacement of an existing detector, shall be a dual sensor smoke detector. If sufficient dual sensor smoke detectors have been installed to comply with the requirements of this chapter, additional smoke detectors which may be other than dual sensor detectors may be installed.

[Filed Emergency 8/25/09, effective 9/1/09]

[Published 9/23/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/23/09.

## **ARC 8158B**

### **VOLUNTEER SERVICE, IOWA COMMISSION ON[817]**

#### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 17A.3 and 2009 Iowa Acts, Senate File 482, the Iowa Commission on Volunteer Service hereby adopts Chapter 9, "Iowa Summer Youth Corps," and Chapter 10, "Iowa Green Corps," Iowa Administrative Code.

The purpose of these chapters is to establish procedures for the Iowa Summer Youth Corps and Iowa Green Corps programs. This adoption is the result of legislation in 2009 Iowa Acts, Senate File 482.

In compliance with Iowa Code section 17A.4(3), the Commission finds that notice and public participation are impracticable and unnecessary because of the immediate need for rules to implement new provisions of this law.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing with the Administrative Rules Coordinator on September 2, 2009, as it confers a benefit on the working procedures of the Commission.

These rules are also published herein under Notice of Intended Action as **ARC 8159B** to allow for public comment.

These rules are intended to implement 2009 Iowa Acts, Senate File 482.

These rules became effective September 2, 2009.

## VOLUNTEER SERVICE, IOWA COMMISSION ON[817](cont'd)

The following amendment is adopted.

Adopt the following **new** 817—Chapter 9 and Chapter 10:

CHAPTER 9  
IOWA SUMMER YOUTH CORPS

**817—9.1(83GA,SF482) Purpose and program description.** The purpose of the Iowa summer youth corps is to provide youth with meaningful community service opportunities along with instruction and reflection activities to enrich the learning experience, teach civic responsibility, and strengthen communities. On a competitive basis, Iowa summer youth corps grants will give support to summer youth corps projects in Iowa. The program is established under the authority of the Iowa commission on volunteer service, pursuant to Iowa Code chapter 15H as amended by 2009 Iowa Acts, Senate File 482.

**817—9.2(83GA,SF482) Applications.** Appropriate forms and applications for grants are available from the commission at [www.volunteeriowa.org](http://www.volunteeriowa.org).

**817—9.3(83GA,SF482) Incentives.** Incentives will be determined by federal funding guidelines or restrictions depending on the source of funds utilized for the Iowa summer youth corps in a given grant year. Types of incentives may include:

1. Education awards that may be used to further educational attainment and that may be earned upon completion of a defined number of hours;
2. Living allowances that are not considered wages but are paid evenly over the course of a service period; or
3. Wages that are based on the hours worked.

Types of incentives or combinations of incentives that may be used for a program design will be described in the application instructions.

**817—9.4(83GA,SF482) Grant criteria.** To respond to funding priorities, as funds are made available, the executive director of the commission will establish criteria consistent with federal regulations. If federal funds are being offered, applicants will be considered on a competitive basis. At a minimum, the criteria will contain the following:

1. Goals and objectives of the project;
2. Qualifications of the applicant to manage funds;
3. For new and re-competing applicants, letters of local support verifying coordination and communitywide cooperation;
4. Total project budget;
5. For previous grantees, evidence of ability to submit timely and accurate reports;
6. Description and time line of planned activities;
7. Agreement to develop for the project a community partnership group whose membership should include a cross section of the community served;
8. Description of the applicant organization, including staffing pattern; and
9. Documentation of the applicant's ability to provide the required local match.

**817—9.5(83GA,SF482) Designated funds.** A percentage of the grants will be designated by the commission to address the needs of the city enterprise zones that meet the distress criteria outlined in Iowa Code section 15E.194.

**817—9.6(83GA,SF482) Application process for new grants.**

**9.6(1)** The commission shall issue a request for proposals containing project criteria and application forms for the appropriate fiscal year.

**9.6(2)** The applicant shall submit the completed application to the commission according to the time line identified in the request for proposals.

## VOLUNTEER SERVICE, IOWA COMMISSION ON[817](cont'd)

**9.6(3)** Applications submitted will be reviewed by a grant review committee, which is composed of members of the commission grant review committee, individuals with expertise in youth programming, and the citizens of Iowa. Using the criteria in rule 817—9.4(83GA,SF482), the committee will review the applications for appropriateness and to determine the merit of the project.

**9.6(4)** Applicants whose projects have been selected for funding shall be notified by the commission.

**817—9.7(83GA,SF482) Administration of grants.**

**9.7(1) Contracts.** The commission shall prepare contractual agreements for the grants.

*a.* The contract shall be executed by the executive director of the commission and the duly authorized official of the project.

*b.* The contract shall include due dates and the process for the submission of project reports and financial reports.

**9.7(2) Reporting.** All grant recipients shall submit progress and financial reports to the commission as outlined in the contract.

**9.7(3) Availability of funds.** Separate request for proposals will only be issued when there are funds available for this program. To the extent allowable by federal regulations, summer youth corps will always be an acceptable program model for annual AmeriCorps grants and will be listed in the annual AmeriCorps program request for proposals.

**817—9.8(83GA,SF482) Reversion of funds.** Grant funds not expended by the project closeout date shall revert to the commission.

These rules are intended to implement 2009 Iowa Acts, Senate File 482, section 1.

CHAPTER 10  
IOWA GREEN CORPS

**817—10.1(83GA,SF482) Purpose and program description.** The purpose of the Iowa green corps is to provide youth with meaningful community service opportunities in addition to providing capacity-building activities, training, and implementation of major transformative projects in communities, which emphasize energy efficiency, historic preservation, neighborhood development, and stormwater reduction and management. On a competitive basis, Iowa green corps grants will give support to AmeriCorps or summer youth corps projects in Iowa. The program is established under the authority of the Iowa commission on volunteer service, pursuant to Iowa Code chapter 15H as amended by 2009 Iowa Acts, Senate File 482.

**817—10.2(83GA,SF482) Applications.** Appropriate forms and applications for grants are available from the commission at [www.volunteeriowa.org](http://www.volunteeriowa.org).

**817—10.3(83GA,SF482) Incentives.** Incentives will be determined by federal funding guidelines or restrictions depending on the source of funds utilized for the Iowa green corps in a given grant year. Types of incentives may include:

1. Education awards that may be used to further educational attainment and that may be earned upon completion of a defined number of hours;
2. Living allowances that are not considered wages but are paid evenly over the course of a service period; or
3. Wages that are based on the hours worked.

Types of incentives or combinations of incentives that may be used for a program design will be described in the application instructions.

**817—10.4(83GA,SF482) Grant criteria.** To respond to funding priorities, as funds are made available, the executive director of the commission will establish criteria consistent with federal regulations. If federal funds are being offered, applicants will be considered on a competitive basis. At a minimum, the criteria will contain the following:

## VOLUNTEER SERVICE, IOWA COMMISSION ON[817](cont'd)

1. Goals and objectives of the project;
2. Qualifications of the applicant to manage funds;
3. For new and re-competing applicants, letters of local support verifying coordination and communitywide cooperation;
4. Total project budget;
5. For previous grantees, evidence of ability to submit timely and accurate reports;
6. Description and time line of planned activities;
7. Agreement to develop for the project a community partnership group whose membership should include a cross section of the community served;
8. Description of the applicant organization, including staffing pattern; and
9. Documentation of the applicant's ability to provide the required local match.

**817—10.5(83GA,SF482) Designated funds.** A percentage of the grants may be designated by the commission to address capacity-building activities that target communities that are already working with existing community improvement programs, including but not limited to the Iowa great places program established under Iowa Code section 303.3C, the green streets and main street Iowa programs administered by the Iowa department of economic development, and disaster remediation activities by communities located within an area declared to be a disaster area by the President of the United States or the governor of the state of Iowa.

**817—10.6(83GA,SF482) Application process for new grants.**

**10.6(1)** The commission shall issue a request for proposals containing project criteria and application forms for the applicable fiscal year.

**10.6(2)** The applicant shall submit the completed application to the commission according to the time line identified in the request for proposals.

**10.6(3)** Applications submitted will be reviewed by a grant review committee, which is composed of members of the commission grant review committee, individuals with expertise in youth programming, and the citizens of Iowa. Using the criteria in rule 817—10.4(83GA,SF482), the committee will review the applications for appropriateness and to determine the merit of the project.

**10.6(4)** Applicants whose projects have been selected for funding shall be notified by the commission.

**817—10.7(83GA,SF482) Administration of grants.**

**10.7(1) Contracts.** The commission shall prepare contractual agreements for the grants.

*a.* The contract shall be executed by the executive director of the commission and the duly authorized official of the project.

*b.* The contract shall include due dates and the process for the submission of project reports and financial reports.

**10.7(2) Reporting.** All grant recipients shall submit progress and financial reports to the commission.

**10.7(3) Availability of funds.** Separate request for proposals will only be issued when there are available funds for this program. To the extent allowable by federal regulations, Iowa green corps will always be an acceptable program model for annual AmeriCorps grants and will be listed in the annual AmeriCorps program request for proposals.

**817—10.8(83GA,SF482) Reversion of funds.** Grant funds not expended by the project closeout date shall revert to the commission.

These rules are intended to implement 2009 Iowa Acts, Senate File 482, section 2.

[Filed Emergency 9/2/09, effective 9/2/09]

[Published 9/23/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/23/09.

**ARC 8145B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development amends Chapter 1, "Organization," Chapter 23, "Iowa Community Development Block Grant Program," Chapter 53, "Community Economic Betterment Account (CEBA) Program," Chapter 57, "Value-Added Agricultural Products and Processes Financial Assistance Program (VAAPFAP)," Chapter 59, "Enterprise Zone (EZ) Program," Chapter 60, "Entrepreneurial Ventures Assistance (EVA) Program," Chapter 61, "Physical Infrastructure Assistance Program (PIAP)," Chapter 68, "High Quality Job Creation (HQJC) Program," and Chapter 69, "Loan and Credit Guarantee Program"; adopts Chapter 74, "Grow Iowa Values Financial Assistance Program," and Chapter 75, "Opportunities and Threats Program"; and amends Chapter 165, "Allocation of Grow Iowa Values Fund," Chapter 173, "Standard Definitions," Chapter 174, "Wage, Benefit, and Investment Requirements," Chapter 175, "Application Review and Approval Procedures," Chapter 187, "Contracting," and Chapter 189, "Annual Reporting," Iowa Administrative Code.

These amendments are intended to implement 2009 Iowa Acts, Senate File 344. This rule making amends 15 existing chapters and adopts 2 new chapters. 2009 Iowa Acts, Senate File 344, simplifies four state financial assistance programs (CEBA, PIAP, VAAPFAP, EVA), three funding sources ("old money," IVF (FES), IVF (2005)), and two tax credit programs (HQJC, EZ). These legislative changes will make it easier for the Department to report on program results, easier for the public to evaluate performance, easier for the state to administer, and easier for businesses to understand performance expectations. The amendments also implement revisions made by 2009 Iowa Acts, Senate File 449, which amends the statutory language applicable to the composition of the Iowa Economic Development Board.

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

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

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 15, 2009, as **ARC 7971B**. These amendments were also Adopted and Filed Emergency and published on the same date as **ARC 7970B**.

A public hearing was held on August 5, 2009. No comments, written or oral, were received at the public hearing. The Department received one written comment asking about the proposed deletion of paragraph 1.3(1)"c" in Item 2. Paragraph "c" describes the composition of the Iowa Economic Development Board, and its proposed deletion was an error. The intention was to update this paragraph to match Iowa Code section 15.103 as amended by 2009 Iowa Acts, Senate File 449, sections 5 and 6. The amendments adopted herein include changes to paragraph 1.3(1)"c" that are needed to conform to statutory language. Paragraph 1.3(1)"c" now reads as follows:

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

“c. *Voting members—representation on the board following the transitional year (July 1, 2005, to June 30, 2006).* Following the transitional year, at least one of the voting members shall be less than 30 years of age at the time of appointment. At least 9 voting members of the board shall be actively employed in the private, for-profit sector of the economy. Each of the following areas of expertise shall be represented by at least 1 voting member of the board who has professional experience in that area of expertise:

- “(1) Finance, insurance, or investment banking.
- “(2) Advanced manufacturing.
- “(3) Statewide agriculture.
- “(4) Life sciences.
- “(5) Small business development.
- “(6) Information technology.
- “(7) Economics or alternative and renewable energy including the alternative and renewable energy sectors listed in Iowa Code section 476.42, subsection 1, paragraph “a.”
- “(8) Labor.
- “(9) Marketing.
- “(10) Entrepreneurship.”

Subsequent to publication of the Notice and Adopted and Filed Emergency amendments, additional amendments were made to rule 261—74.7(83GA,SF344). Amendments to rule 261—74.7(83GA,SF344) were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on July 29, 2009, as **ARC 7978B**. The amendments adopted herein reflect those amendments adopted in **ARC 7978B**.

The Iowa Economic Development Board adopted these amendments on August 20, 2009.

These amendments will become effective on October 28, 2009, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement 2009 Iowa Acts, Senate File 344 and Senate File 449.

EDITOR’S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amend Chs 1, 23, 53, 57, 59 to 61, 68, 69, 165, 173 to 175, 187, 189; adopt Chs 74, 75] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 7971B** and Adopted and Filed Emergency as **ARC 7970B**, IAB 7/15/09.

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[For replacement pages for IAC, see IAC Supplement 9/23/09.]

**ARC 8147B****ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 71, “Targeted Jobs Withholding Tax Credit Program,” Iowa Administrative Code.

The final amendments:

- Add definitions of “employer’s taxable capital investment” and “local financial support.”
- Require the total amount of awarded withholding tax credits to be stated in the withholding agreement.
- Establish a limit on the total amount of withholding tax credits awarded based upon the total dollar amount of qualifying investment in the project.
- Prohibit the entering into of a withholding agreement by an employer not located within a pilot project city when another Iowa community competes for the same project.

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

- Extend until 2013 the ability of a pilot project city to enter into a withholding agreement.
- Clarify required components of a withholding agreement and local match requirements.
- Require base employment to be established by the business at the time of submission of an application.
- Establish the Department's review authority to approve a withholding agreement application.
- Modify reporting requirements of pilot project cities and require annual verification by the Department.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7846B**. These amendments were also Adopted and Filed Emergency and published on that same date as **ARC 7848B**.

A public hearing was held on July 7, 2009, to receive public comment about the proposed amendments. Written and oral comments were received at the hearing. The Department received the same written comments from each of the five "pilot project" cities: Sioux City, Council Bluffs, Burlington, Fort Madison and Keokuk. The comments were as follows:

- The pilot project city representatives expressed concern that the proposed amendments may unintentionally eliminate incentives for job creation above and beyond the original commitment. They asked that paragraph 71.4(2)"b" be amended to state that the withholding agreement will include "all qualifying jobs created during the term of the project."

- Commenters asked for a revision to a definition that applies to the 10 percent local match requirement. They indicated that proposed paragraph 71.4(7)"c" might be interpreted to require a 10 percent match from a pilot project city for projects where a business is purchasing land or an existing building for which the pilot project city is already receiving property taxes, and no increase in tax revenues will be received. Commenters also asked that the proposed definition of "employer's taxable capital investment" in rule 261—71.1(403) be rewritten. Commenters' suggested revisions were intended to clarify that this definition applies to situations where there is an increase in property tax revenue received by a pilot project city.

- The final request was to revise paragraph 71.5(1)"c" to require the Department to provide a pilot project city with written notice of the Department's decision regarding the withholding agreement within a specified period of time. Commenters suggested the Department provide written notice within 30 days of the Department's receipt of the withholding agreement.

At the July 14, 2009, Administrative Rules Review Committee meeting, the Department was asked to consider revising the definition of "local financial support" in rule 261—71.1(403) to clarify that in-kind contributions must be directly related to the project.

After considering the comments received, the Department made the following changes in the final amendments:

(1) Revised the definition of "local financial support" in rule 261—71.1(403) to clarify that in-kind contributions must be directly related to the project; and

(2) Clarified the local match requirement in subrule 71.4(7) and provided an example. The adopted amendment clarifies that the intent of the local match requirement is to require pilot project cities to contribute to projects that result in an increase in a city's tax collections.

The Iowa Economic Development Board adopted these amendments on August 20, 2009.

These amendments will become effective on October 28, 2009, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code section 403.19A as amended by 2009 Iowa Acts, Senate File 304.

The following amendments are adopted.

ITEM 1. Adopt the following **new** definitions in rule **261—71.1(403)**:

"*Employer's taxable capital investment*" means a capital investment in real property, including but not limited to the purchase of land and existing buildings and building construction included in the project, that is subject to taxation by the local taxing authority.

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

“Local financial support” or “local match” means cash or in-kind contributions to be used for the project from a private donor, a business, or the pilot project city. “Cash” includes but is not limited to loans, forgivable loans or grants. “In-kind contributions” means contributions directly related to the project and includes but is not limited to the construction of private or public infrastructure or other amenities and improvements.

ITEM 2. Amend subrule 71.4(2) as follows:

**71.4(2) Entering into ~~an~~ a withholding agreement.**

a. Agreement between pilot project city and business. A pilot project city may enter into a withholding agreement with a business locating to the community from another state that is creating or retaining targeted jobs in an urban renewal area. The pilot project city may enter into a withholding agreement with a business currently located in Iowa only if the business is creating at least ten new jobs or making a qualifying investment of at least \$500,000 within the urban renewal area.

b. Total amount of withholding tax credits. The withholding agreement shall provide for the total amount of withholding tax credits awarded. An agreement shall not provide for an amount of withholding tax credits that exceeds the amount of qualifying investment made in the project.

c. Ineligibility if there is competition between pilot project city and non-pilot project city. A withholding agreement shall not be entered into with an employer not already located in a pilot project city when another Iowa community is competing for the same project and both the pilot project city and the other Iowa community are seeking assistance from the department.

d. Option of a business to enter into withholding agreement. A business shall not be obligated to enter into a withholding agreement with a pilot project city.

e. 2013 sunset date. A pilot project city shall not enter into a withholding agreement with a business after June 30, ~~2010~~ 2013.

f. Department approval of withholding agreements. Prior to entering into a withholding agreement with a business, a pilot project city shall request department approval of the withholding agreement. The process for requesting approval from the department is described in subrule 71.5(1).

ITEM 3. Amend subrule 71.4(3) as follows:

**71.4(3) Required components of a withholding agreement.** A withholding agreement shall be disclosed to the public and shall contain all of the following:

a. A copy of the adopted development agreement between the pilot project city and employer, including how withholding funds generated by the city will be used.

b. A list of all other incentives or financial assistance the business has requested or is receiving from other federal, state, or local economic development programs including loans, grants, forgivable loans, and tax credits.

c. The amount of assistance provided by the pilot project city for the project.

d. Documentation of the approval of the project by local participating authorities.

e. The total amount of withholding tax credits awarded.

f. The total number of created and retained jobs included in the project.

g. The required countywide average wage.

h. The total qualifying investment included in the project.

i. The total required matching local financial support for the project.

ITEM 4. Amend subrule 71.4(7) as follows:

**71.4(7) Local match requirement.** A pilot project city entering into a withholding agreement shall arrange for a match of at least one dollar for each withholding dollar received by the city. The local match may come from the pilot project city, a private donor, or the employer or a combination of the three. Local matches may be in the form of cash or in-kind contributions to be used for the project. The intent of the program is to require a pilot project city to contribute to projects that result in an increase in the city’s tax collections. If a pilot project city realizes an increase in tax revenues due to the project, then the pilot project city is required to contribute at least 10 percent of the required local match. For example, if a project includes the purchase and remodeling of a building that results in increased tax collections to the pilot project city by an amount equal to 10 percent of the total amount of the withholding tax

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

credit award, then the pilot project city is required to contribute at least 10 percent of the required local match for the project. In cases in which a project would include the purchase of a building but there is no increase in tax collections to the pilot project city, the pilot project city is not required to contribute to the required local match.

a. A pilot project city entering into a withholding agreement shall arrange for matching local financial support for the project. The local match required shall be in an amount equal to one dollar for every one dollar of withholding tax credit received by the pilot project city.

b. If the project, when completed, will increase the amount of an employer's taxable capital investment by an amount equal to at least 10 percent of the amount of withholding tax credit dollars received by the pilot project city, then the pilot project city shall itself contribute at least 10 percent of the local match amount computed under paragraph "a."

c. If the project, when completed, will not increase the amount of the employer's taxable capital investment by an amount equal to at least 10 percent of the amount of withholding tax credit dollars received by the pilot project city, then the pilot project city shall not be required to make a contribution to the local match.

d. A pilot project city's contribution, if any, to the local match may include the dollar value of any new tax abatement provided by the city to the business for new construction. For purposes of this paragraph, new construction includes building additions, remodeling, renovations, and updates.

ITEM 5. Amend subrule 71.5(1) as follows:

~~71.5(1) Application for project approval.~~ Request for department approval of withholding agreement.

a. Request for approval form. Prior to entering into a withholding agreement with an employer, a pilot project city must receive approval from the department. ~~The department shall develop a standardized application for project approval and shall make the application available to eligible pilot project cities. The application for project approval shall include, but not be limited to, the following information regarding a project:~~ The department shall develop and make available to the pilot project cities a standardized form to request department approval of a proposed withholding agreement. To request department approval of a proposed withholding agreement, a pilot project city shall provide the department with the following information:

(1) A general description of the project, including how the pilot project city will utilize withholding funds generated by the project.

(2) Base employment of the number of full-time equivalent positions at a business as established by the department and the pilot project city, using the business's payroll records, as of the date that a business files an application with a pilot project city for financial assistance under the program.

~~(2)~~ (3) Information regarding the number of targeted jobs in the project, the wages of the targeted jobs, and the types of jobs created by the project.

~~(3)~~ (4) A budget for the project, showing the total project cost, the amount of local matching funds committed to the project, and the amount of withholding funds the pilot project city will receive from the project.

~~(4)~~ (5) A copy of the proposed withholding agreement to be entered into between the pilot project city and the employer.

~~(5)~~ (6) A letter or resolution of support from the local government showing support for the project.

b. Timing of submittal. ~~Applications for project approval for the targeted jobs withholding tax credit program~~ Requests for department approval of a proposed withholding agreement may be submitted at any time. The department will review applications for projects requests for approval of a proposed withholding agreement in as timely a manner as possible.

c. Department action on requests for approval. The department may approve, deny, or suggest changes to a withholding agreement. The department shall only deny an agreement if the agreement fails to meet the requirements as stated in subrule 71.4(2) or the local match requirement as stated in subrule 71.4(7) or if an employer is not in good standing as to prior or existing agreements with the

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

department. A pilot project city will be notified in writing of the department's decision regarding the project proposed withholding agreement.

ITEM 6. Amend subrule 71.6(1) as follows:

**71.6(1) Required reports.**

*a.* No change.

*b.* The pilot project city shall provide information documenting the total amount of payments and receipts from the special fund under the withholding agreement, including all agreements with an employer to suspend, abate, exempt, rebate, refund, or reimburse property taxes, to provide a grant for property taxes, to provide a grant not related to property taxes, or to make a direct payment of taxes. The pilot project city shall submit this information to the department annually by September 1 covering the prior fiscal year (July 1 to June 30). The department shall verify the information provided by the pilot project city. The department will verify job creation or retention using the method described in 261—Chapter 188.

~~*b. c.* The department may request additional reports from pilot project cities as necessary to determine the status of the targeted jobs withholding tax credit program.~~

*d.* The department shall make, at minimum, an annual on-site monitoring visit to each pilot project city to verify the documented information. The pilot project city shall provide the following:

(1) Payroll records that correspond to the quarterly report provided by the pilot project city for the department of revenue;

(2) Information substantiating the total amount of qualifying investment made in the project;

(3) Information substantiating the total amount of local financial support made in the project;

(4) Payments and receipts as described in paragraph 71.6(1) "b."

ITEM 7. Amend subrule 71.6(2) as follows:

~~**71.6(2) Annual report.** The department shall prepare an annual report for the governor, the general assembly, and the legislative services agency on the targeted jobs withholding tax credit program. As required by Iowa Code section 15.104(9) "k," the department shall include in its annual report information about the targeted jobs withholding tax credit program. This report shall be due on January 31 of each year. The report shall include but not be limited to the following:~~

~~*a.* — The amount of withholding funds each project received.~~

~~*b.* — The number of new and retained jobs resulting from the program.~~

~~*c.* — The average wage of jobs resulting from the program.~~

~~*d.* — An evaluation of the investment made by the state, including but not limited to the terms in paragraphs "a" to "c" of this subrule.~~

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**ARC 8146B**

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

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts new Chapter 76, "Aggregate Tax Credit Limit for Certain Economic Development Programs," Iowa Administrative Code.

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

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Notice of Intended Action was published in the Iowa Administrative Bulletin on July 15, 2009, as **ARC 7953B**. These rules were also Adopted and Filed Emergency and published on that same date as **ARC 7954B**.

The Department held a public hearing on Thursday, August 6, 2009, to receive comments on these rules. No comments pertaining directly to the proposed rules were received. The final rules are identical to the proposed rules.

The Iowa Department of Economic Development Board adopted these rules on August 20, 2009.

These rules will become effective on October 28, 2009, at which time the Adopted and Filed Emergency rules are hereby rescinded.

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

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 76] is being omitted. These rules are identical to those published under Notice as **ARC 7953B** and Adopted and Filed Emergency as **ARC 7954B**, IAB 7/15/09.

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[For replacement pages for IAC, see IAC Supplement 9/23/09.]

## **ARC 8174B**

### **INSPECTIONS AND APPEALS DEPARTMENT[481]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 231B.2, 231C.3, and 231D.2, the Department of Inspections and Appeals hereby adopts new Chapter 67, "General Provisions for Elder Group Homes, Assisted Living Programs, and Adult Day Services," Iowa Administrative Code.

These rules are adopted pursuant to 2007 Iowa Acts, Senate File 601, which transferred the regulatory authority for elder group homes, assisted living programs, and adult day services from the Department of Elder Affairs to the Department of Inspections and Appeals. Since that time, the Department has been working with stakeholder groups to develop new Chapter 67. The work with stakeholder groups has included written comments on two draft versions of the proposed rules, collaboration sessions across Iowa with over 200 participants, and presentations on the draft rules to industry groups. The Department is also adopting herein specific provisions for elder group homes (**ARC 8175B**), assisted living programs (**ARC 8176B**), and adult day services (**ARC 8177B**). The rules in Chapter 67 include provisions common to the three entities. Chapter 67 will supersede the Department of Elder Affairs' (now the Department on Aging) current chapter containing general provisions for elder group homes, assisted living programs, and adult day services, 321—Chapter 26.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7877B** on June 17, 2009.

Comments on proposed Chapter 67 were generally positive. Several comments suggesting clarification have been incorporated.

The following changes have been incorporated into the chapter as the result of comments:

- Added language to the definition of "human service professional" to further clarify the definition;
- Revised the definition of "nurse-delegated assistance" to incorporate suggestions from the Board of Nursing;
- Added a definition for "nurse delegation" to incorporate suggestions from the Board of Nursing;
- Added a definition for "physician extender" to incorporate the suggestions of several commenters;
- Clarified rule 481—67.5(231B,231C,231D) regarding medications;

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- Clarified rule 481—67.12(17A,231B,231C,231D) regarding enforcement action at the suggestion of industry groups; and
- Added new rule 481—67.18(231B,231C,231D), which stipulates that once administrative rules are adopted by the Iowa Department on Aging related to Alzheimer's and dementia education, or effective July 1, 2010, whichever is later, programs must comply with the rules, as was suggested by the Alzheimer's Association of Iowa and the Iowa Department on Aging.

These rules are intended to implement Iowa Code chapters 231B, 231C, and 231D.

These rules will become effective January 1, 2010.

The following amendment is adopted.

Adopt the following **new** 481—Chapter 67:

## CHAPTER 67

GENERAL PROVISIONS FOR ELDER GROUP HOMES, ASSISTED LIVING PROGRAMS,  
AND ADULT DAY SERVICES

**481—67.1(231B,231C,231D) Definitions.** The following definitions apply to this chapter and to 481—Chapters 68, 69, and 70.

*“Activities of daily living”* means the following self-care tasks: bathing, dressing, grooming, eating, transferring, toileting, and ambulation.

*“Ambulatory”* or *“ambulation”* means physically and cognitively able to walk without aid of another person.

*“Applicable requirements”* means Iowa Code chapters 135C, 231B, 231C, 231D, 235B, 235E, and 562A, this chapter, and 481—Chapters 68, 69, and 70, as applicable, and includes any other applicable administrative rules and provisions of the Iowa Code.

*“Applicant or certificate holder”* means the owner and operator of a program. If a program is operated under an operating agreement, both the owner and the operator are the applicant or certificate holder. If a program is leased, the lessee is the applicant or certificate holder.

*“Assistance”* means aid to a tenant who self-directs or participates in a task or activity or who retains the mental or physical ability, or both, to participate in a task or activity. Cueing of the tenant regarding a particular task or activity shall be construed to mean the tenant has participated in the task or activity.

*“Blueprint”* means copies of all completed drawings, schedules, and specifications that have been certified, sealed, and signed by an Iowa-licensed architect or Iowa-licensed engineer of record. The department may allow electronic transfer of blueprints pursuant to policy.

*“Dementia”* means an illness characterized by multiple cognitive deficits which represent a decline from previous levels of functioning and includes memory impairment and one or more of the following cognitive disturbances: aphasia, apraxia, agnosia, and disturbance in executive functioning.

*“Department”* means the department of inspections and appeals.

*“Director”* means the director of the department of inspections and appeals.

*“Elope”* means that a tenant who has impaired decision-making ability leaves the program without the knowledge or authorization of staff.

*“Global Deterioration Scale”* or *“GDS”* means the seven-stage scale for assessment of primary degenerative dementia developed by Dr. Barry Reisberg.

*“Health care professional”* means a physician, physician assistant, registered nurse or advanced registered nurse practitioner licensed in Iowa by the respective licensing board.

*“Health-related care”* means services provided by a registered nurse or a licensed practical nurse, on a part-time or intermittent basis, and services provided by other licensed health care professionals, on a part-time or intermittent basis. “Health-related care” includes nurse-delegated assistance.

*“Human service professional”* means an individual with a bachelor's degree in a human service field including, but not limited to: human services, gerontology, social work, sociology, psychology, or family science. Two years of experience in a human service field may be substituted for up to two years

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

of the required education. For example, an individual with an associate's degree in a human service field and two years of experience in a human service field is a human service professional.

*"Impaired decision-making ability"* means a lack of capacity to make safe and prudent decisions regarding one's own routine safety as determined by the program manager or nurse or means having a GDS score of four or above.

*"Instrumental activities of daily living"* means those activities that reflect the tenant's ability to perform household and other tasks necessary to meet the tenant's needs within the community, which may include but are not limited to shopping, housekeeping, chores, and traveling within the community.

*"Medication setup"* means assistance with various steps of medication administration to support a tenant's autonomy, which may include but is not limited to routine prompting, cueing and reminding, opening containers or packaging at the direction of the tenant, reading instructions or other label information, or transferring medications from the original containers into suitable medication dispensing containers, reminder containers, or medication cups.

*"Modification"* means any addition to or change in physical dimensions or structure, except as incidental to the customary maintenance of the physical structure of the program's facility.

*"Monitoring"* means an on-site evaluation of a program, a complaint investigation, or a program-reported incident investigation performed by the department to determine compliance with applicable requirements. A monitor who performs a monitoring for the department shall be a registered nurse, human service professional, or another person with program-related expertise.

*"Nurse-delegated assistance"* means delegation of tasks or activities by a registered nurse or licensed practical nurse. The nurse retains accountability for the delegation process and the decision to delegate. Licensed practical nurses are allowed to delegate within the scope of their license (655—subrule 6.2(5), paragraph "c") with the supervision of a registered nurse.

*"Nurse delegation"* means the action of a nurse to direct competent individuals to perform selected nursing tasks in selected situations pursuant to 655—subrule 6.2(5), paragraph "c." The decision of a nurse to delegate is based on the delegation process, including assessment, planning, implementation, supervision, and evaluation of the tenant, nursing tasks, personnel, and the situation. The nurse retains accountability for the delegation process and the decision to delegate. A licensed practical nurse is allowed to delegate within the scope of the nurse's license with the supervision of a registered nurse.

*"Occupancy agreement"* or *"contractual agreement"* means a written contract entered into between a program and a tenant that clearly describes the rights and responsibilities of the program and the tenant and other information required by applicable requirements. An occupancy agreement may include a separate signed lease and signed service agreement.

*"Part-time or intermittent care"* means licensed nursing services and professional therapies that are provided no more than 5 days per week; or licensed nursing services and professional therapies that are provided 6 or 7 days per week for a temporary period of time with a predictable end within 21 days; or licensed nursing services and professional therapies that do not exceed 28 hours per week or, for adult day services, 4 hours per day and are provided in combination with nurse-delegated assistance with medications or activities of daily living.

*"Personal care"* means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, and grooming that are essential to the health and welfare of a tenant.

*"Physician extender"* means nurse practitioners, clinical nurse specialists, and physician assistants.

*"Preponderance of the evidence"* means that the evidence, considered and compared with the evidence opposed to it, produces the belief in a reasonable mind that the allegations are more likely true than not true.

*"Program"* means one or more of the following, as applicable: an elder group home as defined in Iowa Code section 231B.1 and 481—Chapter 68, an assisted living program as defined in Iowa Code section 231C.1 and 481—Chapter 69, or adult day services as defined in Iowa Code section 231D.1 and 481—Chapter 70.

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

“*Qualified professional*” means a facility plant engineer familiar with the type of program being provided, or a licensed plumbing, heating, cooling, or electrical contractor who furnishes regular service to such equipment.

“*Recognized accrediting entity*” means a nationally recognized accrediting entity that the department recognizes as having specific program standards equivalent to the program standards established by the department.

“*Regulatory insufficiency*” means a violation of an applicable requirement.

“*Remodeling*” means a modification of any part of an existing building, an addition of a new wing or floor to an existing building, or a conversion of an existing building.

“*Routine*” means more often than not or on a regular customary basis.

“*Self-administration*” means a tenant’s taking personal responsibility for all phases of medication except for any component assigned to the program under medication setup, and may include the tenant’s use of an automatic pill dispenser.

“*Service plan*” means the document that defines all services necessary to meet the needs and preferences of a tenant, whether or not the services are provided by the program or other service providers.

“*Significant change*” means a major decline or improvement in the tenant’s status which does not normally resolve itself without further interventions by staff or by implementing standard disease-related clinical interventions that have an impact on the tenant’s mental, physical, or functional health status.

“*Substantial compliance*” means a level of compliance with applicable requirements such that any identified regulatory insufficiency poses no greater risk to tenant health or safety than the potential for causing minimal harm.

“*Tenant*” means an individual who receives services through a program. In the context of adult day services, “tenant” means a participant as defined in 481—Chapter 70.

“*Tenant advocate*” means the office of long-term care resident’s advocate established in Iowa Code section 231.42.

“*Tenant’s legal representative*” means a person appointed by the court to act on behalf of a tenant or a person acting pursuant to a power of attorney. In the context of adult day services, “tenant’s legal representative” means a participant’s legal representative as defined in 481—Chapter 70.

“*Waiver*” means action taken by the department that suspends in whole or in part the requirements or provisions of a rule.

**481—67.2(231B,231C,231D) Program policies and procedures, including those for incident reports.** A program’s policies and procedures must meet the minimum standards set by applicable requirements. The program shall follow the policies and procedures established by a program. All programs shall have policies and procedures related to the reporting of incidents including allegations of dependent adult abuse.

**67.2(1)** The program’s policies and procedures on incident reports, at a minimum, shall include the following:

- a. The program shall have available incident report forms for use by program staff.
- b. An incident report shall be in detail and shall be provided on an incident report form.
- c. The person in charge at the time of the incident shall prepare and sign the report.
- d. The incident report shall include statements from individuals, if any, who witnessed the incident.
- e. All accidents or unusual occurrences within the program’s building or on the premises that affect tenants shall be reported as incidents.
- f. A copy of the completed incident report shall be kept on file on the program’s premises for a minimum of three years.

**67.2(2)** The program’s policies and procedures on allegations of dependent adult abuse shall be consistent with Iowa Code chapter 235E and rules adopted pursuant to that chapter and, at a minimum, shall include:

- a. Reporting requirements for staff and employees, and

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

*b.* Requirements that the victim and alleged abuser be separated.

**481—67.3(231B,231C,231D) Tenant rights.** All tenants have the following rights:

**67.3(1)** To be treated with consideration, respect, and full recognition of personal dignity and autonomy.

**67.3(2)** To receive care, treatment and services which are adequate and appropriate.

**67.3(3)** To receive respect and privacy in the tenant's medical care program. Personal and medical records shall be confidential, and the written consent of the tenant shall be obtained for the records' release to any individual, including family members, except as needed in case of the tenant's transfer to a health care facility or as required by law or a third-party payment contract.

**67.3(4)** To be free from mental and physical abuse.

**67.3(5)** To receive from the manager and staff of the program a reasonable response to all requests.

**67.3(6)** To associate and communicate privately and without restriction with persons and groups of the tenant's choice, including the tenant advocate, on the tenant's initiative or on the initiative of the persons or groups at any reasonable hour.

**67.3(7)** To manage the tenant's own financial affairs unless a tenant's legal representative has been appointed for the purpose of managing the tenant's financial affairs.

**67.3(8)** To present grievances and recommend changes in program policies and services, personally or through other persons or in combination with others, to the program's staff or person in charge without fear of reprisal, restraint, interference, coercion, or discrimination.

**481—67.4(231B,231C,231D) Program notification to the department.** The director or the director's designee shall be notified within 24 hours, or the next business day, by the most expeditious means available:

**67.4(1)** Of any accident causing major injury. For the purposes of this rule, "major injury" shall also mean a substantial injury.

*a.* "Major injury" shall be defined as any injury which:

(1) Results in death; or

(2) Requires admission to a higher level of care for treatment, other than for observation; or

(3) Requires consultation with the attending physician, designee of the physician, or physician extender who determines, in writing on a form designated by the department, that an injury is a "major injury" based upon the circumstances of the accident, the previous functional ability of the tenant, and the tenant's prognosis.

*b.* The following are not reportable accidents:

(1) An ambulatory tenant who falls when neither the program nor its employees have culpability related to the fall, even if the tenant sustains a major injury; or

(2) Spontaneous fractures; or

(3) Hairline fractures.

**67.4(2)** When damage to the program is caused by a natural or other disaster.

**67.4(3)** When there is an act that causes major injury to a tenant or when a program has knowledge of a pattern of acts committed by the same tenant on another tenant that results in any physical injury. For the purposes of this subrule, "pattern" means two or more times within a 30-day period.

**67.4(4)** When a tenant elopes from a program.

**67.4(5)** When a tenant attempts suicide, regardless of injury.

**67.4(6)** When a fire occurs in a program and the fire requires the notification of emergency services, requires full or partial evacuation of the program, or causes physical injury to a tenant.

**67.4(7)** When a defect or failure occurs in the fire sprinkler or fire alarm system for more than 4 hours in a 24-hour period. (This reporting requirement is in addition to the requirement to notify the state fire marshal.)

NOTE: Additional reporting requirements are created by other rules and statutes, including but not limited to Iowa Code chapters 235B and 235E, which require reporting of dependent adult abuse.

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

**481—67.5(231B,231C,231D) Medications.** Each program shall follow its own written medication policy, which shall include the following:

**67.5(1)** The program shall not prohibit a tenant from self-administering medications.

**67.5(2)** A tenant shall self-administer medications unless:

*a.* The tenant or the tenant's legal representative delegates in the occupancy agreement or signed service plan any portion of medication setup to the program.

*b.* The tenant delegates medication setup to someone other than the program.

*c.* The program assumes partial control of medication setup at the direction of the tenant. The medication plan shall not be implemented by the program unless the program's registered nurse deems it appropriate under applicable requirements, including those in 655—Chapter 6 governing nurse delegation. The program's registered nurse must agree to the medication plan.

**67.5(3)** A tenant shall keep medications in the tenant's possession unless the tenant or the tenant's legal representative, if applicable, delegates in the occupancy agreement or signed service plan partial or complete control of medications to the program. The service plan shall include the tenant's choice related to storage.

**67.5(4)** When a tenant has delegated medication administration to the program, the program shall maintain a list of the tenant's medications. If the tenant self-administers medications, the tenant may choose to maintain a list of medications in the tenant's apartment or to disclose a current list of medications to the program for the purpose of emergency response. If the tenant discloses a medication list to the program in case of an emergency, the tenant remains responsible for the accuracy of the list.

**67.5(5)** When medication setup is delegated to the program by the tenant, staff via nurse delegation may transfer medications from the original prescription containers or unit dosing into medication reminder boxes or medication cups.

**67.5(6)** When medications are administered traditionally by the program:

*a.* The administration of medications shall be provided by a registered nurse, licensed practical nurse or advanced registered nurse practitioner registered in Iowa or by unlicensed assistive personnel in accordance with requirements in 655—Chapter 6 governing nurse delegation.

*b.* Medications shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.

*c.* The program shall maintain a list of each tenant's medications and document the medications administered.

**67.5(7)** Narcotics protocol shall be determined by the program's registered nurse.

**481—67.6(231B,231C,231D) Another business or activity located in a program.**

**67.6(1)** A business or activity serving persons other than tenants of a program is allowed in a designated part of the physical structure in which the program is located if the other business or activity meets the requirements of applicable state and federal codes, administrative rules, and federal regulations.

**67.6(2)** A business or activity conducted in the designated part of the physical structure in which the program is located shall not interfere with the use of the program by tenants or with services provided to tenants or disturb tenants.

**67.6(3)** A business or activity conducted in the designated part of the physical structure in which the program is located shall not reduce access, space, services, or staff available to tenants or necessary to meet the needs of tenants.

**481—67.7(231B,231C,231D) Waiver of criteria for retention of a tenant in the program.**

**67.7(1)** *Time-limited waiver.* Upon receipt of a program's request for waiver of the criteria for retention of a tenant, the department may grant a waiver of the criteria under applicable requirements for a time-limited basis. Absent extenuating circumstances, a waiver of the criteria for retention of a tenant is limited to a period of six months or less.

**67.7(2)** *Waiver petition procedures.* The following procedures shall be used to request and to receive approval of a waiver from criteria for the retention of a tenant:

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

*a.* A program shall submit the waiver request on a form and in a manner designated by the department as soon as it becomes apparent that a tenant exceeds retention criteria pursuant to an evaluation by a health care or human service professional.

*b.* The department shall respond in writing to a waiver request within 15 working days of receipt of all required documentation. In consultation with the program, the department may take an additional 15 working days to report its determination regarding the waiver request.

*c.* The program shall provide to the department within 5 working days written notification of any changes in the condition of the tenant as described in the approved waiver request.

**67.7(3)** *Factors for consideration for waiver of criteria for retention of a tenant.* In addition to the criteria established in Iowa Code subsection 17A.9A(2), the following factors may be demonstrative in determining whether the criteria for issuance of a waiver have been met.

*a.* It is the informed choice of the tenant or the tenant's legal representative, if applicable, to remain in the program;

*b.* The program is able to provide the staff necessary to meet the tenant's service needs in addition to the service needs of the other tenants;

*c.* The department shall only issue a waiver if the waiver will not jeopardize the health, safety, security or welfare of the tenant, program staff, or other tenants; and

*d.* The tenant has been diagnosed with a terminal illness and has been admitted to hospice, and the tenant exceeds the criteria for retention and admission for a temporary period of less than six months. A terminal diagnosis means the tenant is within six months of the end of life.

**67.7(4)** *Conditional waiver.* A conditional waiver may be granted contingent upon the department's receipt of additional information or performance of monitoring.

*a.* If a waiver has been in effect for six months, a monitoring shall be conducted to determine whether the tenant meets the criteria to continue on a waiver.

*b.* The department may seek additional information during the period to determine if a waiver should be granted.

**481—67.8(231B,231C,231D) All other waiver requests.** Waiver requests relating to topics other than retention of a tenant in a program shall be filed in accordance with 481—Chapter 6.

**481—67.9(231B,231C,231D) Staffing.**

**67.9(1)** A sufficient number of trained staff shall be available at all times to fully meet tenants' identified needs.

**67.9(2)** All staff shall be able to implement the accident, fire safety, and emergency procedures.

**67.9(3)** Pursuant to Iowa Code section 135C.33, a prospective employee of a program shall have a criminal history check, dependent adult abuse check, and child abuse check performed before the prospective employee begins work. If a prospective employee has a criminal history or an abuse history, the prospective employee shall not be employed by the program unless the department of human services has performed an evaluation and determined that the record does not warrant the employment prohibition. Proof of the preemployment background check shall be maintained in the program's employee file. The program must meet all requirements of Iowa Code section 135C.33 and administrative rules adopted pursuant to Iowa Code section 135C.33.

**67.9(4)** The program shall have training and staffing plans on file and shall maintain documentation of training received by program staff.

**67.9(5)** Any nursing services shall be provided in accordance with Iowa Code chapter 152 and 655—Chapter 6.

**67.9(6)** A staff member shall not be designated as attorney-in-fact, guardian, conservator, or representative payee for a tenant unless the staff member is related to the tenant by blood, marriage, or adoption.

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**481—67.10(17A,231B,231C,231D) Monitoring, plans of correction, and requests for reconsideration.**

**67.10(1) *Frequency of monitoring.*** The department shall monitor a certified program at least once during the program's certification period.

**67.10(2) *Accessibility of records and program areas.*** All records and areas of the program deemed necessary to determine compliance with the applicable requirements for certification shall be accessible to the department for purposes of monitoring.

**67.10(3) *Standard for determining whether a regulatory insufficiency exists.*** The department shall use a preponderance-of-the-evidence standard when determining whether a regulatory insufficiency exists. A preponderance-of-the-evidence standard does not require that the monitor shall have personally witnessed the alleged violation.

**67.10(4) *Preliminary report.*** When a regulatory insufficiency is found, a preliminary report detailing the insufficiency shall be sent by the department to the program within 20 working days. The department shall send the report by certified mail.

**67.10(5) *Plan of correction.*** Within 10 working days following receipt of the preliminary report, the program shall submit a plan of correction to the department.

*a. Contents of plan.* The plan of correction shall include: elements detailing how the program will correct each regulatory insufficiency, what measures will be taken to ensure the problem does not recur, how the program plans to monitor performance to ensure compliance, and any other required information.

*b. Review of plan.* The department shall review the plan of correction within 10 working days. The department may request additional information or suggest revisions to the plan. Once an acceptable plan of correction has been received, the department shall issue a final report within 10 working days and shall determine whether any enforcement action related to the program's continued certification is necessary.

**67.10(6) *Request for reconsideration.*** Within 10 working days of receiving the preliminary report, the program may submit a request for reconsideration in response to a regulatory insufficiency. Regardless of whether a request for reconsideration is submitted, a plan of correction must be submitted.

*a.* The request may include additional information to support the request for reconsideration.

*b.* The department shall review the request for reconsideration and additional information and determine whether to withdraw or modify the regulatory insufficiency.

*c.* The department shall accept a request for reconsideration if the additional information submitted by the program shows by a preponderance of the evidence that the regulatory insufficiency did not exist at the time of the monitoring.

*d.* The department's decision regarding a request for reconsideration shall be reflected in the final report.

**67.10(7) *Final report.*** The final report issued after the plan of correction and request for reconsideration have been considered may be appealed in accordance with the department's appeal procedures in rule 481—67.13(17A,231B,231C,231D). The department shall issue a final report regarding a monitoring whether or not any regulatory insufficiency is found.

**67.10(8) *Monitoring revisit.*** The department may conduct a monitoring revisit to ensure that the plan of correction has been implemented and the regulatory insufficiency has been corrected. A monitoring revisit by the department shall review the program prospectively from the date of the plan of correction to determine compliance.

**481—67.11(231B,231C,231D) Complaint and program-reported incident report investigation procedure.**

**67.11(1) *Complaints.*** The process for filing a complaint is as follows:

*a.* Any person with concerns regarding the operation or service delivery of a program may file a complaint with the Department of Inspections and Appeals, Complaints Unit, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; by use of the complaint

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hotline, 1-877-686-0027; by facsimile sent to (515)281-7106; or through the Web site address: [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do).

*b.* When the nature of the complaint is outside the department's authority, the department shall forward the complaint or refer the complainant to the appropriate investigatory entity.

*c.* The complainant shall include as much of the following information as possible in the complaint: the complainant's name, address and telephone number; the complainant's relationship to the program or tenant; and the reason for the complaint. The complainant's name shall be confidential information and shall not be released by the department. The department shall act on anonymous complaints unless the department determines that the complaint is intended to harass the program. If the department, upon preliminary review, determines that the complaint is intended as harassment or is without reasonable basis, the department may dismiss the complaint.

**67.11(2)** *Program-reported incident reports.* When the program is required pursuant to applicable requirements to report an incident, the program shall make the report to the department via:

*a.* The Web-based reporting tool accessible from the following Internet site, [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do), under the "Complaints" tab;

*b.* Mail by sending the complaint to the Department of Inspections and Appeals, Complaints Unit, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083;

*c.* The complaint hotline, 1-877-686-0027; or

*d.* Facsimile sent to (515)281-7106.

**67.11(3)** *Time frames for investigation of complaints or program-reported incident reports.* Upon receipt of a complaint or program-reported incident report made in accordance with this rule, the department shall conduct a preliminary review of the complaint or report to determine if a potential regulatory insufficiency has occurred. If a potential regulatory insufficiency exists, the department shall institute a monitoring of the program within 20 working days unless there is the possibility of immediate danger, in which case the department shall institute a monitoring of the program within 2 working days of receipt of the complaint or incident report.

**67.11(4)** *Standard for determining whether a complaint is substantiated.* The department shall apply a preponderance-of-the-evidence standard in determining whether or not a complaint or program-reported incident report is substantiated.

**67.11(5)** *Notification of program and complainant.* The department shall notify the program and, if known, the complainant of the final report regarding the complaint investigation. The department and the program shall follow the procedures outlined in subrules 67.10(2) through 67.10(7).

**67.11(6)** *Notification of accrediting entity.* In addition, for any credible report of alleged improper or inappropriate conduct or conditions within an accredited program, the department shall notify the accrediting entity by the most expeditious means possible of any actions taken by the department with respect to certification enforcement.

**67.11(7)** *Notification of complainant when complaint not investigated.* The department shall notify the complainant, if known, if the department does not investigate a complaint. The reasons for not investigating the complaint shall be included in the notification.

**481—67.12(17A,231B,231C,231D) Enforcement action.** In all cases, if a regulatory insufficiency has been identified, the program shall comply with the plan of correction requirements in subrule 67.10(5). In addition, the department may take enforcement actions pursuant to this rule as a result of the program's noncompliance with applicable requirements.

**67.12(1)** *Types of enforcement action.* The department's enforcement action may include: denial, suspension, or revocation of a certification; issuance of a conditional certification and the placement of conditions upon a certificate such as requiring additional training; restriction of the program from accepting additional tenants for a period of time; or any other action or combination of actions deemed appropriate by the department.

**67.12(2)** *Conditional certification.* In lieu of denial, suspension or revocation of a certificate, the department may issue a conditional certification for a period of up to one year. A conditional certificate

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shall be issued only when regulatory insufficiencies pose no greater risk to tenant health or safety than the potential for causing minimal harm.

- a. The department shall specify the regulatory insufficiency in the notice of enforcement action.
- b. The department shall notify the tenant advocate when a conditional certificate is issued and when a conditional certification is lifted.
- c. During the period of a conditional certification, the department shall conduct a monitoring to verify compliance prior to making the final certification decision.
- d. The department shall issue reports pursuant to rule 481—67.10(17A,231B,231C,231D).
- e. Failure by the program to adhere to the plan of correction may result in suspension or revocation of the conditional certification and may result in further enforcement action as available under applicable requirements.
- f. A program must be in substantial compliance with applicable requirements before the removal of a conditional certificate by the department. Once the program is in substantial compliance with applicable requirements, the department shall lift the conditional certificate.

**67.12(3) Civil penalties.**

a. *When civil penalties may be issued.* Civil penalties may be issued when the director finds that any of the following has occurred:

(1) Noncompliance results in imminent danger or substantial probability of resultant death or physical harm. A program that is in noncompliance with applicable requirements and the noncompliance results in imminent danger or a substantial probability of resultant death or physical harm to a tenant may be assessed a civil penalty of not more than \$10,000.

(2) A program has failed to comply, and the noncompliance has a direct relationship to the health, safety, or security of tenants. Following receipt of a final report from the department, a program which continues to fail or refuses to comply with applicable requirements within prescribed time frames established by the department or approved by the department in the program's plan of correction and the noncompliance has a direct relationship to the health, safety, or security of tenants may be assessed a civil penalty of not more than \$5,000.

(3) The program prevents or interferes with enforcement. A program that prevents, interferes with or attempts to impede in any way any duly authorized representative of the department in the lawful enforcement of applicable requirements may be assessed a civil penalty of not more than \$1,000.

b. *Factors in determining the amount of a civil penalty.* The department shall consider the following factors when determining the amount of a civil penalty:

(1) The frequency and length of time the regulatory insufficiency occurred (i.e., whether the regulatory insufficiency was an isolated or a widespread occurrence, practice, or condition);

(2) The past history of the program as it relates to the nature of the regulatory insufficiency (the department shall not consider more than the current certification period and the immediate previous certification period);

(3) The culpability of the program as it relates to the reasons the regulatory insufficiency occurred;

(4) The extent of any harm to the tenants or the effect on the health, safety, or security of the tenants which resulted from the regulatory insufficiency;

(5) The relationship of the regulatory insufficiency to any other types of regulatory insufficiencies which have occurred in the program;

(6) The actions of the program after the occurrence of the regulatory insufficiency, including when corrective measures, if any, were implemented and whether the program notified the director as required;

(7) The accuracy and extent of records kept by the program which relate to the regulatory insufficiency, and the availability of such records to the department;

(8) The rights of tenants to make informed decisions;

(9) Whether the program made a good-faith effort to address a high-risk tenant's specific needs and whether the evidence substantiates this effort.

c. *Civil penalties due.* The department may assess a civil penalty, which shall be paid to the department within 30 days following the program's receipt of the final notice of the enforcement action. The program may appeal the decision in accordance with rule 481—67.13(17A,231B,231C,231D).

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

*d. Automatic reduction of civil penalty if paid timely and no hearing is requested or request for hearing is withdrawn.* If a program has been assessed a civil penalty, does not request a formal hearing pursuant to rule 481—67.13(17A,231B,231C,231D) or has withdrawn the request for a formal hearing within 30 days of the notice or service, and the civil penalty is paid within 30 days of receipt of notice or service, the amount of the civil penalty shall be reduced by 35 percent. The notice of civil penalty shall include a statement to this effect.

*e. Suspension of civil penalty pending hearing.* If the program appeals the civil penalty, the civil penalty shall be deemed suspended until a final agency decision is reached in accordance with rule 481—67.13(17A,231B,231C,231D) and 481—Chapter 10.

*f. Duplicate penalties prohibited.* The department shall not impose duplicate civil penalties on a program for the same set of facts and circumstances.

**67.12(4) Immediate suspension of certificate.** When the department finds that an imminent danger to the health or safety of tenants of a program exists which requires action on an emergency basis, the department may direct removal of all tenants from the program and suspend the certificate or require additional remedies to ensure the ongoing safety of the program's tenants prior to a hearing.

**67.12(5) Immediate imposition of enforcement action.** When the department finds that an imminent danger to the health or safety of tenants exists which requires action on an emergency basis, the department may immediately impose a conditional certificate and accompanying conditions upon the program in lieu of immediate suspension of the certificate and removal of the tenants from the program if the department finds that tenants' health and safety would still be protected. The program may request a hearing pursuant to rule 481—67.13(17A,231B,231C,231D) on the immediate enforcement action, but the immediate enforcement action remains in effect regardless of the request for hearing.

**481—67.13(17A,231B,231C,231D) Notice, hearings, and appeals.**

**67.13(1)** Effective date and status of enforcement action if a hearing is requested. An enforcement action described in rule 481—67.12(17A,231B,231C,231D) shall be effected by delivery of a notice of enforcement action setting forth the particular reasons for such action to the applicant or certificate holder by restricted certified mail, return receipt requested, or by personal service. The enforcement action shall become effective 30 days after the mailing or service of the notice unless the applicant or certificate holder, within such 30-day period, gives the department written notice requesting a hearing, in which case the notice shall be deemed to be suspended. If, however, an enforcement action has been implemented immediately in accordance with subrule 67.12(4) or 67.12(5), the enforcement action remains in effect regardless of a request for hearing.

**67.13(2)** Final report containing a finding of a regulatory insufficiency. A final report issued pursuant to rule 481—67.10(17A,231B,231C,231D) shall be delivered to the applicant or certificate holder by restricted certified mail, return receipt requested, or by personal service. If a regulatory insufficiency is noted, the final report shall include particular reasons for the finding that a regulatory insufficiency exists.

**67.13(3)** Hearings shall be conducted by the administrative hearings division of the department pursuant to Iowa Code chapter 17A and 481—Chapter 10.

**67.13(4)** At any time during or prior to a hearing, the department may rescind or modify the notice of enforcement action or final report.

**67.13(5)** Appeals. All appeals authorized under applicable requirements shall be conducted pursuant to 481—Chapter 10.

**481—67.14(17A,231B,231C,231D) Judicial review.** Procedures for judicial review shall be conducted pursuant to 481—Chapter 10.

**481—67.15(17A,231C,231D) Emergency removal of tenants.** If the department determines that the health or safety of tenants is in jeopardy and the tenants need to be removed from the program, the department shall use the following procedures to ensure a safe and orderly transfer.

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**67.15(1)** The department shall notify the department of human services, the tenant advocate, the appropriate area agency on aging, and other agencies as necessary and appropriate:

- a. To alert them to the need to transfer tenants from a program;
- b. To request assistance in identifying alternative programs or other appropriate settings; and
- c. To contact the tenants and their legal representatives or family members, if applicable, and others as appropriate, including health care professionals.

**67.15(2)** The department shall notify the program of the immediate need to transfer tenants and of any assistance available, in coordination with the appropriate parties under subrule 67.15(1).

**67.15(3)** The department, in conjunction with other agencies as necessary and appropriate, shall proceed with the transfer of tenants.

**481—67.16(231C) Nursing assistant work credit.**

**67.16(1)** A person who is certified as a nursing assistant, including a medication aide, and who is supervised by a registered nurse may submit information to the department to obtain credit toward maintaining certification for working in a program. A program may add an employee to the direct care worker registry by calling (515)281-4077 or by registering through the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do), under the “Documents” tab.

**67.16(2)** A program shall complete and submit to the department a direct care worker registry application for each certified nursing assistant who works in the program. A registered nurse employed by the program shall supervise the nursing assistant. The application may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do), under the “Documents” tab.

**67.16(3)** A program shall complete and submit to the department a direct care worker registry quarterly employment report whenever a change in the employment of a certified nursing assistant occurs. The report form may be obtained by telephone at (515)281-4077 or via the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do), under the “Documents” tab.

**481—67.17(231B,231C,231D) Public or confidential information.**

**67.17(1) Public information.**

a. *Public disclosure of findings.* The program shall post a notice stating that copies of the final report resulting from a monitoring are available via the department’s Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do). The program shall post the notice in a prominent location on the premises of the program. Copies shall also be available upon request from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0083; telephone (515)281-6325.

b. *Open records.* The following records are open records available for inspection:

- (1) Certification applications, certification status, and accompanying materials;
- (2) Final findings of state monitorings, including a monitoring that results from a complaint or program-reported incident;
- (3) Reports from the state fire marshal;
- (4) Plans of correction submitted by a program;
- (5) Official notices of certification sanctions, including enforcement actions;
- (6) Findings of fact, conclusions of law, decisions and orders issued pursuant to rules 481—67.10(17A,231B,231C,231D), 481—67.12(17A,231B,231C,231D), and 481—67.13(17A,231B,231C,231D);
- (7) Waivers, including the department’s approval and denial letter and any letter requesting the waiver.

**67.17(2) Confidential information.** Confidential information includes the following:

a. Information that does not comprise a final report resulting from a monitoring, complaint investigation, or program-reported incident investigation. Information which does not comprise a final report may be made public in a legal proceeding concerning a denial, suspension or revocation of certification;

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

- b. Names of all complainants;
- c. Names of tenants of a program, identifying medical information, copies of documentation appointing a legal representative, and the address of anyone other than an owner or operator; and
- d. Social security numbers or employer identification numbers (EIN).

**67.17(3) Redaction of confidential information.** If a record normally open for inspection contains confidential information, the confidential information shall be redacted before the records are provided for inspection.

**481—67.18(231B,231C,231D) Training related to Alzheimer’s disease and similar forms of irreversible dementia.** Effective July 1, 2010, or when administrative rules are adopted pursuant to Iowa Code section 231.62, whichever is later, all programs shall comply with the requirements set forth in administrative rule to implement Iowa Code section 231.62 for Alzheimer’s disease and dementia education.

These rules are intended to implement Iowa Code chapters 231B, 231C and 231D.

[Filed 9/3/09, effective 1/1/10]

[Published 9/23/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/23/09.

**ARC 8175B**

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 231B.2, the Department of Inspections and Appeals hereby adopts new Chapter 68, “Elder Group Homes,” Iowa Administrative Code.

These rules are adopted pursuant to 2007 Iowa Acts, Senate File 601, which transferred the regulatory authority for elder group homes, assisted living programs, and adult day services from the Department of Elder Affairs to the Department of Inspections and Appeals. Since that time, the Department has been working with stakeholder groups to develop new Chapter 68. The work with stakeholder groups included a conference call in which all elder group homes were invited to participate. In addition, new Chapter 67, which contains general provisions for elder group homes, assisted living programs, and adult day services, is also Adopted and Filed herein as **ARC 8174B**. The rules in Chapter 68, however, relate specifically to elder group homes and will supersede the Department of Elder Affairs’ (now the Department on Aging) current chapter on elder group homes, 321—Chapter 29.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7960B** on July 15, 2009.

Comments were generally positive. Several clarifications have been added to the adopted chapter to address comments. Several commenters also suggested items that would require statutory authority to implement, such as allowing aging in place in elder group homes.

The following changes have been incorporated into the chapter as the result of comments:

- The definition for “medically unstable” was clarified at the request of several commenters;
- Requirements for copies of the occupancy agreement were included, as suggested by a consumer group;
- Clarification was made as to when the Global Deterioration Scale should be used, as suggested by two industry groups;
- The criteria for admission and retention were clarified to specify that in order to use unmanageable incontinence as a reason not to admit or retain, the program must have attempted an individualized toileting plan;
- Requirements for involuntary discharge were modified to specify that the tenant’s treating physician shall be provided notice, as suggested by the Iowa AARP.

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

- The term “anecdotal notes” was changed to “nurses’ notes” at the suggestion of several commenters.
- A change was made to clarify that incident reports must be maintained but do not need to be maintained in a tenant’s clinical record, in response to several commenters;
- A change was made to require a program to inquire as to the tenant’s nursing facility preference, if any, while completing the service plan, as suggested by consumer group; and
- Cessation requirements were clarified.

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

These rules will become effective January 1, 2010.

The following amendment is adopted.

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

CHAPTER 68  
ELDER GROUP HOMES

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

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

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

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

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

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

“*In the proximate area*” means located within a five minutes or less response time.

“*Maximal assistance with activities of daily living*” means routine total dependence on staff for the performance of a minimum of four activities of daily living for a period that exceeds 21 days.

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

1. Indicating physiological frailty as determined by the program’s staff in consultation with a physician or physician extender;
2. Resulting in two or more significant hospitalizations within a consecutive three-month period for more than observation; and
3. Requiring supervision by a registered nurse more than once a week of the tenant for more than 21 days.

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

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

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

“*Program*” means an elder group home.

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

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

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

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

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

**68.2(2) Posting requirements.** A program’s current certificate shall be visibly displayed within the designated operation area of the program. In addition, the latest monitoring report, state fire marshal report, and food establishment inspections report issued pursuant to Iowa Code chapter 137F shall be made available to the public by the program upon request.

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

**68.3(1)** The applicant shall complete an application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do); by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

**68.3(2)** The applicant shall submit one copy of the completed application and all supporting documentation to the department at the above address at least 90 calendar days prior to the expected date of beginning operation.

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

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

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

**68.4(1)** A list that includes the names, addresses, and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the change.

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

**68.4(3)** A statement disclosing whether any of the individuals listed in subrule 68.4(1) have or have had an ownership interest in an assisted living program, adult day services program, elder group home, home health agency, licensed health care facility as defined in Iowa Code section 135C.1 or licensed hospital as defined in Iowa Code section 135B.1, or a boarding home as defined in 2009 Iowa Acts, Senate File 484, section 3 (to be codified as Iowa Code Supplement section 135O.1), which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

**68.4(4)** The policy and procedure for evaluation of each tenant. A copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each tenant shall be included.

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

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

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

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

**68.4(9)** The policy and procedure for transportation.

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

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**68.4(11)** The policy and procedure for emergencies, including natural disasters. The policy and procedure shall include an evacuation plan and procedures for notifying legal representatives in emergency situations as applicable.

**68.4(12)** The policy and procedure for managing risk and upholding tenant autonomy when tenant decision making results in poor outcomes for the tenant or others.

**68.4(13)** The policy and procedure for reporting incidents including dependent adult abuse as required in rule 481—67.2(231B,231C,231D).

**68.4(14)** The tenant occupancy agreement and all attachments.

**68.4(15)** If the program contracts for personal care or health-related care services from a certified home health agency, a mental health center or a licensed health care facility, a copy of that entity's current license or certification.

**68.4(16)** A copy of the state license for the entity that provides food service, whether the entity is the program or an outside entity or a combination of both.

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

**481—68.5(231B) Initial certification process.**

**68.5(1)** Upon receipt of all completed documentation, including state fire marshal approval and structural and evacuation review approval, the department shall determine whether or not the proposed program meets applicable requirements.

**68.5(2)** If, based upon the review of the complete application including all required supporting documents, the department determines the proposed program meets the requirements for certification, a provisional certification shall be issued to the program to begin operation and accept tenants.

**68.5(3)** Within 180 calendar days following issuance of provisional certification, the department shall conduct a monitoring to determine the program's compliance with applicable requirements.

**68.5(4)** If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

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

**68.5(6)** The department shall notify the program of a final certification decision within 10 working days following the finalization of the monitoring report or receipt of an acceptable plan of correction, whichever is applicable.

**68.5(7)** If the decision is to continue certification, the department shall issue a full two-year certification effective from the date of the original provisional certification.

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

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

**68.6(2)** The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.

**481—68.7(231B) Recertification process.** To obtain recertification, a program shall:

**68.7(1)** Submit one copy of the completed application, including the information required in rule 481—68.4(231B), associated documentation, and the recertification fee as listed in Iowa Code section 231B.17 to the department at the address stated in subrule 68.3(1) at least 90 calendar days prior to the expiration of the program's certification. The program need not submit policies and procedures that have been previously submitted to the department and remain unchanged. The program shall provide a list of the policies and procedures that have been previously submitted and are not being resubmitted.

**68.7(2)** Submit additional documentation that each of the following has been inspected and found to be maintained in conformance with the manufacturer's recommendations and nationally recognized standards: heating system, cooling system, water heater, electrical system, plumbing, sewage system, artificial lighting, and ventilation system; and, if located on site, garbage disposal, kitchen appliances, washing machines and dryers, and elevators.

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**481—68.8(231B) Notification of recertification.**

**68.8(1)** The department shall review the application and associated documentation and fees. If the application is incomplete, the department shall contact the program to request the additional information. After all finalized documentation is received, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements.

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

**68.8(3)** If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

**68.8(4)** If no regulatory insufficiency is identified as a result of the monitoring, the department shall issue a report of the findings with the final recertification decision.

**68.8(5)** If the decision is to recertify, the department shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

**68.8(6)** If the decision is to deny recertification, the department shall issue a notice of denial and provide the program the opportunity for a hearing pursuant to rule 481—67.13(17A,231B,231C,231D).

**68.8(7)** If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

**481—68.9(231B) Listing of all certified programs.** The department shall maintain a list of all certified programs, which is available online at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do), under the "Entities Book" tab.

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

**68.10(1)** Certification, unless conditionally issued, suspended or revoked, may be transferable to a new owner of a program. If the program's certification has been conditionally issued, the new owner must receive approval from the department prior to transfer of the certification.

**68.10(2)** The new owner is required to notify the department in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all applicable requirements for programs.

**68.10(3)** The department may conduct a monitoring within 90 days following a change in the program's ownership or management corporation to ensure that the program complies with applicable requirements. If a regulatory insufficiency is found, the department shall take any necessary enforcement action authorized by applicable requirements.

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

**68.11(1)** If a certified program ceases operation, which includes seeking decertification, at any time prior to expiration of the program's certification, the program shall submit the certificate to the department. The program shall provide, at least 90 days in advance of cessation, which includes seeking decertification, unless there is some type of emergency, written notification to the department and the tenant advocate of the date on which the program will cease operation, which includes seeking decertification.

**68.11(2)** If a certified program plans to cease operation, which includes seeking decertification, at the time the program's certification expires, the program shall provide written notice of this fact to the department and the tenant advocate at least 90 days prior to expiration of the certification.

**68.11(3)** At the time a program decides to cease operation, which includes seeking decertification, the program shall submit a plan to the department and make arrangements for the safe and orderly transfer or transition of all tenants within the 90-day period specified by subrule 68.11(2).

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

**68.11(5)** The department may conduct an on-site visit to verify that the program has ceased operation as a certified program in accordance with the notice provided by the program.

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**68.11(6)** When a program ceases operation, which includes seeking decertification, tenant advocates shall be allowed by the program to privately meet with tenants to provide education and service options.

**481—68.12(231B) Occupancy agreement.**

**68.12(1)** The occupancy agreement shall be in 12-point type or larger, shall be written in plain language using commonly understood terms and shall be easy for the tenant or the tenant's legal representative to understand.

**68.12(2)** In addition to the requirements of Iowa Code section 231B.5, the written occupancy agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

- a. The telephone number for filing a complaint with the department.
- b. The telephone number for the office of the tenant advocate.
- c. The telephone number for reporting dependent adult abuse.
- d. A copy of the program's statement on tenants' rights.
- e. A statement that the program will notify the tenant at least 90 days in advance of any planned program cessation, which includes voluntary decertification, except in cases of emergency.
- f. A copy of the program's admission and transfer criteria.

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

**68.12(4)** A copy of the occupancy agreement shall be provided to the tenant or the tenant's legal representative, if any, and a copy shall be kept by the program.

**68.12(5)** A copy of the most current occupancy agreement shall be made available to the general public upon request. The basic marketing material shall include a statement that a copy of the occupancy agreement is available to all persons upon request.

**481—68.13(231B) Evaluation of tenant.**

**68.13(1)** *Evaluation prior to occupancy.* A program shall evaluate each prospective tenant's functional, cognitive and health status prior to the tenant's signing the occupancy agreement and becoming a household occupant to determine the tenant's eligibility for the program, including whether the services needed are available. The cognitive evaluation shall utilize a scored, objective tool. When the score from the cognitive evaluation indicates moderate cognitive decline and risk, the Global Deterioration Scale shall be used at all subsequent intervals, if applicable. If the tenant subsequently returns to the tenant's mildly cognitively impaired state, the program may discontinue the GDS and revert to a scored cognitive screening tool. The evaluation shall be conducted by a health care professional or human service professional.

**68.13(2)** *Evaluation within 30 days of occupancy and with significant change.* A program shall evaluate each tenant's functional, cognitive and health status within 30 days of occupancy. A program shall also evaluate each tenant's functional, cognitive and health status as needed with significant change, but not less than annually, to determine the tenant's continued eligibility for the program and to determine any changes to services needed. The evaluation shall be conducted by a health care professional or human service professional. A licensed practical nurse may complete the evaluation via nurse delegation when the tenant has not exhibited a significant change.

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

**68.14(1)** *Persons who may not be admitted or retained.* A program shall not knowingly admit or retain a tenant who:

- a. Is bed-bound; or
- b. Requires routine, one-person assistance with standing, transfer or evacuation; or
- c. Is dangerous to self or other tenants or staff, including but not limited to a tenant who:
  - (1) Despite intervention chronically elopes, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or
  - (2) Displays behavior that places another tenant at risk; or

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- d.* Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
  - e.* Is under the age of 18; or
  - f.* Requires more than part-time or intermittent health-related care; or
  - g.* Has unmanageable incontinence on a routine basis despite an individualized toileting program;
- or
- h.* Is medically unstable; or
  - i.* Requires maximal assistance with activities of daily living; or
  - j.* Is physically or mentally unable to immediately and without aid of another travel a normal path to safety, including the ascent and descent of stairs from the tenant's bedroom or bathroom.

**68.14(2)** *Disclosure of additional occupancy and transfer criteria.* A program may have additional occupancy or transfer criteria if the criteria are disclosed in the written occupancy agreement prior to the tenant's occupancy.

**68.14(3)** *Assistance with transfer from the program.* A program shall provide assistance to a tenant and the tenant's legal representative, if applicable, to ensure a safe and orderly transfer from the program when the tenant exceeds the program's criteria for admission and retention.

**481—68.15(231B) Involuntary transfer from the program.**

**68.15(1)** *Program initiation of transfer.* If a program initiates the involuntary transfer of a tenant and the action is not the result of a monitoring, including a complaint investigation or program-reported incident investigation, by the department and if the tenant or tenant's legal representative contests the transfer, the following procedures shall apply:

*a.* The program shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer the tenant and of the reason for the transfer and shall include the contact information for the tenant advocate.

*b.* The program shall immediately provide to the tenant advocate, by certified mail, a copy of the notification and notify the tenant's treating physician, if any.

*c.* Pursuant to statute, the tenant advocate shall offer the notified tenant or tenant's legal representative assistance with the program's internal appeal process. The tenant or tenant's legal representative is not required to accept the assistance of the tenant advocate.

*d.* If, following the internal appeal process, the program upholds the transfer decision, the tenant or tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

**68.15(2)** *Transfer pursuant to results of monitoring or complaint or program-reported incident investigation by the department.* If one or more tenants are identified as exceeding the admission and retention criteria for tenants and need to be transferred as a result of a monitoring or a complaint or program-reported incident investigation conducted by the department, the following procedures shall apply:

*a.* *Notification of the program.* Within 20 working days of the monitoring or complaint or program-reported incident investigation, the department shall notify the program, in writing, of the identification of any tenant who exceeds admission and retention criteria.

*b.* *Notification of others.* Each identified tenant, the tenant's legal representative, if applicable, and other providers of services to the tenant shall be notified of their opportunity to provide responses including: specific input, written comment, information, and documentation directly addressing any agreement or disagreement with the identification. All responses shall be provided to the department within 10 days of receipt of the notice.

*c.* *Program agreement with the department's finding.* If the program agrees with the department's finding and the program begins involuntary transfer proceedings, the program's internal appeal process in subrule 68.15(1) shall be utilized for appeals.

*d.* *Program disagreement with the department's finding.* If the program does not agree with the department's finding that the tenant exceeds admission and retention criteria, the program may collect and submit all responses to the department, including those from other interested parties. In the program's response, the program shall identify the tenant, list the known responses from others, and note the program's agreement or disagreement with the responses from others. The program's response shall

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be submitted to the department within 10 working days of the receipt of the notice. Submission of a response does not eliminate the applicable requirements including submission of a plan of correction under 481—subrule 67.10(5). Other persons may also submit information directly to the department.

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

(2) Amending the regulatory insufficiency. If the department's determination is to amend the regulatory insufficiency based on the response, the department shall modify the report of findings.

(3) Retaining regulatory insufficiency. If the department retains the regulatory insufficiency, the department shall review the plan of correction in accordance with this chapter and 481—Chapter 67. The department shall notify the program of the opportunity to appeal the report findings as they relate to the admission and retention decision. In addition, the department shall provide to the tenant or the tenant's legal representative the contact information for the tenant advocate. A copy of the final report shall also be sent to the tenant advocate.

(4) Effect of the filing of an appeal. If an appeal is filed, the tenant who exceeds admission and retention criteria shall be allowed to continue living in the EGH until all administrative appeals have been exhausted. Appeals filed that relate to the tenant's exceeding admission and retention criteria shall be heard within 30 days of receipt, and appropriate services to meet the tenant's needs shall be provided during that period of time.

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

**481—68.16(231B) Tenant documents.**

**68.16(1)** Documentation for each tenant shall be maintained by the program and shall include:

- a.* An occupancy record including the tenant's name, birth date, and home address; identification numbers; date of beginning participation; name, address and telephone number of health professional(s); diagnosis; and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;
- b.* Application forms;
- c.* The initial evaluations and updates;
- d.* A nutritional assessment as necessary;
- e.* The initial individual service plan and updates;
- f.* Signed authorizations for permission to release medical information, photographs, or other media information as necessary;
- g.* A signed authorization for the tenant to receive emergency medical care as necessary;
- h.* A signed managed risk policy and signed managed risk consensus agreements, if any;
- i.* When any personal or health-related care is delegated to the program, the medical information sheet; documentation of health professionals' orders, such as those for treatment, therapy, and medication; and nurses' notes written by exception;
- j.* Medication lists, which shall be maintained in conformance with 481—subrule 67.5(4);
- k.* Advance health care directives as applicable;
- l.* A complete copy of the tenant's occupancy agreement, including any updates;
- m.* A written acknowledgment that the tenant or the tenant's legal representative, if applicable, has been fully informed of the tenant's rights;
- n.* A copy of guardianship, durable power of attorney for health care, power of attorney, or conservatorship or other documentation of a legal representative;
- o.* Incident reports involving the tenant, including but not limited to those related to medication errors, accidents, falls, and elopements (such reports shall be maintained by the program but need not be included in the tenant's medical record);
- p.* A copy of waivers of admission or retention criteria, if any;

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*q.* When the tenant is unable to advocate on the tenant's own behalf or the tenant has multiple service providers, including hospice care providers, accurate documentation of the completion of routine personal or health-related care is required on task sheets. If tasks are doctor-ordered, the tasks shall be part of the medication administration records (MARs); and

*r.* Authorizations for the release of information, if any.

**68.16(2)** The program records relating to a tenant shall be retained for a minimum of three years after the transfer or death of the tenant.

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

**481—68.17(231B) Service plans.**

**68.17(1)** A service plan shall be developed for each tenant based on the evaluations conducted in accordance with subrules 68.13(1) and 68.13(2) and shall be designed to meet the specific service needs of the individual tenant. The service plan shall subsequently be updated at least annually and whenever changes are needed.

**68.17(2)** Prior to the tenant's signing the occupancy agreement and becoming a household occupant, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the tenant and, at the tenant's request, with other individuals identified by the tenant, and, if applicable, with the tenant's legal representative. All persons who develop the plan and the tenant or the tenant's legal representative shall sign the plan.

**68.17(3)** When a tenant needs personal care or health-related care, the service plan shall be updated within 30 days of the tenant's occupancy and as needed with significant change, but not less than annually.

*a.* If a significant change triggers the review and update of the service plan, the updated service plan shall be signed and dated by all parties.

*b.* If a significant change does not exist, the program may, after nurse review, add minor discretionary changes to the service plan without a comprehensive evaluation and without obtaining signatures on the service plan.

*c.* If a significant change relates to a recurring or chronic condition, a previous evaluation and service plan of the recurring condition may be utilized without new signatures being obtained. For example, with chronic exacerbation of a urinary tract infection, nurse review is adequate to institute the previously written evaluation and service plan.

**68.17(4)** The service plan shall be individualized and shall indicate, at a minimum:

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

*b.* Any services and care to be provided pursuant to the occupancy agreement;

*c.* The service provider(s), if other than the program, including but not limited to providers of hospice care, home health care, occupational therapy, and physical therapy; and

*d.* Preferences, if any, of the tenant or the tenant's legal representative for nursing facility care, if the need for nursing facility care presents itself during the elder group home occupancy.

**481—68.18(231B) Nurse review.** If a tenant does not receive personal or health-related care, but an observed significant change in the tenant's condition occurs, a nurse review shall be conducted. If a tenant receives personal or health-related care, the program shall provide for a registered nurse or a licensed practical nurse via nurse delegation:

**68.18(1)** To monitor, at least every 90 days, or after a significant change in the tenant's condition, any tenant who receives program-administered prescription medications for adverse reactions to the medications and to make appropriate interventions or referrals, and to ensure that the prescription medication orders are current and that the prescription medications are administered consistent with such orders; and

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

**68.18(3)** To assess and document the health status of each tenant, to make recommendations and referrals as appropriate, and to monitor progress relating to previous recommendations at least every 90 days and whenever there are changes in the tenant's health status; and

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

NOTE: Refer to Table A at the end of this chapter. If the program does not provide personal or health-related care to a tenant, nurse review is not required.

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

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

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

**68.19(3)** The owner or management corporation of the program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population.

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

**481—68.20(231B) Managed risk policy and managed risk consensus agreements.** The program shall have a managed risk policy. The managed risk policy shall be provided to the tenant along with the occupancy agreement. The managed risk policy shall include the following:

**68.20(1)** An acknowledgment of the shared responsibility for identifying and meeting the needs of the tenant and the process for managing risk and for upholding tenant autonomy when tenant decision making results in poor outcomes for the tenant or others;

**68.20(2)** A consensus-based process to address specific risk situations. Program staff and the tenant shall participate in the process. The result of the consensus-based process may be a managed risk consensus agreement. The managed risk consensus agreement shall include the signature of the tenant and the others who participated in the process. The managed risk consensus agreement shall be included in the tenant's file.

**481—68.21(231B) Transportation.** When transportation services are provided directly or under contract with the program:

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

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

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

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

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

**68.21(6)** The driver shall have a valid and appropriate Iowa driver's license or commercial driver's license as required by law for the vehicle being utilized for transport. If the driver is licensed in another state, the license shall be valid and appropriate for the vehicle being utilized for transport. The driver shall meet any state or federal requirements for licensure or certification for the vehicle operated.

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

**68.22(1)** Within 30 days of a tenant's participation in an elder group home that receives reimbursement through the medical assistance program under Iowa Code chapter 249A, the program shall ask the tenant or the tenant's personal representative whether the tenant is a veteran or whether the tenant is the spouse, widow, or dependent of a veteran and shall document the response.

**68.22(2)** If the program determines that the tenant may be a veteran or the spouse, widow, or dependent of a veteran, the program shall report the tenant's name along with the name of the veteran,

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if applicable, as well as the name of the contact person for this information, to the Iowa department of veterans affairs. When appropriate, the program may also report such information to the Iowa department of human services.

**68.22(3)** If a tenant is eligible for benefits through the U.S. Department of Veterans Affairs or other third-party payor, the program first shall seek reimbursement from the identified payor source before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

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

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

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

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

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

- a. An emergency plan, which shall include procedures for natural disasters (identify where the plan is located for easy reference);
- b. Fire safety procedures;
- c. Other general or personal emergency procedures;
- d. Provisions for amending or revising the emergency plan;
- e. Provisions for periodic training of all employees;
- f. Procedures for fire drills;
- g. Regulations regarding smoking;
- h. Monitoring and testing of smoke-control systems;
- i. Tenant evacuation procedures; and
- j. Procedures for reporting and documentation.

**68.24(2)** The program's structure and procedures and the facility in which a program is located shall meet the requirements adopted for elder group homes in administrative rules promulgated by the state fire marshal. Approval of the state fire marshal indicating that the building is in compliance with these requirements is necessary for certification of a program.

**68.24(3)** The program shall have the means to control the maximum temperature of water at sources accessible by a tenant to prevent scalding and shall control the maximum water temperature for tenants with cognitive impairment or dementia or at a tenant's request.

**481—68.25(231B) Structural standards.**

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

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

- a. *General.*
  - (1) The home, furnishings and fixtures shall be clean, in good repair and appropriate for the tenants.
  - (2) Stairways shall have handrails of a circumference, length, texture, strength and stability that can reasonably be expected to provide tenant support.
  - (3) A functioning light shall be provided in each room, stairway and exit; all light bulbs shall be protected from breakage or removal with appropriate covers.
  - (4) The yard, fire exits and exterior steps shall be kept free of obstructions and shall be accessible and appropriate to the condition of the tenants.

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

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

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

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

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

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

*b. Safety.*

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

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

*c. Sanitation requirements.*

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

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

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

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

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

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

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

(8) There shall be at least one toilet and one sink for every four household occupants. A minimum of one sink and toilet is required on each floor occupied by tenants. A sink shall be located near each toilet. For an EGH constructed or remodeled after July 1, 2005, there shall be at least one toilet and one sink for every two household occupants, with a minimum of one toilet and one sink on each floor occupied by tenants.

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

*d. Bedroom requirements.*

(1) Each tenant bedroom shall:

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

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

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

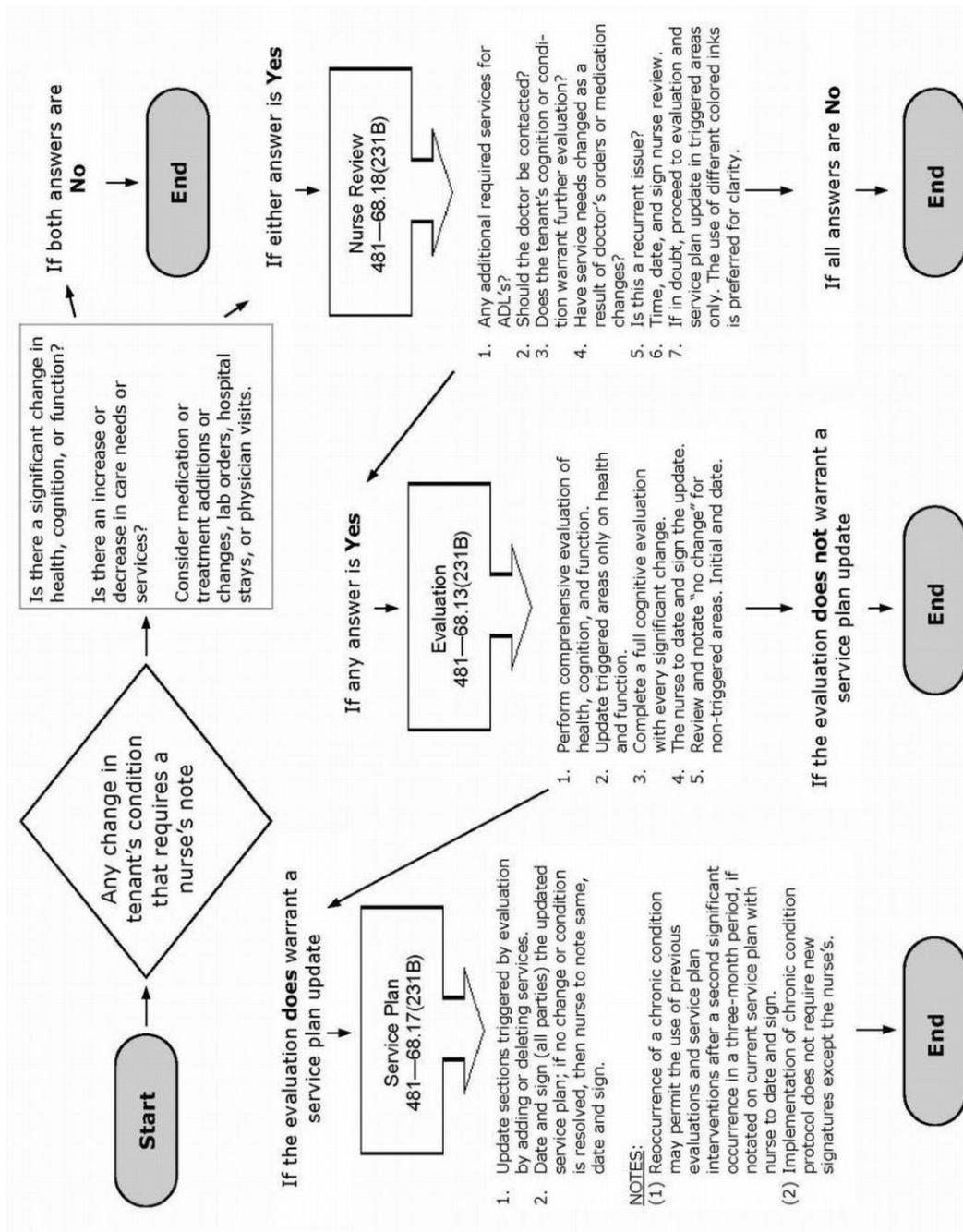
## INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

4. Provide individual privacy and be occupied by one tenant, unless an alternative arrangement is agreed to in the occupancy agreement by the tenant or the tenant's legal representative;
5. Be on ground level for tenants with impaired mobility;
6. Be in sufficiently close proximity to the on-site manager to ensure that tenants are able to alert the on-site manager to nighttime needs or emergencies, or be equipped with a call system.
  - (2) Owners, operators, on-site managers, their family members, and personal care providers shall not use as bedrooms areas that are designated as living areas or as tenant bedrooms;
  - (3) Common living space and tenant bedrooms shall not be used for storage areas.

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

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

Table A



[Filed 9/3/09, effective 1/1/10]

[Published 9/23/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/23/09.

**ARC 8176B**

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 231C.3, the Department of Inspections and Appeals hereby adopts new Chapter 69, "Assisted Living Programs," Iowa Administrative Code.

These rules are adopted pursuant to 2007 Iowa Acts, Senate File 601, which transferred the regulatory authority for elder group homes, assisted living programs, and adult day services from the Department of Elder Affairs to the Department of Inspections and Appeals. Since that time, the Department has been working with stakeholder groups to develop the new chapter. The work with stakeholder groups has included written comments on two draft versions of the proposed rules, collaboration sessions across Iowa with over 200 participants, and presentations on the draft rules to industry groups. The Department is also adopting Chapter 67, "General Provisions for Elder Group Homes, Assisted Living Programs, and Adult Day Services," which is published herein as **ARC 8174B**. The rules in Chapter 69, however, relate specifically to assisted living programs and will supersede the Department of Elder Affairs' (now the Department of Aging) current chapter on assisted living programs, 321—Chapter 25.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7878B** on June 17, 2009.

Comments were generally positive. Several comments suggesting clarification have been incorporated.

The following changes have been incorporated into the chapter as the result of comments:

- The definition for "medically unstable" was clarified at the request of several commenters;
- Requirements for copies of the occupancy agreement were included, as suggested by a consumer group;
- Clarification was made as to when the Global Deterioration Scale should be used, as suggested by two industry groups;
- The criteria for admission and retention were clarified to specify that, in order to use unmanageable incontinence as a reason not to admit or retain, a program must have attempted an individualized toileting plan;
- Requirements for involuntary discharge were modified to specify that the tenant's treating physician shall be provided notice, as suggested by the Iowa AARP;
- The term "anecdotal notes" was changed to "nurses' notes" at the suggestion of several commenters;
- A change was made in response to several commenters to clarify that incident reports must be maintained, but do not need to be maintained in a tenant's clinical record;
- A change was made to require a program to inquire as to the participant's nursing facility preference, if any, while completing the service plan, as suggested by a consumer group;
- A requirement was added to specify that, if a program obtains a new delegating nurse, the nurse must complete at least six hours of training on Iowa's assisted living rules and regulations and, as of January 1, 2011, all programs shall have a minimum of one delegating nurse who has completed such training, as suggested by a consumer group;
- The training requirement for dementia-specific programs was changed to be consistent with 2008 Iowa Acts, Senate File 2341 (Iowa Code section 231.62); and
- Cessation requirements were clarified.

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

These rules will become effective January 1, 2010.

The following amendment is adopted.

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

Adopt the following **new** 481—Chapter 69:

CHAPTER 69  
ASSISTED LIVING PROGRAMS

**481—69.1(231C) Definitions.** In addition to the definitions in 481—Chapter 67 and Iowa Code chapter 231C, the following definitions apply.

“*Accredited*” means that the program has received accreditation from an accreditation entity recognized in subrule 69.14(1).

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

“*Assisted living*” or “*program*” means provision of housing with services, which may include but are not limited to health-related care, personal care, and assistance with instrumental activities of daily living, to three or more tenants in a physical structure which provides a homelike environment. “Assisted living” also includes encouragement of family involvement, tenant self-direction, and tenant participation in decisions that emphasize choice, dignity, privacy, individuality, shared risk, and independence. “Assisted living” includes the provision of housing and assistance with instrumental activities of daily living only if personal care or health-related care is also included. “Assisted living” includes 24 hours per day response staff to meet scheduled and unscheduled or unpredictable needs in a manner that promotes maximum dignity and independence and provides supervision, safety, and security.

“*CARF*” means the Commission on Accreditation of Rehabilitation Facilities.

“*Cognitive disorder*” means a disorder characterized by cognitive dysfunction presumed to be the result of illness that does not meet the criteria for dementia, delirium, or amnesic disorder.

“*Dementia-specific assisted living program*” means an assisted living program certified under this chapter that:

1. Serves fewer than 55 tenants and has 5 or more tenants who have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
2. Serves 55 or more tenants and 10 percent or more of the tenants have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
3. Holds itself out as providing specialized care for persons with dementia, such as Alzheimer’s disease, in a dedicated setting.

“*Dwelling unit*” means an apartment, group of rooms or single room which 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, and which has direct access from the outside of the building or through a common hall.

“*In the proximate area*” means located within a five minutes or less response time.

“*Maximal assistance with activities of daily living*” means routine total dependence on staff for the performance of a minimum of four activities of daily living for a period that exceeds 21 days.

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

1. Indicating physiological frailty as determined by the program’s staff in consultation with a physician or physician extender;
2. Resulting in three or more significant hospitalizations within a consecutive three-month period for more than observation; and
3. Requiring frequent supervision of the tenant for more than 21 days by a registered nurse.

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

“*Nonaccredited*” means that the program has been certified under the provisions of this chapter but has not received accreditation from an accreditation entity recognized in subrule 69.14(1).

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

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

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

**481—69.2(231C) Program certification.** A program may obtain certification by meeting all applicable requirements. In addition, a program may be voluntarily accredited by a recognized accreditation entity. For the purpose of these rules, certification is equivalent to licensure.

**69.2(1) Posting requirements.** A program’s current certificate shall be visibly displayed within the designated operation area of the program. In addition, the latest monitoring report, state fire marshal report, and food establishment inspections report issued pursuant to Iowa Code chapter 137F shall be made available to the public by the program upon request.

**69.2(2) Dementia-specific programs and door alarms.** If a program meets the definition of a dementia-specific assisted living program during two sequential certification monitorings, the program shall meet all requirements for a dementia-specific program, including the requirements set forth in rule 481—69.30(231C), subrules 69.29(2) and 69.29(4), paragraph 69.35(1) “d,” and subrule 69.32(2), which includes the requirements relating to door alarms.

**481—69.3(231C) Certification of a nonaccredited program—application process.**

**69.3(1)** The applicant shall complete an application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do); by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

**69.3(2)** The applicant shall submit one copy of the completed application and all supporting documentation to the department at the above address at least 90 calendar days prior to the expected date of beginning operation.

**69.3(3)** The appropriate fee as stated in Iowa Code section 231C.18 shall accompany each application and be payable by check or money order to the Department of Inspections and Appeals. Fees are nonrefundable.

**69.3(4)** The department shall consider the application when all supporting documents and fees are received.

**481—69.4(231C) Nonaccredited program—application content.** An application for certification or recertification of a nonaccredited program shall include the following:

**69.4(1)** A list that includes the names, addresses, and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the change.

**69.4(2)** A statement affirming that the individuals listed in subrule 69.4(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

**69.4(3)** A statement disclosing whether any of the individuals listed in subrule 69.4(1) have or have had an ownership interest in an assisted living program, adult day services program, elder group home, home health agency, licensed health care facility as defined in Iowa Code section 135C.1 or licensed hospital as defined in Iowa Code section 135B.1, or a boarding home as defined in 2009 Iowa Acts, Senate File 484, section 3 (to be codified as Iowa Code Supplement section 135O.1), which has been closed in any state due to removal of program, agency, or facility licensure, certification, or registration or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

**69.4(4)** The policy and procedure for evaluation of each tenant. A copy of the evaluation tool or tools to be used to identify the functional, cognitive and health status of each tenant shall be included.

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- 69.4(5) The policy and procedure for service plans.
- 69.4(6) The policy and procedure for addressing medication needs of tenants.
- 69.4(7) The policy and procedure for accidents and emergency response.
- 69.4(8) The policies and procedures for food service, including those relating to staffing, nutrition, menu planning, therapeutic diets, and food preparation, service and storage.
- 69.4(9) The policy and procedure for activities.
- 69.4(10) The policy and procedure for transportation.
- 69.4(11) The policy and procedure for staffing and training.
- 69.4(12) The policy and procedure for emergencies, including natural disasters. The policy and procedure shall include an evacuation plan and procedures for notifying legal representatives in emergency situations as applicable.
- 69.4(13) The policy and procedure for managing risk and upholding tenant autonomy when tenant decision making results in poor outcomes for the tenant or others.
- 69.4(14) The policy and procedure for reporting incidents including dependent adult abuse as required in rule 481—67.2(231B,231C,231D).
- 69.4(15) The policy and procedure related to life safety requirements for a dementia-specific program as required by subrule 69.32(2).
- 69.4(16) The tenant occupancy agreement and all attachments.
- 69.4(17) If the program contracts for personal care or health-related care services from a certified home health agency, a mental health center or a licensed health care facility, a copy of that entity's current license or certification.
- 69.4(18) A copy of the state license for the entity that provides food service, whether the entity is the program or an outside entity or a combination of both.
- 69.4(19) The fee set forth in Iowa Code section 231C.18.

**481—69.5(231C) Initial certification process for a nonaccredited program.**

- 69.5(1) Upon receipt of all completed documentation, including state fire marshal approval and structural and evacuation review approval, the department shall determine whether or not the proposed program meets applicable requirements.
- 69.5(2) If, based upon the review of the complete application including all required supporting documents, the department determines the proposed program meets the requirements for certification, a provisional certification shall be issued to the program to begin operation and accept tenants.
- 69.5(3) Within 180 calendar days following issuance of provisional certification, the department shall conduct a monitoring to determine the program's compliance with applicable requirements.
- 69.5(4) If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.
- 69.5(5) The department shall make a final certification decision based on the results of the monitoring and review of an acceptable plan of correction.
- 69.5(6) The department shall notify the program of a final certification decision within 10 working days following the finalization of the monitoring report or receipt of an acceptable plan of correction, whichever is applicable.
- 69.5(7) If the decision is to continue certification, the department shall issue a full two-year certification effective from the date of the original provisional certification.

**481—69.6(231C) Expiration of the certification of a nonaccredited program.**

- 69.6(1) Unless conditionally issued, suspended or revoked, certification of a program shall expire at the end of the time period specified on the certificate.
- 69.6(2) The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.

**481—69.7(231C) Recertification process for a nonaccredited program.** To obtain recertification, a program shall:

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**69.7(1)** Submit one copy of the completed application, including the information required in rule 481—69.4(231C), associated documentation, and the recertification fee as listed in Iowa Code section 231C.18 to the department at the address stated in subrule 69.3(1) at least 90 calendar days prior to the expiration of the program's certification. The program need not submit policies and procedures that have been previously submitted to the department and remain unchanged. The program shall provide a list of the policies and procedures that have been previously submitted and are not being resubmitted.

**69.7(2)** Submit additional documentation that each of the following has been inspected by a qualified professional and found to be maintained in conformance with the manufacturer's recommendations and nationally recognized standards: heating system, cooling system, water heater, electrical system, plumbing, sewage system, artificial lighting, and ventilation system; and, if located on site, garbage disposal, kitchen appliances, washing machines and dryers, and elevators.

**481—69.8(231C) Notification of recertification for a nonaccredited program.**

**69.8(1)** The department shall review the application and associated documentation and fees. If the application is incomplete, the department shall contact the program to request the additional information. After all finalized documentation is received, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements.

**69.8(2)** The department shall conduct a monitoring of the program between 60 and 90 days prior to expiration of the program's certification.

**69.8(3)** If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

**69.8(4)** If no regulatory insufficiency is identified as a result of the monitoring, the department shall issue a report of the findings with the final recertification decision.

**69.8(5)** If the decision is to recertify, the department shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

**69.8(6)** If the decision is to deny recertification, the department shall issue a notice of denial and provide the program the opportunity for a hearing pursuant to rule 481—67.13(17A,231B,231C,231D).

**69.8(7)** If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

**481—69.9(231C) Certification or recertification of an accredited program—application process.**

**69.9(1)** An applicant for certification or recertification of a program accredited by a recognized accrediting entity shall:

*a.* Submit a completed application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do); by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

*b.* Submit a copy of the current accreditation outcome from the recognized accrediting entity.

*c.* Apply for certification or recertification within 90 calendar days following verification of compliance with life safety requirements pursuant to this chapter.

*d.* Maintain compliance with life safety requirements pursuant to this chapter.

*e.* Submit the appropriate fees as set forth in Iowa Code section 231C.18.

**69.9(2)** The department shall not consider an application until it is complete and includes all supporting documentation and the appropriate fees.

**481—69.10(231C) Certification or recertification of an accredited program—application content.** An application for certification or recertification of an accredited program shall include the following:

**69.10(1)** A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated

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manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the change.

**69.10(2)** A statement affirming that the individuals listed in subrule 69.10(1) have not been convicted of a felony or serious misdemeanor or found in violation of the dependent adult abuse code in any state.

**69.10(3)** A statement disclosing whether any of the individuals listed in subrule 69.10(1) have or have had an ownership interest in a program, adult day services program, elder group home, home health agency, licensed health care facility as defined under Iowa Code section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 or a boarding home as defined in 2009 Iowa Acts, Senate File 484, section 3 (to be codified as Iowa Code Supplement section 135O.1), which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for tenants to prevent abuse or neglect.

**69.10(4)** A copy of the current accreditation outcome from the recognized accrediting entity.

**481—69.11(231C) Initial certification process for an accredited program.**

**69.11(1)** Within 20 working days of receiving all finalized documentation, including state fire marshal approval, the department shall determine and notify the accredited program whether or not the accredited program meets applicable requirements and whether or not certification will be issued.

**69.11(2)** If the decision is to certify, a certification shall be issued for the term of the accreditation not to exceed three years, unless the certification is conditionally issued, suspended or revoked by either the department or the recognized accrediting entity.

**69.11(3)** If the decision is to deny certification, the department shall provide the applicant an opportunity for hearing in accordance with rule 481—67.13(17A,231B,231C,231D).

**69.11(4)** Unless conditionally issued, suspended or revoked, certification for a program shall expire at the end of the time period specified on the certificate.

**481—69.12(231C) Recertification process for an accredited program.**

**69.12(1)** The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.

**69.12(2)** To obtain recertification, an accredited program shall submit one copy of the completed application, associated documentation, and the administrative fee as stated in Iowa Code section 231C.18 to the department at the address stated in subrule 69.9(1) at least 90 calendar days prior to the expiration of the program's certification.

**69.12(3)** Within 20 working days of receiving all finalized documentation, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements and make a recertification decision.

**69.12(4)** The department shall notify the accredited program within 10 working days of the final recertification decision.

*a.* If the decision is to recertify, a full certification shall be issued for the term of the accreditation not to exceed three years, unless the certification is conditionally issued, suspended or revoked by either the department or the recognized accrediting entity.

*b.* If the decision is to deny recertification, the department shall provide the applicant an opportunity for hearing in accordance with rule 481—67.13(17A,231B,231C,231D).

**69.12(5)** If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

**481—69.13(231C) Listing of all certified programs.** The department shall maintain a list of all certified programs, which is available online at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do) under the "Entities Book" tab.

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**481—69.14(231C) Recognized accrediting entity.**

**69.14(1)** The department designates CARF as a recognized accrediting entity for programs.

**69.14(2)** To apply for designation by the department as a recognized accrediting entity for programs, an accrediting entity shall submit a letter of request, and its standards shall, at minimum, meet the applicable requirements for programs.

**69.14(3)** The designation shall remain in effect for as long as the accreditation standards continue to meet, at minimum, the applicable requirements for programs.

**69.14(4)** An accrediting entity shall provide annually to the department, at no cost, a current edition of the applicable standards manual and survey preparation guide, and training thereon, within 120 working days after the publications are released.

**481—69.15(231C) Requirements for an accredited program.** Each accredited program that is certified by the department shall:

**69.15(1)** Provide the department a copy of all survey reports including outcomes, quality improvement plans and annual conformance to quality reports generated or received, as applicable, within ten working days of receipt of the reports.

**69.15(2)** Notify the department by the most expeditious means possible of all credible reports of alleged improper or inappropriate conduct or conditions within the program and any actions taken by the accrediting entity with respect thereto.

**69.15(3)** Notify the department immediately of the expiration, suspension, revocation or other loss of the program's accreditation.

**481—69.16(231C) Maintenance of program accreditation.**

**69.16(1)** An accredited program shall continue to be recognized for certification by the department if both of the following requirements are met:

*a.* The program complies with the requirements outlined in rule 481—69.15(231C).

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

**69.16(2)** A program that does not maintain its voluntary accreditation status must become certified by the department prior to any lapse in accreditation.

**69.16(3)** A program that does not maintain its voluntary accreditation status and is not certified by the department prior to any lapse in voluntary accreditation shall cease operation as a program.

**481—69.17(231C) Transfer of certification.**

**69.17(1)** Certification, unless conditionally issued, suspended or revoked, may be transferable to a new owner of a program. If the program's certification has been conditionally issued, the new owner must receive approval from the department prior to transfer of the certification.

**69.17(2)** The new owner is required to notify the department in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all applicable requirements for programs.

**69.17(3)** The department may conduct a monitoring within 90 days following a change in the program's ownership or management corporation to ensure that the program complies with applicable requirements. If a regulatory insufficiency is found, the department shall take any necessary enforcement action authorized by applicable requirements.

**481—69.18(231C) Structural and life safety reviews of a building for a new program.**

**69.18(1)** Before a building is constructed or remodeled for use in a new program, the department shall review the blueprints for compliance with requirements pursuant to this chapter. Construction or remodeling includes new construction, remodeling of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

**69.18(2)** A program applicant shall submit to the department blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in Iowa

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

Code section 231C.18 to the Department of Public Safety, State Fire Marshal Division, 215 E. 7th Street, Third Floor, Des Moines, Iowa 50319.

**69.18(3)** Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

**69.18(4)** The department shall review the blueprints and notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

**69.18(5)** The Iowa-licensed architect or Iowa-licensed engineer shall respond to the department to state how any noncompliance will be resolved.

**69.18(6)** Upon final notification by the department that the blueprints meet structural and life safety requirements, construction or remodeling of the building may commence.

**69.18(7)** The department shall schedule an on-site visit of the building site with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the construction or remodeling process to ensure compliance with the approved blueprints. Any noncompliance must be resolved prior to approval for certification.

**481—69.19(231C) Structural and life safety review prior to the remodeling of a building for a certified program.**

**69.19(1)** Before a building for a certified program is remodeled, the department shall review the blueprints for compliance with requirements set forth in rule 481—69.35(231C). Remodeling includes modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

**69.19(2)** A certified program shall submit to the department blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in Iowa Code section 231C.18 to the Department of Public Safety, State Fire Marshal Division, 215 E. 7th Street, Third Floor, Des Moines, Iowa 50319.

**69.19(3)** Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

**69.19(4)** The department shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

**69.19(5)** The Iowa-licensed architect or Iowa-licensed engineer shall respond to the department in 20 working days to state how any noncompliance will be resolved.

**69.19(6)** Upon final notification by the department that the blueprints meet structural and life safety requirements, remodeling of the building may commence.

**69.19(7)** The department shall schedule an on-site visit of the building with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the remodeling process to ensure compliance with the approved blueprints. Any noncompliance must be resolved prior to approval for continued certification or recertification of the program.

**481—69.20(231C) Cessation of program operation.**

**69.20(1)** If a certified program ceases operation, which includes seeking decertification, at any time prior to expiration of the program's certification, the program shall submit the certificate to the department. The program shall provide, at least 90 days in advance of cessation, which includes seeking decertification, unless there is some type of emergency, written notification to the department and the tenant advocate of the date on which the program will cease operation, which includes seeking decertification.

**69.20(2)** If a certified program plans to cease operation, which includes seeking decertification, at the time the program's certification expires, the program shall provide written notice of this fact to the department and the tenant advocate at least 90 days prior to expiration of the certification.

**69.20(3)** At the time a program decides to cease operation, which includes seeking decertification, the program shall submit a plan to the department and make arrangements for the safe and orderly transfer or transition of all tenants within the 90-day period specified by subrule 69.20(2).

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**69.20(4)** The department may conduct a monitoring during the 90-day period to ensure the safety of tenants during the transfer process or transition process.

**69.20(5)** The department may conduct an on-site visit to verify that the program has ceased operation as a certified program in accordance with the notice provided by the program.

**69.20(6)** When a program ceases operation, which includes seeking decertification, tenant advocates shall be allowed by the program to privately meet with tenants to provide education and service options.

**481—69.21(231C) Occupancy agreement.**

**69.21(1)** The occupancy agreement shall be in 12-point type or larger, shall be written in plain language using commonly understood terms and shall be easy for the tenant or the tenant's legal representative to understand.

**69.21(2)** In addition to the requirements of Iowa Code section 231C.5, the written occupancy agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

- a. The telephone number for filing a complaint with the department.
- b. The telephone number for the office of the tenant advocate.
- c. The telephone number for reporting dependent adult abuse.
- d. A copy of the program's statement on tenants' rights.
- e. A statement that the tenant landlord law applies to assisted living programs.
- f. A statement that the program will notify the tenant at least 90 days in advance of any planned program cessation, which includes voluntary decertification, except in cases of emergency.

**69.21(3)** The occupancy agreement shall be reviewed and updated as necessary to reflect any change in services or financial arrangements.

**69.21(4)** A copy of the occupancy agreement shall be provided to the tenant or the tenant's legal representative, if any, and a copy shall be kept by the program.

**69.21(5)** A copy of the most current occupancy agreement shall be made available to the general public upon request. The basic marketing material shall include a statement that a copy of the occupancy agreement is available to all persons upon request.

**481—69.22(231C) Evaluation of tenant.**

**69.22(1) *Evaluation prior to occupancy.*** A program shall evaluate each prospective tenant's functional, cognitive and health status prior to the tenant's signing the occupancy agreement and taking occupancy of a dwelling unit in order to determine the tenant's eligibility for the program, including whether the services needed are available. The cognitive evaluation shall utilize a scored, objective tool. When the score from the cognitive evaluation indicates moderate cognitive decline and risk, the Global Deterioration Scale shall be used at all subsequent intervals, if applicable. If the tenant subsequently returns to the tenant's mildly cognitively impaired state, the program may discontinue the GDS and revert to a scored cognitive screening tool. The evaluation shall be conducted by a health care professional or human service professional.

**69.22(2) *Evaluation within 30 days of occupancy and with significant change.*** A program shall evaluate each tenant's functional, cognitive and health status within 30 days of occupancy. A program shall also evaluate each tenant's functional, cognitive and health status as needed with significant change, but not less than annually, to determine the tenant's continued eligibility for the program and to determine any changes to services needed. The evaluation shall be conducted by a health care professional or human service professional. A licensed practical nurse may complete the evaluation via nurse delegation when the tenant has not exhibited a significant change.

**481—69.23(231C) Criteria for admission and retention of tenants.**

**69.23(1) *Persons who may not be admitted or retained.*** A program shall not knowingly admit or retain a tenant who:

- a. Is bed-bound; or
- b. Requires routine, two-person assistance with standing, transfer or evacuation; or

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- c. Is dangerous to self or other tenants or staff, including but not limited to a tenant who:
    - (1) Despite intervention chronically elopes, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or
    - (2) Displays behavior that places another tenant at risk; or
  - d. Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
  - e. Is under the age of 18; or
  - f. Requires more than part-time or intermittent health-related care; or
  - g. Has unmanageable incontinence on a routine basis despite an individualized toileting program;
- or
- h. Is medically unstable; or
  - i. Requires maximal assistance with activities of daily living.

**69.23(2)** *Disclosure of additional occupancy and transfer criteria.* A program may have additional occupancy or transfer criteria if the criteria are disclosed in the written occupancy agreement prior to the tenant's occupancy.

**69.23(3)** *Assistance with transfer from the program.* A program shall provide assistance to a tenant and the tenant's legal representative, if applicable, to ensure a safe and orderly transfer from the program when the tenant exceeds the program's criteria for admission and retention.

**481—69.24(231C) Involuntary transfer from the program.**

**69.24(1)** *Program initiation of transfer.* If a program initiates the involuntary transfer of a tenant and the action is not the result of a monitoring, including a complaint investigation or program-reported incident investigation, by the department and if the tenant or tenant's legal representative contests the transfer, the following procedures shall apply:

- a. The program shall notify the tenant or tenant's legal representative, in accordance with the occupancy agreement, of the need to transfer the tenant and of the reason for the transfer and shall include the contact information for the tenant advocate.
- b. The program shall immediately provide to the tenant advocate, by certified mail, a copy of the notification and notify the tenant's treating physician, if any.
- c. Pursuant to statute, the tenant advocate shall offer the notified tenant or tenant's legal representative assistance with the program's internal appeal process. The tenant or tenant's legal representative is not required to accept the assistance of the tenant advocate.
- d. If, following the internal appeal process, the program upholds the transfer decision, the tenant or tenant's legal representative may utilize other remedies authorized by law to contest the transfer.

**69.24(2)** *Transfer pursuant to results of monitoring or complaint or program-reported incident investigation by the department.* If one or more tenants are identified as exceeding the admission and retention criteria for tenants and need to be transferred as a result of a monitoring or a complaint or program-reported incident investigation conducted by the department, the following procedures shall apply:

- a. *Notification of the program.* Within 20 working days of the monitoring or complaint or program-reported incident investigation, the department shall notify the program, in writing, of the identification of any tenant who exceeds admission and retention criteria.
- b. *Notification of others.* Each identified tenant, the tenant's legal representative, if applicable, and other providers of services to the tenant shall be notified of their opportunity to provide responses including: specific input, written comment, information, and documentation directly addressing any agreement or disagreement with the identification. All responses shall be provided to the department within 10 days of receipt of the notice.
- c. *Program agreement with the department's finding.* If the program agrees with the department's finding and the program begins involuntary transfer proceedings, the program's internal appeal process in subrule 69.24(1) shall be utilized for appeals.

d. *Program disagreement with the department's finding.* If the program does not agree with the department's finding that the tenant exceeds admission and retention criteria, the program may collect and submit all responses to the department, including those from other interested parties. In the program's

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response, the program shall identify the tenant, list the known responses from others, and note the program's agreement or disagreement with the responses from others. The program's response shall be submitted to the department within 10 working days of the receipt of the notice. Submission of a response does not eliminate the applicable requirements, including submission of a plan of correction under 481—subrule 67.10(5). Other persons may also submit information directly to the department.

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

(2) Amending the regulatory insufficiency. If the department's determination is to amend the regulatory insufficiency based on the response, the department shall modify the report of findings.

(3) Retaining regulatory insufficiency. If the department retains the regulatory insufficiency, the department shall review the plan of correction in accordance with this chapter and 481—Chapter 67. The department shall notify the program of the opportunity to appeal the report findings as they relate to the admission and retention decision. In addition, the department shall provide to the tenant or the tenant's legal representative the contact information for the tenant advocate. A copy of the final report shall also be sent to the tenant advocate.

(4) Effect of the filing of an appeal. If an appeal is filed, the tenant who exceeds admission and retention criteria shall be allowed to continue living at the program until all administrative appeals have been exhausted. Appeals filed that relate to the tenant's exceeding admission and retention criteria shall be heard within 30 days of receipt, and appropriate services to meet the tenant's needs shall be provided during that period of time.

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

**481—69.25(231C) Tenant documents.**

**69.25(1)** Documentation for each tenant shall be maintained by the program and shall include:

- a.* An occupancy record including the tenant's name, birth date, and home address; identification numbers; date of occupancy; name, address and telephone number of health professional(s); diagnosis; and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;
- b.* Application forms;
- c.* The initial evaluations and updates;
- d.* A nutritional assessment as necessary;
- e.* The initial individual service plan and updates;
- f.* Signed authorizations for permission to release medical information, photographs, or other media information as necessary;
- g.* A signed authorization for the tenant to receive emergency medical care as necessary;
- h.* A signed managed risk policy and signed managed risk consensus agreements, if any;
- i.* When any personal or health-related care is delegated to the program, the medical information sheet; documentation of health professionals' orders, such as those for treatment, therapy, and medication; and nurses' notes written by exception;
- j.* Medication lists, which shall be maintained in conformance with 481—subrule 67.5(4);
- k.* Advance health care directives as applicable;
- l.* A complete copy of the tenant's occupancy agreement, including any updates;
- m.* A written acknowledgment that the tenant or the tenant's legal representative, if applicable, has been fully informed of the tenant's rights;
- n.* A copy of guardianship, durable power of attorney for health care, power of attorney, or conservatorship or other documentation of a legal representative;
- o.* Incident reports involving the tenant, including but not limited to those related to medication errors, accidents, falls, and elopements (such reports shall be maintained by the program but need not be included in the tenant's medical record);

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- p.* A copy of waivers of admission or retention criteria, if any;
  - q.* When the tenant is unable to advocate on the tenant's own behalf or the tenant has multiple service providers, including hospice care providers, accurate documentation of the completion of routine personal or health-related care is required on task sheets. If tasks are doctor-ordered, the tasks shall be part of the medication administration records (MARs); and
  - r.* Authorizations for the release of information, if any.
- 69.25(2)** The program records relating to a tenant shall be retained for a minimum of three years after the transfer or death of the tenant.
- 69.25(3)** All records shall be protected from loss, damage and unauthorized use.

**481—69.26(231C) Service plans.**

**69.26(1)** A service plan shall be developed for each tenant based on the evaluations conducted in accordance with subrules 69.22(1) and 69.22(2) and shall be designed to meet the specific service needs of the individual tenant. The service plan shall subsequently be updated at least annually and whenever changes are needed.

**69.26(2)** Prior to the tenant's signing the occupancy agreement and taking occupancy of a dwelling unit, a preliminary service plan shall be developed by a health care professional or human service professional in consultation with the tenant and, at the tenant's request, with other individuals identified by the tenant, and, if applicable, with the tenant's legal representative. All persons who develop the plan and the tenant or the tenant's legal representative shall sign the plan.

**69.26(3)** When a tenant needs personal care or health-related care, the service plan shall be updated within 30 days of the tenant's occupancy and as needed with significant change, but not less than annually.

*a.* If a significant change triggers the review and update of the service plan, the updated service plan shall be signed and dated by all parties.

*b.* If a significant change does not exist, the program may, after nurse review, add minor discretionary changes to the service plan without a comprehensive evaluation and without obtaining signatures on the service plan.

*c.* If a significant change relates to a recurring or chronic condition, a previous evaluation and service plan of the recurring condition may be utilized without new signatures being obtained. For example, with chronic exacerbation of a urinary tract infection, nurse review is adequate to institute the previously written evaluation and service plan.

**69.26(4)** The service plan shall be individualized and shall indicate, at a minimum:

- a.* The tenant's identified needs and preferences for assistance;
- b.* Any services and care to be provided pursuant to the occupancy agreement;
- c.* The service provider(s), if other than the program, including but not limited to providers of hospice care, home health care, occupational therapy, and physical therapy;
- d.* For tenants who are unable to plan their own activities, including tenants with dementia, planned and spontaneous activities based on the tenant's abilities and personal interests; and
- e.* Preferences, if any, of the tenant or the tenant's legal representative for nursing facility care, if the need for nursing facility care presents itself during the assisted living program occupancy.

**481—69.27(231C) Nurse review.** If a tenant does not receive personal or health-related care, but an observed significant change in the tenant's condition occurs, a nurse review shall be conducted. If a tenant receives personal or health-related care, the program shall provide for a registered nurse or a licensed practical nurse via nurse delegation:

**69.27(1)** To monitor, at least every 90 days, or after a significant change in the tenant's condition, any tenant who receives program-administered prescription medications for adverse reactions to the medications and to make appropriate interventions or referrals, and to ensure that the prescription medication orders are current and that the prescription medications are administered consistent with such orders; and

**69.27(2)** To ensure that health care professionals' orders are current for tenants who receive health care professional-directed care from the program; and

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**69.27(3)** To assess and document the health status of each tenant, to make recommendations and referrals as appropriate, and to monitor progress relating to previous recommendations at least every 90 days and whenever there are changes in the tenant's health status; and

**69.27(4)** To provide the program with written documentation of the activities under the service plan, as set forth in rule 481—69.26(231C), showing the time, date and signature.

NOTE: Refer to Table A at the end of this chapter. If the program does not provide personal or health-related care to a tenant, nurse review is not required.

**481—69.28(231C) Food service.**

**69.28(1)** The program shall provide or coordinate with other community providers to provide a hot or other appropriate meal(s) at least once a day or shall make arrangements for the availability of meals.

**69.28(2)** Meals and snacks provided by the program but not prepared on site shall be obtained from or provided by an entity that meets the standards of state and local health laws and ordinances concerning the preparation and serving of food.

**69.28(3)** Menus shall be planned to provide the following percentage of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences based on the number of meals provided by the program:

- a. A minimum of 33 $\frac{1}{3}$  percent if the program provides one meal per day;
- b. A minimum of 66 $\frac{2}{3}$  percent if the program provides two meals per day; and
- c. One hundred percent if the program provides three meals per day.

**69.28(4)** Therapeutic diets may be provided by a program. If therapeutic diets are provided, they shall be prescribed by a physician, physician assistant, or advanced registered nurse practitioner. A current copy of the Iowa Simplified Diet Manual published by the Iowa Dietetic Association shall be available and used in the planning and serving of therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and for reviewing procedures for food preparation and service for therapeutic diets.

**69.28(5)** Personnel who are employed by or contract with the program and who are responsible for food preparation or service, or both food preparation and service, shall have an orientation on sanitation and safe food handling prior to handling food and shall have annual in-service training on food protection.

a. In addition to the requirements above, a minimum of one person directly responsible for food preparation shall have successfully completed a state-approved food protection program by:

- (1) Obtaining certification as a dietary manager; or
- (2) Obtaining certification as a food protection professional; or
- (3) Successfully completing a course meeting the requirements for a food protection program

included in the Food Code adopted pursuant to Iowa Code chapter 137F. Another course may be substituted if the course's curriculum includes substantially similar competencies to a course that meets the requirements of the Food Code and the provider of the course files with the department a statement indicating that the course provides substantially similar instruction as it relates to sanitation and safe food handling.

b. If the person is in the process of completing a course or certification listed in paragraph "a," the requirement relating to completion of a state-approved food protection program shall be considered to have been met.

**69.28(6)** Programs engaged in the preparation and service of meals and snacks shall meet the standards of state and local health laws and ordinances pertaining to the preparation and service of food and shall be licensed pursuant to Iowa Code chapter 137F.

**69.28(7)** Programs may have an on-site dietitian. Programs may secure menus and a dietitian through other methods.

**481—69.29(231C) Staffing.** In addition to the general staffing requirements in rule 481—67.9(231B,231C,231D), the following requirements apply to staffing in programs.

**69.29(1)** Each tenant shall have access to a 24-hour personal emergency response system that automatically identifies the tenant in distress and can be activated with one touch.

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**69.29(2)** In lieu of providing access to a personal emergency response system, a program serving one or more tenants with cognitive disorder or dementia shall follow a system, program, or written staff procedures that address how the program will respond to the emergency needs of the tenant(s).

**69.29(3)** The owner or management corporation of the program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population.

**69.29(4)** A dementia-specific assisted living program shall have one or more staff persons who monitor tenants as indicated in each tenant's service plan. The staff shall be awake and on duty 24 hours a day on site and in the proximate area. The staff shall check on tenants as indicated in the tenants' service plans.

**69.29(5)** All programs employing a new program manager after January 1, 2010, shall require the manager within six months of hire to complete an assisted living management class whose curriculum includes at least six hours of training specifically related to Iowa rules and laws on assisted living programs. Managers who have completed a similar training prior to January 1, 2010, shall not be required to complete additional training to meet this requirement.

**69.29(6)** All programs employing a new delegating nurse after January 1, 2010, shall require the delegating nurse within six months of hire to complete an assisted living manager class or assisted living nursing class whose curriculum includes at least six hours of training specifically related to Iowa rules and laws on assisted living. A minimum of one delegating nurse from each program must complete the training. If there are multiple delegating nurses and only one delegating nurse completes the training, the delegating nurse who completes the training shall train the other delegating nurses in the Iowa rules and laws on assisted living. As of January 1, 2011, all programs shall have a minimum of one delegating nurse who has completed the training described in this subrule.

**481—69.30(231C) Dementia-specific education for program personnel.**

**69.30(1)** All personnel employed by or contracting with a dementia-specific program shall receive a minimum of eight hours of dementia-specific education and training within 30 days of either employment or the beginning date of the contract, as applicable.

**69.30(2)** The dementia-specific education or training shall include, at a minimum, the following:

- a. An explanation of Alzheimer's disease and related disorders;
- b. The program's specialized dementia care philosophy and program;
- c. Skills for communicating with persons with dementia;
- d. Skills for communicating with family and friends of persons with dementia;
- e. An explanation of family issues such as role reversal, grief and loss, guilt, relinquishing the care-giving role, and family dynamics;
- f. The importance of planned and spontaneous activities;
- g. Skills in providing assistance with instrumental activities of daily living;
- h. The importance of the service plan and social history information;
- i. Skills in working with challenging tenants;
- j. Techniques for simplifying, cueing, and redirecting;
- k. Staff support and stress reduction; and
- l. Medication management and nonpharmacological interventions.

**69.30(3)** All personnel employed by or contracting with a dementia-specific program shall receive a minimum of two hours of dementia-specific continuing education annually. Direct-contact personnel shall receive a minimum of eight hours of dementia-specific continuing education annually.

**69.30(4)** An employee or contractor who provides documentation of completion of a dementia-specific education or training program within the past 12 months shall be exempt from the education and training requirement of subrule 69.30(1).

**69.30(5)** Dementia-specific training shall include hands-on training and may include any of the following: classroom instruction, Web-based training, and case studies of tenants in the program.

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**481—69.31(231C) Managed risk policy and managed risk consensus agreements.** The program shall have a managed risk policy. The managed risk policy shall be provided to the tenant along with the occupancy agreement. The managed risk policy shall include the following:

**69.31(1)** An acknowledgment of the shared responsibility for identifying and meeting the needs of the tenant and the process for managing risk and for upholding tenant autonomy when tenant decision making results in poor outcomes for the tenant or others; and

**69.31(2)** A consensus-based process to address specific risk situations. Program staff and the tenant shall participate in the process. The result of the consensus-based process may be a managed risk consensus agreement. The managed risk consensus agreement shall include the signature of the tenant and the signatures of all others who participated in the process. The managed risk consensus agreement shall be included in the tenant's file.

**481—69.32(231C) Life safety—emergency policies and procedures and structural safety requirements.**

**69.32(1)** The program shall submit to the department and follow written emergency policies and procedures, which shall include the following:

*a.* An emergency plan, which shall include procedures for natural disasters (identify where the plan is located for easy reference);

*b.* Fire safety procedures;

*c.* Other general or personal emergency procedures;

*d.* Provisions for amending or revising the emergency plan;

*e.* Provisions for periodic training of all employees;

*f.* Procedures for fire drills;

*g.* Regulations regarding smoking;

*h.* Monitoring and testing of smoke-control systems;

*i.* Tenant evacuation procedures; and

*j.* Procedures for reporting and documentation.

**69.32(2)** An operating alarm system shall be connected to each exit door in a dementia-specific program. A program serving a person(s) with cognitive disorder or dementia, whether in a general or dementia-specific setting, shall have:

*a.* Written procedures regarding alarm systems and appropriate staff response when a tenant's service plan indicates a risk of elopement or a tenant exhibits wandering behavior.

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

**69.32(3)** The program's structure and procedures and the facility in which a program is located shall meet the requirements adopted for assisted living programs in administrative rules promulgated by the state fire marshal. Approval of the state fire marshal indicating that the building is in compliance with these requirements is necessary for certification of a program.

**69.32(4)** The program shall have the means to control the maximum temperature of water at sources accessible by a tenant to prevent scalding and shall control the maximum water temperature for tenants with cognitive impairment or dementia or at a tenant's request.

**481—69.33(231C) Transportation.** When transportation services are provided directly or under contract with the program:

**69.33(1)** The vehicle shall be accessible and appropriate to the tenants who use it, with consideration for any physical disabilities and impairments.

**69.33(2)** Every tenant transported shall have a seat in the vehicle, except for a tenant who remains in a wheelchair during transport.

**69.33(3)** Vehicles shall have adequate seat belts and securing devices for ambulatory and wheelchair-using passengers.

**69.33(4)** Wheelchairs shall be secured when the vehicle is in motion.

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**69.33(5)** During loading and unloading of a tenant, the driver shall be in the proximate area of the tenants in a vehicle.

**69.33(6)** The driver shall have a valid and appropriate Iowa driver's license or commercial driver's license as required by law for the vehicle being utilized for transport. If the driver is licensed in another state, the license shall be valid and appropriate for the vehicle being utilized for transport. The driver shall meet any state or federal requirements for licensure or certification for the vehicle operated.

**69.33(7)** Each vehicle shall have a first-aid kit, fire extinguisher, safety triangles and a device for two-way communication.

**481—69.34(231C) Activities.**

**69.34(1)** The program shall provide appropriate activities for each tenant. Activities shall reflect individual differences in age, health status, sensory deficits, lifestyle, ethnic and cultural beliefs, religious beliefs, values, experiences, needs, interests, abilities and skills by providing opportunities for a variety of types and levels of involvement.

**69.34(2)** Activities shall be planned to support the tenant's service plan and shall be consistent with the program statement and occupancy policies.

**69.34(3)** A written schedule of activities shall be developed at least monthly and made available to tenants and their legal representatives.

**69.34(4)** Tenants shall be given the opportunity to choose their levels of participation in all activities offered in the program.

**481—69.35(231C) Structural requirements.****69.35(1) General requirements.**

- a. The structure of the program shall be designed and operated to meet the needs of the tenants.
- b. The buildings and grounds shall be well-maintained, clean, safe and sanitary.
- c. Programs shall have private dwelling units with a single-action, lockable entrance door.
- d. A program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the lock on an entrance door and shall disable or remove the lock if its presence presents a danger to the health and safety of the tenant.
- e. The structure in which a program is housed shall be built, at a minimum, of Type V (111) construction as provided in Section 22.3.1.3.3 and Sections 6.2.1A to 6.2.2 of NFPA 101, Life Safety Code, 2003 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts 02169-7471, or as required in administrative rules promulgated by the state fire marshal.
- f. Programs may have individual cooking facilities within the private dwelling units. Any program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or easily remove appliances and shall disable or remove them if their presence presents a danger to the health and safety of the tenant or others.

**69.35(2) Programs certified prior to July 4, 2001.** Facilities for programs certified prior to July 4, 2001, shall meet the following requirements:

- a. Each dwelling unit shall have at least one room that shall have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.
- b. Each dwelling unit shall have not less than 190 square feet of floor area, excluding bathrooms.
- c. A dwelling unit used for double occupancy shall have not less than 290 square feet of floor area, excluding bathrooms.
- d. The program shall have a minimum of 15 square feet of common area per tenant.

**69.35(3) New construction built on or after July 4, 2001.** Programs operated in new construction built on or after July 4, 2001, shall meet the following requirements:

- a. Each dwelling unit shall have at least one room that shall have not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.
- b. Each dwelling unit used for single occupancy shall have a total square footage of not less than 240 square feet of floor area, excluding bathrooms and door swing.

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c. A dwelling unit used for double occupancy shall have a total square footage of not less than 340 square feet of floor area, excluding bathrooms and door swing.

d. Each dwelling unit shall contain a bathroom, including but not limited to a toilet, sink and bathing facilities. A program serving persons with cognitive impairment or dementia, whether in a general or dementia-specific setting, shall have the means to disable or remove the sink or bathing facility water control and shall disable or remove the water control if its presence presents a danger to the health and safety of the tenant.

e. The program shall have a minimum of 25 square feet of common space per tenant.

f. Self-closing doors are not required for individual dwelling units, whether in a general or dementia-specific setting, unless the authority with jurisdiction determines that the level of hazard has increased to require the installation of closure hardware (for example, presence of a stove, range or oven).

**69.35(4)** *Structure being converted to or remodeled for use by a program on or after July 4, 2001.*

A program operating in a structure that was converted or remodeled for use for a program on or after July 4, 2001, shall meet the following requirements:

a. Each dwelling unit shall have at least one room that has not less than 120 square feet of floor area. Other habitable rooms shall have an area of not less than 70 square feet.

b. Each dwelling unit used for single occupancy shall have a total square footage of not less than 190 square feet of floor area, excluding bathrooms and door swing.

c. A dwelling unit used for double occupancy shall have a total square footage of not less than 290 square feet of floor area, excluding bathrooms and door swing.

d. The program shall have dedicated for use by tenants a minimum of 15 square feet of common area per tenant.

e. Each dwelling unit shall have a bathroom, including but not limited to a toilet, sink and bathing facility.

f. Each sleeping room shall have a minimum of 5.7 square feet of operable window. Waiver of this requirement may be granted by the state fire marshal or designee.

**481—69.36(231C) Dwelling units in dementia-specific programs.** Dementia-specific programs are exempt from the requirements in subrules 69.35(2) to 69.35(4) as follows:

**69.36(1)** For a program built in a family or neighborhood design:

a. Each dwelling unit used for single occupancy shall have a total square footage of not less than 150 square feet of floor area, excluding a bathroom; and

b. Each dwelling unit used for double occupancy shall have a total square footage of not less than 250 square feet of floor area, excluding a bathroom.

**69.36(2)** Dementia-specific programs may choose not to provide bathing facilities in the dwelling units.

**481—69.37(231C) Landlord and tenant Act.** Iowa Code chapter 562A, the uniform residential landlord and tenant Act, shall apply to programs under this chapter.

**481—69.38(83GA,SF203) Identification of veteran's benefit eligibility.**

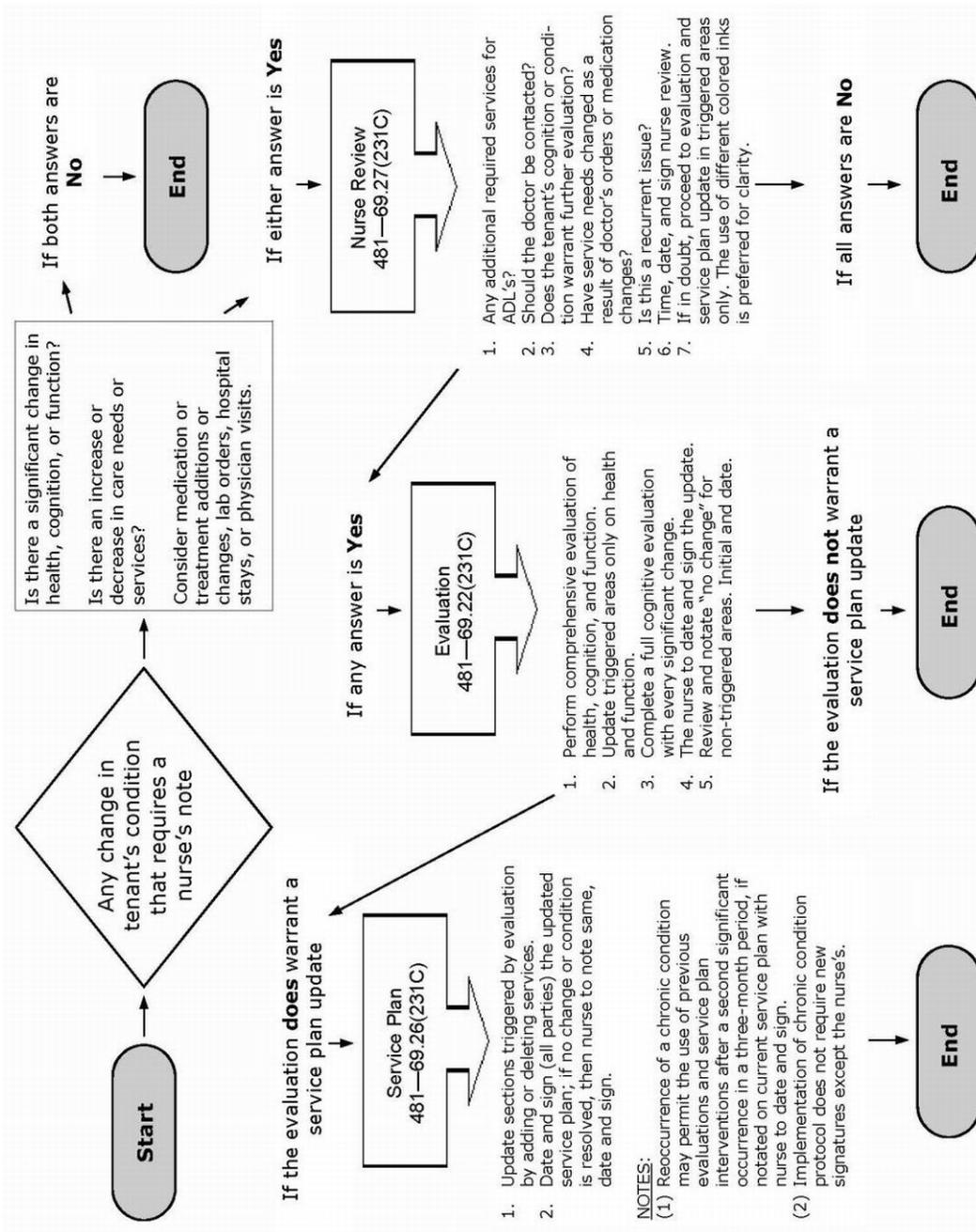
**69.38(1)** Within 30 days of a tenant's admission to an assisted living program that receives reimbursement through the medical assistance program under Iowa Code chapter 249A, the program shall ask the tenant or the tenant's personal representative whether the tenant is a veteran or whether the tenant is the spouse, widow, or dependent of a veteran and shall document the response.

**69.38(2)** If the program determines that the tenant may be a veteran or the spouse, widow, or dependent of a veteran, the program shall report the tenant's name along with the name of the veteran, if applicable, as well as the name of the contact person for this information, to the Iowa department of veterans affairs. When appropriate, the program may also report such information to the Iowa department of human services.

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

**69.38(3)** If a tenant is eligible for benefits through the U.S. Department of Veterans Affairs or other third-party payor, the program first shall seek reimbursement from the identified payor source before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A. These rules are intended to implement Iowa Code chapter 231C.

Table A



[Filed 9/3/09, effective 1/1/10]

[Published 9/23/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/23/09.

**ARC 8177B**

**INSPECTIONS AND APPEALS DEPARTMENT[481]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 231D.2, the Department of Inspections and Appeals hereby adopts new Chapter 70, “Adult Day Services,” Iowa Administrative Code.

These rules are adopted pursuant to 2007 Iowa Acts, Senate File 601, which transferred the regulatory authority for elder group homes, assisted living programs, and adult day services from the Department of Elder Affairs to the Department of Inspections and Appeals. Since that time, the Department has been working with stakeholder groups to develop the new chapter. The work with stakeholder groups has included visits to adult day services programs and meeting with the leadership of the adult day services trade association. In addition, a new Chapter 67, which contains general provisions for adult day services programs, elder group homes and assisted living programs is also Adopted and Filed herein as **ARC 8174B**. The rules in Chapter 70, however, relate specifically to adult day services programs and will supersede the Department of Elder Affairs’ (now the Department on Aging) current chapter on adult day services, 321—Chapter 24.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 7959B** on July 15, 2009.

Comments were generally supportive. Clarifications and additions have been made to address multiple comments. Several comments suggested items that would require statutory changes for implementation.

The following changes have been incorporated in the chapter:

- The definition for “medically unstable” was clarified at the request of several commenters;
- Requirements for copies of the contractual agreement were included, as suggested by a consumer group;
- Clarification was made as to when the Global Deterioration Scale should be used, as suggested by two industry groups;
- The criteria for admission and retention were clarified to specify that, in order to use unmanageable incontinence as a reason not to admit or retain, a program must have attempted an individualized toileting plan;
- References to the tenant or participant advocate have been deleted as there is currently no statutory authority;
- Requirements for involuntary discharge were modified to specify that the tenant’s treating physician shall be provided notice, as suggested the Iowa AARP;
- The term “anecdotal notes” was changed to “nurses’ notes” at the suggestions of several commenters;
- A change was made in response to several commenters to clarify that incident reports must be maintained, but do not need to be maintained in a tenant’s clinical record;
- A change was made to require a program to inquire as to the participant’s nursing facility preference, if any, while completing the service plan, as suggested by a consumer group;
- The training requirement for dementia-specific programs was changed to be consistent with 2008 Iowa Acts, Senate File 2341 (Iowa Code section 231.62); and
- Cessation requirements were clarified.

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

These rules will become effective January 1, 2010.

The following amendment is adopted.

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

CHAPTER 70  
ADULT DAY SERVICES

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

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

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

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

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

“*CARF*” means the Commission on Accreditation of Rehabilitation Facilities.

“*Cognitive disorder*” means a disorder characterized by cognitive dysfunction presumed to be the result of illness that does not meet criteria for dementia, delirium, or amnesic disorder.

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

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

1. Serves fewer than 55 participants and has 5 or more participants who have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
2. Serves 55 or more participants and 10 percent or more of the participants have dementia between Stages 4 and 7 on the Global Deterioration Scale, or
3. Holds itself out as providing specialized care for persons with dementia, such as Alzheimer’s disease, in a dedicated setting.

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

“*Maximal assistance with activities of daily living*” means routine total dependence on staff for the performance of a minimum of four activities of daily living for a period that exceeds 21 days.

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

1. Indicating physiological frailty as determined by the program’s staff in consultation with a physician or physician extender;
2. Resulting in three or more significant hospitalizations within a consecutive three-month period for more than observation; and
3. Requiring frequent supervision of the participant for more than 21 days by a registered nurse.

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

“*Nonaccredited*” means that the program has been certified under the provisions of this chapter but has not received accreditation from the accreditation entity recognized in subrule 70.14(1).

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

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

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

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

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

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

**481—70.2(231D) Program certification.** A program may obtain certification by meeting all applicable requirements. In addition, a program may be voluntarily accredited by a recognized accreditation entity. For the purpose of these rules, certification is equivalent to licensure.

**70.2(1) Posting requirements.** A program's current certificate shall be visibly displayed within the designated operation area of the program. In addition, the latest monitoring report, state fire marshal report, and food establishment inspections report issued pursuant to Iowa Code chapter 137F shall be made available to the public by the program upon request.

**70.2(2) Dementia-specific programs and door alarms.** If a program meets the definition of a dementia-specific adult day services program during two sequential certification monitorings, the program shall meet all requirements for a dementia-specific program, including the requirements set forth in rule 481—70.30(231D) and in subrule 70.32(2), which includes the requirements relating to door alarms.

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

**70.3(1)** The applicant shall complete an application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do); by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

**70.3(2)** The applicant shall submit one copy of the completed application and all supporting documentation to the department at the above address at least 90 calendar days prior to the expected date of beginning operation.

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

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

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

**70.4(1)** A list that includes the names, addresses, and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the change.

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

**70.4(3)** A statement disclosing whether any of the individuals listed in subrule 70.4(1) have or have had an ownership interest in an adult day services program, assisted living program, elder group home, home health agency, licensed health care facility as defined in Iowa Code section 135C.1 or licensed hospital as defined in Iowa Code section 135B.1 or a boarding home as defined in 2009 Iowa Acts, Senate File 484, section 3 (to be codified as Iowa Code Supplement section 135O.1), which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

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

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

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

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

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

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

**70.4(9)** The policy and procedure for activities.

**70.4(10)** The policy and procedure for transportation.

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

**70.4(12)** The policy and procedure for emergencies, including natural disasters. The policy and procedure shall include an evacuation plan and procedures for notifying legal representatives in emergency situations as applicable.

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

**70.4(14)** The policy and procedure for reporting incidents including dependent adult abuse as required in rule 481—67.2(231B,231C,231D).

**70.4(15)** The policy and procedure related to life safety requirements for a dementia-specific program as required by subrule 70.32(2).

**70.4(16)** The participant contractual agreement and all attachments.

**70.4(17)** If the program contracts for personal care or health-related care services from a certified home health agency, a mental health center or a licensed health care facility, a copy of that entity's current license or certification.

**70.4(18)** A copy of the state license for the entity that provides food service, whether the entity is the program or an outside entity or a combination of both.

**70.4(19)** The fee set forth in Iowa Code section 231D.4.

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

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

**70.5(2)** If, based upon the review of the complete application, including all required supporting documents, the department determines the proposed program meets the requirements for certification, a provisional certification shall be issued to the program to begin operation and accept participants.

**70.5(3)** Within 180 calendar days following issuance of provisional certification, the department shall conduct a monitoring to determine the program's compliance with applicable requirements.

**70.5(4)** If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

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

**70.5(6)** The department shall notify the program of a final certification decision within 10 working days following the finalization of the monitoring report or receipt of an acceptable plan of correction, whichever is applicable.

**70.5(7)** If the decision is to continue certification, the department shall issue a full two-year certification effective from the date of the original provisional certification.

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

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

**70.6(2)** The department shall send recertification application materials to each program at least 120 calendar days prior to expiration of the program's certification.

**481—70.7(231D) Recertification process for a nonaccredited program.** To obtain recertification, a program shall:

**70.7(1)** Submit one copy of the completed application, including the information required in rule 481—70.4(231D), associated documentation, and the recertification fee as listed in Iowa Code section 231D.4 to the department at the address stated in subrule 70.3(1) at least 90 calendar days prior to the

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

expiration of the program's certification. The program need not submit policies and procedures that have been previously submitted to the department and remain unchanged. The program shall provide a list of the policies and procedures that have been previously submitted and are not being resubmitted.

**70.7(2)** Submit additional documentation that each of the following has been inspected by a qualified professional and found to be maintained in conformance with the manufacturer's recommendations and nationally recognized standards: heating system, cooling system, water heater, electrical system, plumbing, sewage system, artificial lighting, and ventilation system; and, if located on site, garbage disposal, kitchen appliances, washing machines and dryers, and elevators.

**481—70.8(231D) Notification of recertification for a nonaccredited program.**

**70.8(1)** The department shall review the application and associated documentation and fees. If the application is incomplete, the department shall contact the program to request the additional information. After all finalized documentation is received, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements.

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

**70.8(3)** If a regulatory insufficiency is identified as a result of the monitoring, the process in rule 481—67.10(17A,231B,231C,231D) shall be followed.

**70.8(4)** If no regulatory insufficiency is identified as a result of the monitoring, the department shall issue a report of the findings with the final recertification decision.

**70.8(5)** If the decision is to recertify, the department shall issue the program a two-year certification effective from the date of the expiration of the previous certification.

**70.8(6)** If the decision is to deny recertification, the department shall issue a notice of denial and provide the program the opportunity for a hearing pursuant to rule 481—67.13(17A,231B,231C,231D).

**70.8(7)** If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

**481—70.9(231D) Certification or recertification of an accredited program—application process.**

**70.9(1)** An applicant for certification or recertification of a program accredited by a recognized accrediting entity shall:

*a.* Submit a completed application packet obtained from the department. Application materials may be obtained from the health facilities division Web site at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do); by mail from the Department of Inspections and Appeals, Adult Services Bureau, Lucas State Office Building, Third Floor, 321 E. 12th Street, Des Moines, Iowa 50319-0083; or by telephone at (515)281-6325.

*b.* Submit a copy of the current accreditation outcome from the recognized accrediting entity.

*c.* Apply for certification or recertification within 90 calendar days following verification of compliance with life safety requirements pursuant to this chapter.

*d.* Maintain compliance with life safety requirements pursuant to this chapter.

*e.* Submit the appropriate fees as set forth in Iowa Code section 231D.4.

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

**481—70.10(231D) Certification or recertification of an accredited program—application content.**

An application for certification or recertification of an accredited program shall include the following:

**70.10(1)** A list that includes the names, addresses and percentage of stock, shares, partnership or other equity interest of all officers, members of the board of directors, and trustees and of the designated manager, as well as stockholders, partners or any individuals who have greater than a 5 percent equity interest in the program. The program shall notify the department of any changes in the list within ten working days of the change.

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

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

**70.10(3)** A statement disclosing whether any of the individuals listed in subrule 70.10(1) have or have had an ownership interest in an adult day services program, assisted living program, elder group home, home health agency, licensed health care facility as defined under Iowa Code section 135C.1 or licensed hospital as defined under Iowa Code section 135B.1 or a boarding home as defined in 2009 Iowa Acts, Senate File 484, section 3 (to be codified as Iowa Code Supplement section 135O.1), which has been closed in any state due to removal of program, agency, or facility licensure or certification or due to involuntary termination from participation in either the Medicaid or Medicare program; or have been found to have failed to provide adequate protection or services for participants to prevent abuse or neglect.

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

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

**70.11(1)** Within 20 working days of receiving all finalized documentation, including state fire marshal approval, the department shall determine and notify the accredited program whether the accredited program meets applicable requirements and whether certification will be issued.

**70.11(2)** If the decision is to certify, a certification shall be issued for the term of the accreditation not to exceed three years, unless the certification is conditionally issued, suspended or revoked by either the department or the recognized accrediting entity.

**70.11(3)** If the decision is to deny certification, the department shall provide the applicant an opportunity for hearing in accordance with rule 481—67.13(17A,231B,231C,231D).

**70.11(4)** Unless conditionally issued, suspended or revoked, certification for a program shall expire at the end of the time period specified on the certificate.

**481—70.12(231D) Recertification process for an accredited program.**

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

**70.12(2)** To obtain recertification, an accredited program shall submit one copy of the completed application, associated documentation, and the administrative fee as stated in Iowa Code section 231D.4 to the department at the address stated in subrule 70.9(1) at least 90 calendar days prior to the expiration of the program's certification.

**70.12(3)** Within 20 working days of receiving all finalized documentation, including state fire marshal approval, the department shall determine the program's compliance with applicable requirements and make a recertification decision.

**70.12(4)** The department shall notify the accredited program within 10 working days of the final recertification decision.

*a.* If the decision is to recertify, a full certification shall be issued for the term of the accreditation not to exceed three years, unless the certification is conditionally issued, suspended or revoked by either the department or the recognized accrediting entity.

*b.* If the decision is to deny recertification, the department shall provide the applicant an opportunity for hearing in accordance with rule 481—67.13(17A,231B,231C,231D).

**70.12(5)** If the department is unable to recertify a program through no fault of the program, the department shall issue to the program a time-limited extension of certification of no longer than one year.

**481—70.13(231D) Listing of all certified programs.** The department shall maintain a list of all certified programs, which is available online at [https://dia-hfd.iowa.gov/DIA\\_HFD/Home.do](https://dia-hfd.iowa.gov/DIA_HFD/Home.do), under the "Entities Book" tab.

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**481—70.14(231D) Recognized accrediting entity.**

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

**70.14(2)** To apply for designation by the department as a recognized accrediting entity for programs, an accrediting entity shall submit a letter of request, and its standards shall, at minimum, meet the applicable requirements for programs.

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

**70.14(4)** An accrediting entity shall provide annually to the department, at no cost, a current edition of the applicable standards manual and survey preparation guide, and training thereon, within 120 working days after the publications are released.

**481—70.15(231D) Requirements for an accredited program.** Each accredited program that is certified by the department shall:

**70.15(1)** Provide the department a copy of all survey reports including outcomes, quality improvement plans and annual conformance to quality reports generated or received, as applicable, within ten working days of receipt of the reports.

**70.15(2)** Notify the department by the most expeditious means possible of all credible reports of alleged improper or inappropriate conduct or conditions within the program and any actions taken by the accrediting entity with respect thereto.

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

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

**70.16(1)** An accredited program shall continue to be recognized for certification by the department if both of the following requirements are met:

*a.* The program complies with the requirements outlined in rule 481—70.15(231D).

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

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

**70.16(3)** A program that does not maintain its voluntary accreditation status and is not certified by the department prior to any lapse in voluntary accreditation shall cease operation as a program.

**481—70.17(231D) Transfer of certification.**

**70.17(1)** Certification, unless conditionally issued, suspended or revoked, may be transferable to a new owner of a program. If the program's certification has been conditionally issued, the new owner must receive approval from the department prior to transfer of the certification.

**70.17(2)** The new owner is required to notify the department in writing within 30 calendar days prior to the change in ownership. The notice shall include assurance that the new owner meets all applicable requirements for programs.

**70.17(3)** The department may conduct a monitoring within 90 days following a change in the program's ownership or management corporation to ensure that the program complies with applicable requirements. If a regulatory insufficiency is found, the department shall take any necessary enforcement action authorized by applicable requirements.

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

**70.18(1)** Before a building is constructed or remodeled for use in a new program, the department shall review the blueprints for compliance with requirements pursuant to this chapter. Construction or remodeling includes new construction, remodeling of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

**70.18(2)** A program applicant shall submit to the department blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in Iowa

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

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

**70.18(3)** Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

**70.18(4)** The department shall review the blueprints and notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

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

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

**70.18(7)** The department shall schedule an on-site visit of the building site with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the construction or remodeling process to ensure compliance with the approved blueprints. Any noncompliance must be resolved prior to approval for certification.

**481—70.19(231D) Structural and life safety review prior to the remodeling of a building for a certified program.**

**70.19(1)** Before a building for a certified program is remodeled, the department shall review the blueprints for compliance with requirements set forth in rule 481—70.35(231D). Remodeling includes modification of any part of an existing building, addition of a new wing or floor to an existing building, or conversion of an existing building.

**70.19(2)** A certified program shall submit to the department blueprints wet-sealed by an Iowa-licensed architect or Iowa-licensed engineer and the blueprint plan review fee as stated in Iowa Code section 231D.4 to the Department of Public Safety, State Fire Marshal Division, 215 E. 7th Street, Third Floor, Des Moines, Iowa 50319.

**70.19(3)** Failure to submit the blueprint plan review fee with the blueprints shall result in delay of the blueprint plan review until the fee is received.

**70.19(4)** The department shall review the blueprints within 20 working days of receipt and immediately notify the Iowa-licensed architect or Iowa-licensed engineer in writing regarding the status of compliance with requirements.

**70.19(5)** The Iowa-licensed architect or Iowa-licensed engineer shall respond to the department in 20 working days to state how any noncompliance will be resolved.

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

**70.19(7)** The department shall schedule an on-site visit of the building with the contractor, or Iowa-licensed architect or Iowa-licensed engineer, during the remodeling process to ensure compliance with the approved blueprints. Any noncompliance must be resolved prior to approval for continued certification or recertification of the program.

**481—70.20(231D) Cessation of program operation.**

**70.20(1)** If a certified program ceases operation, which includes seeking decertification, at any time prior to expiration of the program's certification, the program shall submit the certificate to the department. The program shall provide, at least 90 days in advance of cessation, which includes seeking decertification, unless there is some type of emergency, written notification to the department of the date on which the program will cease operation, which includes seeking decertification.

**70.20(2)** If a certified program plans to cease operation, which includes seeking decertification, at the time the program's certification expires, the program shall provide written notice of this fact to the department at least 90 days prior to expiration of the certification.

**70.20(3)** At the time a program decides to cease operation, which includes seeking decertification, the program shall submit a plan to the department and make arrangements for the safe and orderly discharge or transition of all participants within the 90-day period specified by subrule 70.20(2).

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

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

**70.20(5)** The department may conduct an on-site visit to verify that the program has ceased operation as a certified program in accordance with the notice provided by the program.

**481—70.21(231D) Contractual agreement.**

**70.21(1)** The contractual agreement shall be in 12-point type or larger, shall be written in plain language using commonly understood terms and shall be easy for the participant or the participant's legal representative to understand.

**70.21(2)** In addition to the requirements of Iowa Code section 231D.17, the written contractual agreement shall include, but not be limited to, the following information in the body of the agreement or in the supporting documents and attachments:

- a. The telephone number for filing a complaint with the department.
- b. The telephone number for reporting dependent adult abuse.
- c. A copy of the program's statement on participants' rights.
- d. A statement that the program will notify the participant at least 90 days in advance of any planned program cessation, which includes voluntary decertification, except in cases of emergency.
- e. A copy of the program's admission and discharge criteria.

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

**70.21(4)** A copy of the contractual agreement shall be provided to the participant or the participant's legal representative, if any, and a copy shall be kept by the program.

**70.21(5)** A copy of the most current contractual agreement shall be made available to the general public upon request. The basic marketing material shall include a statement that a copy of the contractual agreement is available to all persons upon request.

**481—70.22(231D) Evaluation of participant.**

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

**70.22(2) *Evaluation within 30 days of participation and with significant change.*** A program shall evaluate each participant's functional, cognitive and health status within 30 days of the participant's beginning participation in the program. A program shall also evaluate each participant's functional, cognitive and health status as needed with significant change, but not less than annually, to determine the participant's continued eligibility for the program and to determine any changes to services needed. The evaluation shall be conducted by a health care professional or human service professional. A licensed practical nurse may complete the evaluation via nurse delegation when the participant has not exhibited a significant change.

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

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

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

- a. Is bed-bound; or

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- b. Requires routine, three-person assistance with standing, transfer or evacuation; or
- c. Is dangerous to self or other participants or staff, including but not limited to a participant who:
  - (1) Despite intervention chronically elopes, is sexually or physically aggressive or abusive, or displays unmanageable verbal abuse or aggression; or
  - (2) Displays behavior that places another participant at risk; or
- d. Is in an acute stage of alcoholism, drug addiction, or uncontrolled mental illness; or
- e. Is under the age of 18; or
- f. Requires more than part-time or intermittent health-related care; or
- g. Has unmanageable incontinence on a routine basis despite an individualized toileting program; or
- h. Is medically unstable; or
- i. Requires maximal assistance with activities of daily living.

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

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

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

**70.24(1) Program initiation of discharge.** If a program initiates the involuntary discharge of a participant and the action is not the result of a monitoring, including a complaint investigation or program-reported incident investigation, by the department and if the participant or participant's legal representative contests the discharge, the following procedures shall apply:

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

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

a. *Notification of the program.* Within 20 working days of the monitoring or complaint or program-reported incident investigation, the department shall notify the program, in writing, of the identification of any participant who exceeds admission and retention criteria.

b. *Notification of others.* Each identified participant, the participant's legal representative, if applicable, and other providers of services to the participant shall be notified of their opportunity to provide responses including: specific input, written comment, information, and documentation directly addressing any agreement or disagreement with the identification. All responses shall be provided to the department within 10 days of receipt of the notice.

c. *Program agreement with the department's finding.* If the program agrees with the department's finding and the program begins involuntary discharge proceedings, the program's internal appeal process in subrule 70.24(1) shall be utilized for appeals.

d. *Program disagreement with the department's finding.* If the program does not agree with the department's finding that the participant exceeds admission and retention criteria, the program may collect and submit all responses to the department, including those from other interested parties. In the program's response, the program shall identify the participant, list the known responses from others, and note the program's agreement or disagreement with the responses from others. The program's response shall be submitted to the department within 10 working days of the receipt of the notice. Submission of

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a response does not eliminate the applicable requirements, including submission of a plan of correction under 481—subrule 67.10(5). Other persons may also submit information directly to the department.

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

(2) Amending the regulatory insufficiency. If the department's determination is to amend the regulatory insufficiency based on the response, the department shall modify the report of findings.

(3) Retaining regulatory insufficiency. If the department retains the regulatory insufficiency, the department shall review the plan of correction in accordance with this chapter and 481—Chapter 67. The department shall notify the program of the opportunity to appeal the report findings as they relate to the admission and retention decision.

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

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

**481—70.25(231D) Participant documents.**

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

*a.* A participation record including the participant's name, birth date, and home address; identification numbers; date of beginning participation; name, address and telephone number of health professional(s); diagnosis; and names, addresses and telephone numbers of family members, friends or other designated people to contact in the event of illness or an emergency;

*b.* Application forms;

*c.* The initial evaluations and updates;

*d.* A nutritional assessment as necessary;

*e.* The initial individual service plan and updates;

*f.* Signed authorizations for permission to release medical information, photographs, or other media information as necessary;

*g.* A signed authorization for the participant to receive emergency medical care as necessary;

*h.* A signed managed risk policy and signed managed risk consensus agreements, if any;

*i.* When any personal or health-related care is delegated to the program, the medical information sheet; documentation of health professionals' orders, such as those for treatment, therapy, and medication; and nurses' notes written by exception;

*j.* Medication lists, which shall be maintained in conformance with 481—subrule 67.5(4);

*k.* Advance health care directives as applicable;

*l.* A complete copy of the participant's contractual agreement, including any updates;

*m.* A written acknowledgment that the participant or the participant's legal representative, if applicable, has been fully informed of the participant's rights;

*n.* A copy of guardianship, durable power of attorney for health care, power of attorney, or conservatorship or other documentation of a legal representative;

*o.* Incident reports involving the participant, including but not limited to those related to medication errors, accidents, falls, and elopements (such reports shall be maintained by the program but need not be included in the participant's medical record);

*p.* A copy of waivers of admission or retention criteria, if any;

*q.* When the participant is unable to advocate on the participant's own behalf or the participant has multiple service providers, including hospice care providers, accurate documentation of the completion

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of routine personal or health-related care is required on task sheets. If tasks are doctor-ordered, the tasks shall be part of the medication administration records (MARs); and

*r.* Authorizations for the release of information, if any.

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

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

**481—70.26(231D) Service plans.**

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

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

**70.26(3)** When a participant needs personal care or health-related care, the service plan shall be updated within 30 days of the participant's participation and as needed with significant change, but not less than annually.

*a.* If a significant change triggers the review and update of the service plan, the updated service plan shall be signed and dated by all parties.

*b.* If a significant change does not exist, the program may, after nurse review, add minor discretionary changes to the service plan without a comprehensive evaluation and without obtaining signatures on the service plan.

*c.* If a significant change relates to a recurring or chronic condition, a previous evaluation and service plan of the recurring condition may be utilized without new signatures being obtained. For example, with chronic exacerbation of a urinary tract infection, nurse review is adequate to institute the previously written evaluation and service plan.

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

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

*b.* Any services and care to be provided pursuant to the contractual agreement;

*c.* The service provider(s), if other than the program, including but not limited to providers of hospice care, home health care, occupational therapy, and physical therapy; and

*d.* For participants who are unable to plan their own activities, including participants with dementia, planned and spontaneous activities based on the participant's abilities and personal interests.

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

**70.27(1)** To monitor, at least every 90 days, or after a significant change in the participant's condition, any participant who receives program-administered prescription medications for adverse reactions to the medications and to make appropriate interventions or referrals, and to ensure that the prescription medication orders are current and that the prescription medications are administered consistent with such orders; and

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

**70.27(3)** To assess and document the health status of each participant, to make recommendations and referrals as appropriate, and to monitor progress relating to previous recommendations at least every 90 days and whenever there are changes in the participant's health status; and

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**70.27(4)** To provide the program with written documentation of the activities under the service plan, as set forth in rule 481—70.26(231D), showing the time, date and signature.

NOTE: Refer to Table A at the end of this chapter. If the program does not provide personal or health-related care to a participant, nurse review is not required.

**481—70.28(231D) Food service.**

**70.28(1)** The program shall provide or coordinate with other community providers to provide a hot or other appropriate meal(s) at least once a day or shall make arrangements for the availability of meals, unless otherwise noted in the contractual agreement.

**70.28(2)** Meals and snacks provided by the program but not prepared on site shall be obtained from or provided by an entity that meets the standards of state and local health laws and ordinances concerning the preparation and serving of food.

**70.28(3)** Menus shall be planned to provide the following percentage of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Research Council of the National Academy of Sciences based on the number of meals provided by the program:

- a. A minimum of 33 $\frac{1}{3}$  percent if the program provides one meal per day;
- b. A minimum of 66 $\frac{2}{3}$  percent if the program provides two meals per day; and
- c. One hundred percent if the program provides three meals per day.

**70.28(4)** Therapeutic diets may be provided by a program. If therapeutic diets are provided, they shall be prescribed by a physician, physician assistant, or advanced registered nurse practitioner. A current copy of the Iowa Simplified Diet Manual published by the Iowa Dietetic Association shall be available and used in the planning and serving of therapeutic diets. A licensed dietitian shall be responsible for writing and approving the therapeutic menu and for reviewing procedures for food preparation and service for therapeutic diets.

**70.28(5)** Personnel who are employed by or contract with the program and who are responsible for food preparation or service, or both food preparation and service, shall have an orientation on sanitation and safe food handling prior to handling food and shall have annual in-service training on food protection.

a. In addition to the requirements above, a minimum of one person directly responsible for food preparation shall have successfully completed a state-approved food protection program by:

- (1) Obtaining certification as a dietary manager; or
- (2) Obtaining certification as a food protection professional; or
- (3) Successfully completing a course meeting the requirements for a food protection program

included in the Food Code adopted pursuant to Iowa Code chapter 137F. Another course may be substituted if the course's curriculum includes substantially similar competencies to a course that meets the requirements of the Food Code and the provider of the course files with the department a statement indicating that the course provides substantially similar instruction as it relates to sanitation and safe food handling.

b. If the person is in the process of completing a course or certification listed in paragraph "a," the requirement relating to completion of a state-approved food protection program shall be considered to have been met.

**70.28(6)** Programs engaged in the preparation and service of meals and snacks shall meet the standards of state and local health laws and ordinances pertaining to the preparation and service of food and shall be licensed pursuant to Iowa Code chapter 137F.

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

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

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

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**70.29(2)** The owner or management corporation of the program is responsible for ensuring that all personnel employed by or contracting with the program receive training appropriate to assigned tasks and target population.

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

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

**70.30(1)** All personnel employed by or contracting with a dementia-specific program shall receive a minimum of eight hours of dementia-specific education and training within 30 days of either employment or the beginning date of the contract, as applicable.

**70.30(2)** The dementia-specific education or training shall include, at a minimum, the following:

- a. An explanation of Alzheimer's disease and related disorders;
- b. The program's specialized dementia care philosophy and program;
- c. Skills for communicating with persons with dementia;
- d. Skills for communicating with family and friends of persons with dementia;
- e. An explanation of family issues such as role reversal, grief and loss, guilt, relinquishing the care-giving role, and family dynamics;
- f. The importance of planned and spontaneous activities;
- g. Skills in providing assistance with instrumental activities of daily living;
- h. The importance of the service plan and social history information;
- i. Skills in working with challenging participants;
- j. Techniques for simplifying, cueing, and redirecting;
- k. Staff support and stress reduction; and
- l. Medication management and nonpharmacological interventions.

**70.30(3)** All personnel employed by or contracting with a dementia-specific program shall receive a minimum of two hours of dementia-specific continuing education annually. Direct-contact personnel shall receive a minimum of eight hours of dementia-specific continuing education annually.

**70.30(4)** An employee or contractor who provides documentation of completion of a dementia-specific education or training program within the past 12 months shall be exempt from the education and training requirement of subrule 70.30(1).

**70.30(5)** Dementia-specific training shall include hands-on training and may include any of the following: classroom instruction, Web-based training, and case studies of participants in the program.

**481—70.31(231D) Managed risk policy and managed risk consensus agreements.** The program shall have a managed risk policy. The managed risk policy shall be provided to the participant along with the contractual agreement. The managed risk policy shall include the following:

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

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

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

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

- a. An emergency plan, which shall include procedures for natural disasters (identify where the plan is located for easy reference);

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- b.* Fire safety procedures;
- c.* Other general or personal emergency procedures;
- d.* Provisions for amending or revising the emergency plan;
- e.* Provisions for periodic training of all employees;
- f.* Procedures for fire drills;
- g.* Regulations regarding smoking;
- h.* Monitoring and testing of smoke-control systems;
- i.* Participant evacuation procedures; and
- j.* Procedures for reporting and documentation.

**70.32(2)** An operating alarm system shall be connected to each exit door in a dementia-specific program. A program serving a person(s) with cognitive disorder or dementia, whether in a general or dementia-specific setting, shall have:

- a.* Written procedures regarding alarm systems and appropriate staff response when a participant's service plan indicates a risk of elopement or a participant exhibits wandering behavior.
- b.* Written procedures regarding appropriate staff response if a participant with cognitive disorder or dementia is missing.

**70.32(3)** The program's structure and procedures and the facility in which a program is located shall meet the requirements adopted for adult day services programs in administrative rules promulgated by the state fire marshal. Approval of the state fire marshal indicating that the building is in compliance with these requirements is necessary for certification of a program.

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

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

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

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

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

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

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

**70.33(6)** The driver shall have a valid and appropriate Iowa driver's license or commercial driver's license as required by law for the vehicle being utilized for transport. If the driver is licensed in another state, the license shall be valid and appropriate for the vehicle being utilized for transport. The driver shall meet any state or federal requirements for licensure or certification for the vehicle operated.

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

**481—70.34(231D) Activities.**

**70.34(1)** The program shall provide appropriate activities for each participant. Activities shall reflect individual differences in age, health status, sensory deficits, lifestyle, ethnic and cultural beliefs, religious beliefs, values, experiences, needs, interests, abilities and skills by providing opportunities for a variety of types and levels of involvement.

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

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

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

**481—70.35(231D) Structural requirements.**

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

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

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

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

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

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

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

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

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

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

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

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

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

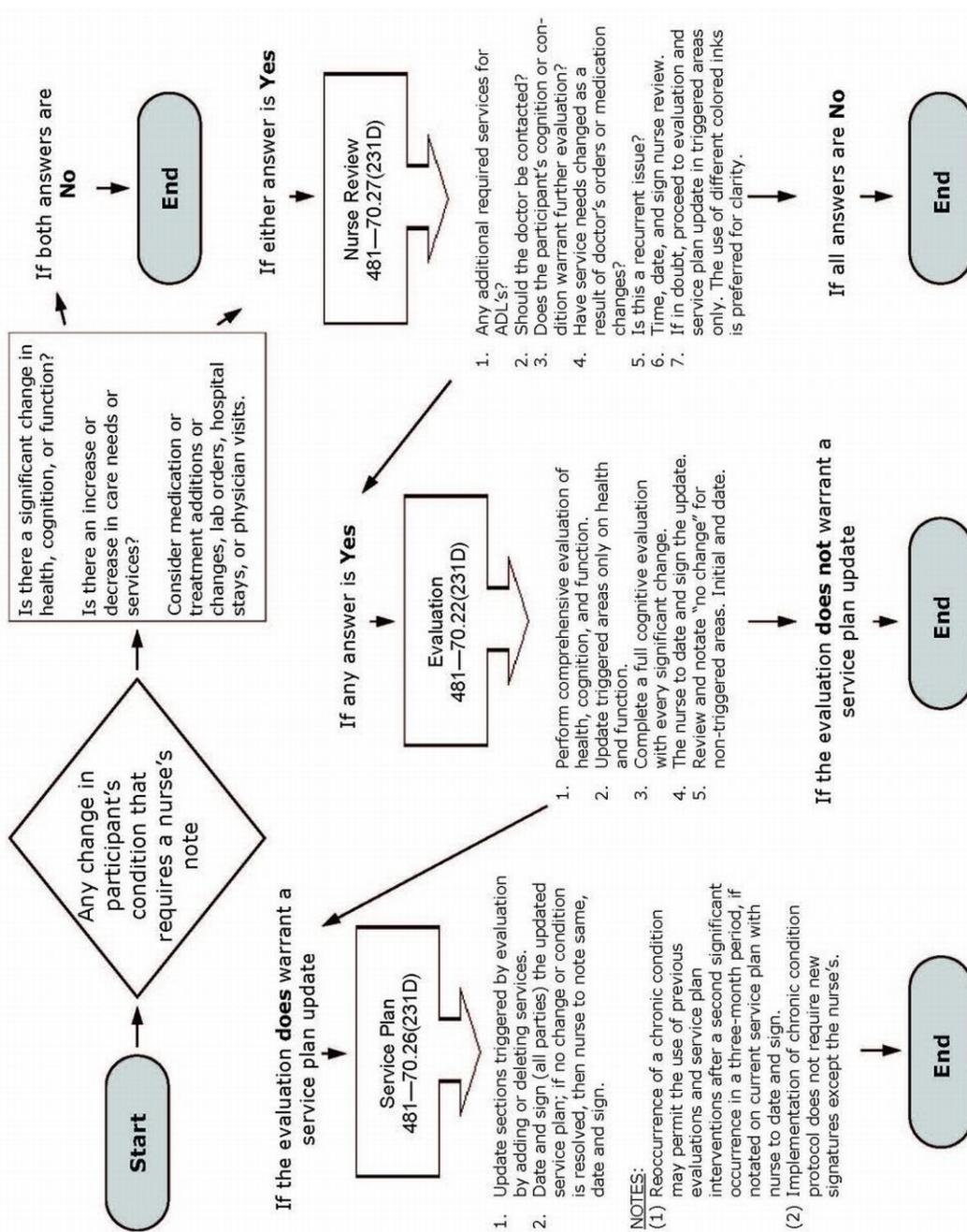
**70.36(1)** Within 30 days of a participant's participation in an adult day services program that receives reimbursement through the medical assistance program under Iowa Code chapter 249A, the program shall ask the participant or the participant's personal representative whether the participant is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

**70.36(2)** If the program determines that the participant may be a veteran or the spouse, widow, or dependent of a veteran, the program shall report the participant's name along with the name of the veteran, if applicable, as well as the name of the contact person for this information, to the Iowa department of veterans affairs. When appropriate, the program may also report such information to the Iowa department of human services.

**70.36(3)** If a participant is eligible for benefits through the U.S. Department of Veterans Affairs or other third-party payor, the program first shall seek reimbursement from the identified payor source before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

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

Table A



[Filed 9/3/09, effective 1/1/10]

[Published 9/23/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/23/09.

**ARC 8169B****PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 6, “General Pharmacy Practice,” Iowa Administrative Code.

The amendment provides for the hard-copy or electronic documentation of review of a communication regarding a prescription transferred between pharmacies accessing the same prescription drug order records via a real-time, online database.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the July 1, 2009, Iowa Administrative Bulletin as **ARC 7926B**. The Board received no written comments regarding the proposed amendment. The adopted amendment is identical to that published under Notice.

The amendment was approved during the August 17, 2009, meeting of the Board of Pharmacy.

This amendment will become effective on October 28, 2009.

This amendment is intended to implement Iowa Code sections 155A.13, 155A.13A, and 155A.34.

The following amendment is adopted.

Amend paragraph **6.9(9)“b”** as follows:

*b.* A pharmacist or pharmacist-intern under the direct supervision of a pharmacist in the transferring pharmacy shall review the message and document the review by signing and dating a hard copy of the message or logbook containing the information required on the message, or by a notation in the electronic message that includes the unique identification of the pharmacist or pharmacist-intern and the date of review, as soon as practical, but in no event more than 72 hours from the time of such transfer.

[Filed 9/3/09, effective 10/28/09]

[Published 9/23/09]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 9/23/09.

**ARC 8170B****PHARMACY BOARD[657]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Pharmacy hereby amends Chapter 7, “Hospital Pharmacy Practice,” Iowa Administrative Code.

The amendments require that hospital pharmacies utilize a unit dose dispensing system, to the extent possible, for the distribution of drugs to patients in a hospital. The amendments provide for the pharmacist in charge to determine situations in which utilization of unit dose dispensing is not possible due to the dosage form or delivery system of the drug and require the pharmacist in charge to develop policies and procedures that identify those situations. The proposed amendments also require the pharmacist in charge to develop policies and procedures regarding the use of patient-owned drugs brought into the institution including procedures for identifying the drugs and ensuring the integrity of the drugs prior to permitting the use of such drugs by the patient.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the July 1, 2009, Iowa Administrative Bulletin as **ARC 7912B**. The Board received written comments regarding the proposed amendments, primarily supporting the amendments. Comments also addressed drug accountability and integrity concerns when a patient is allowed to bring and use patient-owned drugs during the patient’s stay in the institution. The

## PHARMACY BOARD[657](cont'd)

adopted amendments differ from those published under Notice. Subrule 7.8(7) is amended to require that policies and procedures regarding the use of patient-owned drugs brought into the institution to include procedures for the security of those drugs.

The amendments were approved during the August 17, 2009, meeting of the Board of Pharmacy.

These amendments will become effective on October 28, 2009.

These amendments are intended to implement Iowa Code sections 155A.13 and 155A.36.

The following amendments are adopted.

ITEM 1. Amend paragraph 7.8(1)“a” as follows:

a. Hospitals shall utilize a unit dose dispensing system pursuant to rule 657—22.1(155A). All drugs dispensed by the pharmacist for administration to patients shall be in single unit or unit dose packages if practicable unless the dosage form or drug delivery device makes it impracticable to package the drug in a unit dose or single unit package. The need for nurses to manipulate drugs prior to their administration shall be minimized.

(1) The pharmacist in charge shall establish policies and procedures that identify situations when drugs may be dispensed in other than unit dose or single unit packages outside the unit dose dispensing system.

(2) The need for nurses to manipulate drugs prior to their administration shall be minimized.

ITEM 2. Amend subrule 7.8(7) as follows:

7.8(7) Drugs brought into the institution. Policies The pharmacist in charge shall determine those circumstances when patient-owned drugs brought into the institution may be administered to a hospital patient and shall establish policies and procedures shall be established governing the use and security of drugs brought into the institution. Procedures shall address identification of the drug and methods for ensuring the integrity of the product prior to permitting its use by the patient. The use of patient-owned drugs shall be minimized to the greatest extent possible.

[Filed 9/3/09, effective 10/28/09]

[Published 9/23/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/23/09.

**ARC 8171B**

**PHARMACY BOARD[657]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code sections 124.301 and 147.76, the Board of Pharmacy hereby amends Chapter 8, “Universal Practice Standards,” and Chapter 21, “Electronic Data in Pharmacy Practice,” Iowa Administrative Code.

The amendments authorize a prescriber to direct the prescriber’s agent to transmit to a pharmacy a new prescription drug order that has been manually or electronically signed by the prescriber. The transmission shall identify the prescriber’s agent by name and title. The amendments also authorize the transmission by a prescriber’s agent of a prescription refill or renewal as directed by the prescriber. The transmission, if electronic and if the refill or renewal order is identical to the original order, shall not require the written or electronic signature of the prescriber. However, the name and title of the prescriber’s agent shall be included in the electronic transmission.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the July 1, 2009, Iowa Administrative Bulletin as **ARC 7910B**. The Board received written comments from an association representing a group of pharmacies. The comments suggested that pharmacists should not be placed in the position of enforcing requirements imposed on prescribers and the prescribers’ agents. The adopted amendments are identical to those published under Notice.

## PHARMACY BOARD[657](cont'd)

The amendments were approved during the August 17, 2009, meeting of the Board of Pharmacy.

These amendments will become effective on October 28, 2009.

These amendments are intended to implement Iowa Code sections 124.308 and 126.11, and Iowa Code sections 155A.27 and 155A.29 as amended by 2009 Iowa Acts, House File 381, sections 5 and 6.

The following amendments are adopted.

ITEM 1. Amend subrule 8.19(2) as follows:

**8.19(2) *Transmitting agent.*** The prescribing practitioner may authorize an agent to transmit to the pharmacy a prescription drug order or medication order orally or by electronic transmission provided that the name of the transmitting agent is included in the order.

*a. New order.* A new written or electronically prepared and transmitted prescription drug or medication order shall be manually or electronically signed by the prescriber. If transmitted by the prescriber's agent, the name and title of the transmitting agent shall be included in the order.

*b. Refill order or renewal order.* An authorization to refill a prescription drug or medication order, or to renew or continue an existing drug therapy, may be transmitted to a pharmacist through oral communication, in writing, or by electronic transmission initiated by or directed by the prescriber.

(1) If the transmission is completed by the prescriber's agent and the name and title of the transmitting agent is included in the order, the prescriber's signature is not required on the fax or alternate electronic transmission.

(2) If the order differs in any manner from the original order, such as a change of the drug strength, dosage form, or directions for use, the prescriber shall sign the order as provided by paragraph "a."

ITEM 2. Amend rule 657—21.9(124,155A) as follows:

**657—21.9(124,155A) Facsimile transmission (fax) of a prescription.** A pharmacist may dispense noncontrolled and controlled drugs, excluding Schedule II controlled substances, pursuant to a prescription faxed to the pharmacy by the prescribing practitioner or the practitioner's agent. The means of transmission shall ensure that prescription information is not obscured or rendered illegible due to security features of the paper utilized by the prescriber to prepare a written prescription. The faxed prescription drug order shall serve as the original prescription, shall be maintained for a minimum of two years from the date of last fill or refill, and shall contain all information required by Iowa Code section 155A.27, including the prescriber's signature or electronic signature. The faxed prescription drug order, if transmitted by the practitioner's agent, shall identify the transmitting agent by name and title and shall include the prescriber's signature or electronic signature. The receiving pharmacist shall be responsible for verifying the authenticity of an electronically transmitted prescription or of an electronic signature as provided by rule 657—8.19(124,126,155A) or 657—21.3(124,155A). This rule shall not apply to a prescription drug order transmitted pursuant to 657—subrule 8.15(1), paragraph "d."

[Filed 9/3/09, effective 10/28/09]

[Published 9/23/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/23/09.

**ARC 8172B**

**PHARMACY BOARD[657]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 124.301, the Board of Pharmacy hereby amends Chapter 10, "Controlled Substances," Iowa Administrative Code.

The amendment establishes requirements in conformance with federal Drug Enforcement Administration rules relating to the issuance of multiple prescriptions for the same Schedule II controlled substance for dispensing to the same patient over a period of time not to exceed a 90-day

## PHARMACY BOARD[657](cont'd)

supply of the prescribed substance. The rule prohibits a pharmacist from filling a prescription so issued prior to the fill date authorized on the prescription and prohibits a pharmacist from changing the fill date with the verbal approval of the prescriber.

Requests for waiver or variance of the discretionary provisions of these rules will be considered pursuant to 657—Chapter 34.

Notice of Intended Action was published in the July 1, 2009, Iowa Administrative Bulletin as **ARC 7908B**. The Board received no written comments regarding the proposed rule. The adopted rule is identical to that published under Notice.

The amendment was approved during the August 17, 2009, meeting of the Board of Pharmacy.

This rule will become effective on October 28, 2009.

This rule is intended to implement Iowa Code section 124.308.

The following rule is adopted.

Adopt the following **new** rule 657—10.25(124):

**657—10.25(124) Schedule II—issuing multiple prescriptions.** An individual prescriber may issue multiple prescriptions authorizing the patient to receive a total of up to a 90-day supply of a Schedule II controlled substance pursuant to the provisions and limitations of this rule.

**10.25(1) Refills prohibited.** The issuance of refills for a Schedule II controlled substance is prohibited. The use of multiple prescriptions for the dispensing of Schedule II controlled substances, pursuant to this rule, ensures that the prescriptions are treated as separate dispensing authorizations and not as refills of an original prescription.

**10.25(2) Legitimate medical purpose.** Each separate prescription issued pursuant to this rule shall be issued for a legitimate medical purpose by an individual prescriber acting in the usual course of the prescriber's professional practice.

**10.25(3) Dates and instructions.** Each prescription issued pursuant to this rule shall be dated as of and manually signed by the prescriber on the day the prescription is issued. Each separate prescription, other than the first prescription if that prescription is intended to be filled immediately, shall contain written instructions indicating the earliest date on which a pharmacist may fill each prescription.

**10.25(4) Authorized fill date unalterable.** Regardless of the provisions of subrule 10.21(5), when a prescription contains instructions from the prescriber indicating that the prescription shall not be filled before a certain date, a pharmacist shall not fill the prescription before that date. The pharmacist shall not contact the prescriber for verbal authorization to fill the prescription before the fill date originally indicated by the prescriber pursuant to this rule.

**10.25(5) Number of prescriptions and authorized quantity.** An individual prescriber may issue for a patient as many separate prescriptions, to be filled sequentially pursuant to this rule, as the prescriber deems necessary to provide the patient with adequate medical care. The cumulative effect of the filling of each of these separate prescriptions shall result in the receipt by the patient of a quantity of the Schedule II controlled substance not exceeding a 90-day supply.

**10.25(6) Prescriber's discretion.** Nothing in this rule shall be construed as requiring or encouraging an individual prescriber to issue multiple prescriptions pursuant to this rule or to see the prescriber's patients only once every 90 days when prescribing Schedule II controlled substances. An individual prescriber shall determine, based on sound medical judgment and in accordance with established medical standards, how often to see patients and whether it is appropriate to issue multiple prescriptions pursuant to this rule.

[Filed 9/3/09, effective 10/28/09]

[Published 9/23/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/23/09.

**ARC 8152B****PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Behavioral Science hereby amends Chapter 5, "Fees," and Chapter 31, "Licensure of Marital and Family Therapists and Mental Health Counselors," Iowa Administrative Code.

These amendments set the fee for a temporary license, define requirements for temporary licensure for marital and family therapists and mental health counselors, and further clarify the requirements for the supervised work experience.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 17, 2009, as **ARC 7858B**. A public hearing was held on July 7, 2009, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received on the proposed amendments.

These amendments were adopted by the Iowa Board of Behavioral Science on August 14, 2009.

These amendments will become effective October 28, 2009.

These amendments are intended to implement Iowa Code chapters 21, 147, 154D and 272C.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [5.3, 31.2, 31.5, 31.7] is being omitted. These amendments are identical to those published under Notice as **ARC 7858B**, IAB 6/17/09.

[Filed 8/25/09, effective 10/28/09]

[Published 9/23/09]

[For replacement pages for IAC, see IAC Supplement 9/23/09.]

**ARC 8182B****STATUS OF WOMEN DIVISION[435]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 216A.54, the Commission on the Status of Women hereby rescinds Chapter 5, "Iowans in Transition," Iowa Administrative Code.

This amendment rescinds Chapter 5 because the rules in the chapter are obsolete.

Notice of Intended Action was published in the June 3, 2009, Iowa Administrative Bulletin as **ARC 7821B**. This adopted amendment is identical to that published under Notice.

This amendment was approved during the August 29, 2009, meeting of the Iowa Commission on the Status of Women.

This amendment will become effective on October 28, 2009.

This amendment is intended to implement Iowa Code section 216A.54.

The following amendment is adopted.

Rescind and reserve **435—Chapter 5**.

[Filed 9/4/09, effective 10/28/09]

[Published 9/23/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/23/09.

AGENCY	RULE	DELAY
EDUCATION DEPARTMENT[281]	98.12, 98.112 [IAB 8/26/09, <b>ARC 8054B</b> ]	Effective date of September 30, 2009, delayed 70 days by the Administrative Rules Review Committee at its meeting held September 8, 2009. [Pursuant to §17A.4(7)]



IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

**EXECUTIVE ORDER NUMBER SIXTEEN**

**WHEREAS**, the Culver-Judge Administration envisions an economic future for the State of Iowa in which its citizens will lead the nation toward the clean, safe, unlimited, efficient, job-producing, prosperity-inducing and environmentally friendly energies of the 21st Century (sometimes referred to as a "Green Economy"); and

**WHEREAS**, to advance this vision, the Culver-Judge Administration is dedicated to increasing the number of private sector jobs for Iowans, including new energy-related jobs and a strengthened manufacturing base in our State and to increase the prosperity of our citizens by creating new energy-related technologies; and

**WHEREAS**, in the face of an international economic crisis, on February 17, 2009, President Barack Obama signed into law the American Recovery and Reinvestment Act of 2009, hereinafter "Recovery Act," as a proposal to jump-start the United States economy; and

**WHEREAS**, appropriations under the Recovery Act, many of them awarded upon the application of bids in a competitive process, offer support for state and local investment in infrastructure, energy efficiency and technology, job preservation and state and local fiscal stabilization; and

**WHEREAS**, collaboration between state agencies can increase the effectiveness of the State of Iowa in leveraging various state, federal and private funding streams to create green jobs; and

**WHEREAS**, in order to compete effectively for private sector investments in new clean, safe, unlimited, efficient and job-producing businesses and industries that will help ensure the financial well-being of Iowans for years to come, the State of Iowa must offer increased access to education and workforce development training programs to students and workers to create a pipeline of talent that will help to develop a more vibrant 21<sup>st</sup> Century Green Economy for Iowa; and

**WHEREAS**, the creation of a Green Jobs Task Force to examine and report on the issue of green job creation would enable Iowa to make use of additional federal and private resources that are now available for long-term reinvestment in Iowa's advancing green economy.

**NOW, THEREFORE**, I, Chester J. Culver, Governor of the State of Iowa, by the power vested in me by the laws and the constitution of the State of Iowa do hereby order as follows:

A GREEN JOBS TASK FORCE shall be created.

**I. Membership.** Membership on the Green Jobs Task Force shall include:

- The Governor, or the Governor's designee;
- The Director of the Iowa Office of Energy Independence, or the director's designee;
- The Director of Iowa Workforce Development, or the director's designee;
- The Director of the Iowa Department of Economic Development, or the director's designee;
- The Director of the Iowa Finance Authority, or the director's designee;
- The Chair of the Iowa Utilities Board, or the chair's designee;

- The Director of the Iowa Department of Transportation, or the director's designee;
- The Chief of Iowa Department of Education's Bureau of Community Colleges and Career & Technical Education, or the chief's designee;
- The Director of the Board of Regents of the State of Iowa, or the director's designee;
- The Division Administrator of the Division of Community Action Agencies, of the Iowa Department of Human Rights;
- The Building Code Commissioner of the Department of Public Safety;
- The Director of the Iowa Energy Center, or the director's designee; and
- The Consumer Advocate or his designee.
- The Executive Director of the Iowa Association of Independent Colleges and Universities, or the executive director's designee.
- The Executive Director of the Iowa Association of Community College Trustees, or the executive director's designee.

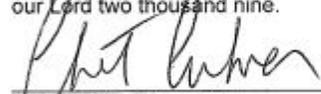
The Director of Iowa Office of Energy Independence, or the director's designee, shall serve as Chair of the Green Jobs Task Force. The Director of the Iowa Workforce Development, or the director's designee, shall serve as the Vice-Chair of the Green Jobs Task Force.

- II. **Duties.** The Green Jobs Task Force shall study and craft proposals, including proposals for Recovery Act funding when necessary, to:
- Create jobs that will deliver integrated and effective energy efficiency in new housing, commercial and industrial construction, and the retrofit of existing structures.
  - Train workers for alternative energy jobs including: wind technology, solar, small hydro, biomass electric and biomass heating.
  - Train workers for the biofuels industry and increase demand for biofuels.
  - Invest in Research and Development jobs which improve the efficiency of alternative fuels and other valuable chemicals.
  - Support and encourage growth in industries that employ green jobs.
  - Develop smart grids for distributed energy installation and electricity transmission.
  - Develop intelligent transportation systems.
  - Support Green Jobs Apprenticeship programs that train workers in Green technology.
  - Train workers for advanced transportation technologies.
  - Increase the options for financing energy efficiency projects undertaken in the private and public sectors.
  - Spur additional research and development in energy efficiency, cogeneration, combined heat and power and renewable technologies.
  - Produce research that promotes new green energy sources or enhances the efficiency of existing energy sources such as wind, solar, biomass, natural gas, and coal.
  - Develop energy related curricula at the Regent universities and independent colleges and universities, and the articulation of these with community colleges.
  - Improve and create infrastructure such as blender pumps, intermodal freight rail and passenger rail that will support the growth of green jobs.
  - Implement smart growth policies that will create green jobs which would include brownfield and grayfield redevelopment.
  - Promote local food systems.
  - Promote new work patterns that reduce energy usage and benefit Iowa employers and workers.
  - Invest in broadband and other technology that supports an increase in the number and type of green jobs.

- III. **Report.** The Green Jobs Task Force shall prepare a comprehensive report, outlining its activities and making recommendations for action by the Governor's Office no later than October 1, 2009.
- IV. **Administrative Support.** The Iowa Office of Energy Independence shall provide the administrative support necessary to facilitate the work of the Green Jobs Task Force.
- V. **Dissolution.** The Green Jobs Task Force shall be dissolved upon submission of its report to the Governor's Office.



IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done at Des Moines this <sup>20<sup>th</sup></sup> day of August, in the year of our Lord two thousand nine.

  
\_\_\_\_\_  
CHESTER J. CULVER  
GOVERNOR

ATTEST:

  
\_\_\_\_\_  
MICHAEL A. MAURO  
SECRETARY OF STATE