



IOWA ADMINISTRATIVE BULLETIN

Published Biweekly

VOLUME XXXIV
November 16, 2011

NUMBER 10
Pages 657 to 726

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

Schedule for Rule Making 2011

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

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
12	Wednesday, November 23, 2011	December 14, 2011
13	Wednesday, December 7, 2011	December 28, 2011
14	Wednesday, December 21, 2011	January 11, 2012

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the filing deadline day 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*****

ECONOMIC DEVELOPMENT AUTHORITY[261]

Tax credits for investments, chs 115, 116 IAB 11/16/11 ARC 9845B	Southeast Conference Room, First Floor 200 E. Grand Ave. Des Moines, Iowa	December 6, 2011 9 to 10 a.m.
SSBCI demonstration fund, ch 117 IAB 11/16/11 ARC 9848B (See also ARC 9846B herein)	Southeast Conference Room, First Floor 200 E. Grand Ave. Des Moines, Iowa	December 6, 2011 11 a.m. to noon
Energy development programs, chs 400 to 402 IAB 11/16/11 ARC 9852B (See also ARC 9851B herein)	Southeast Conference Room, First Floor 200 E. Grand Ave. Des Moines, Iowa	December 6, 2011 10 to 11 a.m.

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Low-income housing tax credit program—2012 qualified allocation plan, 12.1, 12.2 IAB 11/2/11 ARC 9837B	Authority Offices 2015 Grand Ave. Des Moines, Iowa	November 22, 2011 9 to 11 a.m.
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Online filing of documents, 40.9 IAB 11/16/11 ARC 9859B	First Floor Lucas State Office Bldg. Des Moines, Iowa	December 6, 2011 9 a.m.
Revocation of notary license, 43.6 IAB 11/16/11 ARC 9857B	First Floor Lucas State Office Bldg. Des Moines, Iowa	December 6, 2011 9 a.m.

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The following list will be updated as changes occur.

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

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

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

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ARC 9855B

AGRICULTURAL DEVELOPMENT AUTHORITY[25]

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 175.2(2) and 175.6(14), the Agricultural Development Authority hereby gives Notice of Intended Action to amend Chapter 1, “General,” Chapter 6, “Beginning Farmer Tax Credit Program,” and Chapter 11, “Waiver or Variance of Rules,” Iowa Administrative Code.

The proposed amendments update rules on the structure of the Agricultural Development Authority by reflecting the changes made in 2011 Iowa Acts, Senate File 429. The Authority was previously independent and is now established within the Department of Agriculture and Land Stewardship. The board of the Agricultural Development Authority would have the ability to waive rules.

The proposed amendments eliminate the requirement that the beginning farmer annually submit the IRS 1040 Schedule F form for receipt of the beginning farmer tax credit. This change is being made in order to provide for a more efficient use of staff time.

Any interested person may make written suggestions or comments on the proposed amendments on or before December 6, 2011. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319. Comments may be submitted by fax to (515)281-6236 or E-mail to Margaret.Thomson@IowaAgriculture.gov.

The proposed amendments are subject to the Authority’s general waiver provision.

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

These amendments are intended to implement Iowa Code chapter 175 as amended by 2011 Iowa Acts, Senate File 429.

The following amendments are proposed.

ITEM 1. Amend rule 25—1.1(175) as follows:

25—1.1(175) Description of agricultural development authority organization. The agricultural development authority is established within the department of agriculture and land stewardship and consists of nine members. The treasurer of the state or the treasurer’s designee and the state secretary of agriculture or the secretary’s designee are ex officio nonvoting members. Members are appointed for staggered six-year terms. A chairperson, vice-chairperson and treasurer are elected by the membership. Authority staff consists of an executive director and additional staff as approved by the agricultural development authority.

This rule is intended to implement Iowa Code section 17A.3 and Iowa Code chapter 175 as amended by 2011 Iowa Acts, Senate File 429.

ITEM 2. Amend rule 25—1.5(175) as follows:

25—1.5(175) Waiver. The ~~executive director~~ board of the authority may in the ~~director’s~~ board’s discretion retroactively or prospectively waive or vary particular provisions of these rules as necessary to conform to changes in federal or state law or regulations; to further the legislative purposes of programs of the authority; to bestow additional benefits or privileges on persons eligible to participate in the authority’s programs; or to avoid inequitable, harsh or unforeseen results from the application of these rules; provided that the waiver shall be for good cause to avoid irreparable harm or injury to

AGRICULTURAL DEVELOPMENT AUTHORITY[25](cont'd)

citizens of this state, shall not be unduly prejudicial to any person and shall not be in conflict with the Act.

This rule is intended to implement Iowa Code section 17A.3 and Iowa Code chapter 175.

ITEM 3. Amend rule 25—6.5(175) as follows:

25—6.5(175) Procedures following tax credit approval.

~~6.5(1)~~ Either the beginning farmer or the taxpayer shall immediately notify the authority of any material changes in the agricultural assets transfer agreement. The authority shall act upon these changes pursuant to ~~2006 Iowa Acts, Senate File 2268, section 2~~ Iowa Code section 175.37. Material changes cannot result in an increase in the original tax credit amount approved. Death of a party to the lease, divorce, or sale of the property will be considered eligible material changes. Sale of the property will be considered only if the original lease terms remain in effect and the asset purchaser is determined to be eligible for the program.

~~6.5(2)~~ The beginning farmer shall annually by April 15 submit to the authority a copy of the Schedule F for the previous year. This schedule should document that the beginning farmer paid cash rent, received income and incurred expenses associated with operating the agricultural asset under the terms of the lease agreement.

ITEM 4. Amend **25—Chapter 6**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 175 as amended by 2006 Iowa Acts, Senate File 2268.

ITEM 5. Amend rule 25—11.3(17A,175) as follows:

25—11.3(17A,175) Applicability of chapter. ~~The authority may grant a~~ A waiver from a rule may be granted only if the authority has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. ~~The authority may~~ waiver shall not waive be granted for requirements created or duties imposed by statute.

ITEM 6. Amend rule 25—11.4(17A,175), introductory paragraph, as follows:

25—11.4(17A,175) Criteria for waiver or variance. In response to a petition completed pursuant to rule 25—11.6(17A,175), the board of the authority may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the authority board finds, based on clear and convincing evidence, all of the following:

ITEM 7. Amend subrule 11.10(1) as follows:

11.10(1) ~~Authority Board discretion.~~ The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the authority board, based upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the authority board based on the unique, individual circumstances set out in the petition.

ARC 9845B

ECONOMIC DEVELOPMENT AUTHORITY[261]

Notice of Intended Action

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

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

Pursuant to the authority of 2011 Iowa Acts, House File 590, section 7, the Economic Development Authority gives Notice of Intended Action to adopt Chapter 115, “Tax Credits for Investments in

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Qualifying Businesses and Community-Based Seed Capital Funds,” and Chapter 116, “Tax Credits for Investments in Certified Innovation Funds,” Iowa Administrative Code.

The amendments propose to adopt new Chapter 115 to incorporate changes to Iowa Code provisions that provide tax credits for investments in qualifying businesses and community-based seed capital funds. Previously, these credits were administered by the Iowa Capital Investment Board. The Legislature, in 2011 Iowa Acts, Senate File 517, transferred the administration of these credits to the Authority and authorized the Authority to allocate \$2 million in tax credits from the Authority’s maximum aggregate tax credit limit in Iowa Code section 15.119 for these tax credits.

The amendments also propose to adopt new Chapter 116 which provides rules for the administration of innovation fund investment tax credits. These credits were created by the Legislature in 2011 Iowa Acts, Senate File 517, and the Authority was authorized to allocate \$8 million of the maximum aggregate tax credit limit in Iowa Code section 15.119 for purposes of the credits.

The amendments are intended to work in conjunction with Department of Revenue rules published under Notice of Intended Action herein as **ARC 9856B**.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on December 6, 2011. Interested persons may submit written or oral comments by contacting Tim Whipple, Iowa Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3124; or E-mail tim.whipple@iowa.gov.

The Authority will hold a public hearing on Tuesday, December 6, 2011, from 9 to 10 a.m. to receive comments on these amendments. The public hearing will be held in the Southeast Conference Room, First Floor, Iowa Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa.

After analysis and review of this rule making, no adverse impact on jobs has been found. This rule making implements economic development policy in the state by means of a collaboration between government and the private sector. The collaboration allows the Economic Development Authority and the Iowa Innovation Corporation to further economic development policy. This rule making allows Iowa to create a business environment which is competitive with other states in order to ensure job growth and retention.

These amendments are intended to implement Iowa Code chapter 15E, division V, and 2011 Iowa Acts, Senate File 517.

The following amendments are proposed.

ITEM 1. Adopt the following **new** 261—Chapter 115:

CHAPTER 115
TAX CREDITS FOR INVESTMENTS IN QUALIFYING BUSINESSES AND
COMMUNITY-BASED SEED CAPITAL FUNDS

261—115.1(84GA,SF517) Tax credits for investments in qualifying businesses and community-based seed capital funds. Tax credits for investments in qualifying businesses and community-based seed capital funds may be claimed as provided in this rule.

115.1(1) Tax credits allowed only after a certain date. A taxpayer may claim a tax credit under this rule for equity investments in certain qualifying businesses or community-based seed capital funds. Only equity investments made on or after January 1, 2011, qualify for a tax credit under this rule. Equity investments made before that date must be claimed under 123—Chapter 2.

115.1(2) Investments in qualifying businesses.

a. A taxpayer may claim a tax credit under this subrule for a portion of the taxpayer’s equity investment in a qualifying business if that investment was made on or after January 1, 2011.

b. The tax credit may be claimed against the taxpayer’s tax liability for any of the following taxes:

- (1) The personal net income tax imposed under Iowa Code chapter 422, division II.
- (2) The business tax on corporations imposed under Iowa Code chapter 422, division III.
- (3) The franchise tax on financial institutions imposed under Iowa Code chapter 422, division V.
- (4) The tax on the gross premiums of insurance companies imposed under Iowa Code chapter 432.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

(5) The tax on moneys and credits imposed under Iowa Code section 533.329.

115.1(3) *Investments in community-based seed capital funds.*

a. A taxpayer may claim a tax credit under this subrule for a portion of the taxpayer's equity investment in a community-based seed capital fund if that investment was made on or after January 1, 2011.

b. The tax credit may be claimed against the taxpayer's tax liability for any of the following taxes:

- (1) The personal net income tax imposed under Iowa Code chapter 422, division II.
- (2) The business tax on corporations imposed under Iowa Code chapter 422, division III.
- (3) The franchise tax on financial institutions imposed under Iowa Code chapter 422, division V.
- (4) The tax on gross premiums of insurance companies imposed under Iowa Code chapter 432.
- (5) The tax on moneys and credits imposed under Iowa Code section 533.329.

115.1(4) *Amount of tax credit that may be claimed by taxpayer.*

a. The amount of tax credit available to a taxpayer under this rule is equal to 20 percent of the taxpayer's equity investment in either a qualifying business or community-based seed capital fund.

b. The maximum amount of a tax credit for an investment by an investor in any one qualifying business shall be \$50,000. Each year, an investor, and all affiliates of that investor, shall not claim tax credits under this rule for more than five different investments in five different qualifying businesses.

c. An investor in a community-based seed capital fund shall receive a tax credit pursuant to this rule only for the investor's investment in the community-based seed capital fund and shall not receive any additional tax credit for the investor's share of investments in a qualifying business made by the community-based seed capital fund or in an Iowa-based seed capital fund which has at least 40 percent of its committed capital subscribed by community-based seed capital funds. However, an investor in a community-based seed capital fund may receive a tax credit under this rule with respect to a separate direct investment made by the investor in the same qualifying business in which the community-based seed capital fund invests.

115.1(5) *Claiming an investment tax credit.* A taxpayer that makes an investment in a qualifying business or community-based seed capital fund and that otherwise meets the requirements of this chapter will receive a board-approved tax credit certificate from the authority. To claim the credit, the taxpayer must attach the certificate to a tax return filed with the department of revenue. For more information on claiming the tax credit, see department of revenue rule 701—42.22(15E,422).

115.1(6) *Tax credits for pass-through entities.* If the taxpayer that is entitled to a tax credit for an investment in a community-based seed capital fund or a qualifying business is a pass-through entity electing to have its income taxed directly to its individual owners, such as a partnership, limited liability company, S corporation, estate or trust, the pass-through entity must allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro-rata share of the earnings of the entity, and the individual owners may claim their respective credits on their individual income tax returns.

261—115.2(84GA,SF517) Definitions. For purposes of this chapter, unless the context otherwise requires:

"Affiliate" means a spouse, child, or sibling of an investor or a corporation, partnership, or trust in which an investor has a controlling equity interest or in which an investor exercises management control.

"Authority" means the economic development authority created in 2011 Iowa Acts, House File 590.

"Board" means the same as defined in Iowa Code section 15.102 as amended by 2011 Iowa Acts, House File 590, section 3.

"Community-based seed capital fund" means a fund that meets the following criteria:

1. Is organized as a limited partnership or limited liability company;
2. Has, on or after January 1, 2011, a total of capital commitments from both investors and investments in qualifying businesses of at least \$125,000, but not more than \$3 million. If the fund is either a rural business investment company under the Rural Business Investment Program of the federal Farm Security and Rural Investment Act of 2002 or an Iowa-based seed capital fund with at least 40 percent of its committed capital subscribed by community-based seed capital funds, the fund may

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

have more than \$3 million of capital commitments from both investors and investments in qualifying businesses; and

3. Has no fewer than five investors that are not affiliates, with no single investor and affiliates of that investor together owning a total of more than 25 percent of the ownership interests outstanding in the fund.

“Controlling equity interest” means ownership of more than 50 percent of the outstanding equity interests of a corporation, partnership, limited liability company or trust.

“Investor” means a person that makes a cash investment in a community-based seed capital fund or in a qualifying business on or after January 1, 2011. “Investor” does not include a person that holds at least a 70 percent ownership interest as an owner, member, or shareholder in a qualifying business for investments made on or after January 1, 2011.

“Management control” means holding more than 50 percent of the voting power on any board of directors or trustees, any management committee, or any other group managing a corporation, partnership, limited liability company or trust.

“Near equity” means debt that may be converted to equity at the option of the debt holder, and royalty agreements.

“Person” means an individual, corporation, limited liability company, business trust, estate, trust, partnership or association, or any other legal entity.

“Qualifying business” means a business that meets the following criteria:

1. The principal business operations of the business are located in the state of Iowa;
2. The business has been in operation for six years or less, as measured from the date of the investment for which a credit is claimed;
3. The business has an owner who has successfully completed one of the following:
 - An entrepreneurial venture development curriculum, such as programs developed by a John Pappajohn Entrepreneurial Center, or a holistic training program recognized by the Iowa economic development authority which generally encompasses the following areas: entrepreneurial training, management team development, intellectual property management, market research and analysis, sales and distribution development, financial planning and management and strategic planning;
 - Three years of relevant business experience;
 - A four-year college degree in business management, business administration or a related field;
 - Other training or experience sufficient to increase the probability of success of the qualifying business;
4. The business is not a business engaged primarily in retail sales, real estate or the provision of health care services or other services requiring a professional license;
5. The business does not have a net worth that exceeds \$5 million as of the date of the investment for which the credit is claimed; and
6. Within 24 months from the first date on which the equity investments qualifying for investment tax credits have been made, the business shall have secured total equity or near equity financing equal to at least \$250,000.

“Services requiring a professional license” includes but is not limited to the professions listed in Iowa Code section 496C.2.

261—115.3(84GA,SF517) Cash investments required. In order to qualify for a tax credit under this chapter, the taxpayer’s investment must be made in the form of cash to purchase equity in a qualifying business or in a community-based seed capital fund.

261—115.4(84GA,SF517) Applying for an investment tax credit.

115.4(1) A taxpayer that desires to receive an investment tax credit for an equity investment in a qualifying business or community-based seed capital fund shall submit an application to the board for approval and provide such other information and documentation as may be requested by the board. Application forms for the investment tax credit may be obtained by contacting the Economic

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

Development Authority. The telephone number is (515)725-3000. The address is 200 East Grand Avenue, Des Moines, Iowa 50309.

115.4(2) Application forms may also be obtained by contacting a Small Business Development Center in the applicant's geographic location. The authority will coordinate with Small Business Development Centers throughout the state to provide uniform application forms to Small Business Development Centers and to disseminate information regarding the investment tax credits. The authority will provide a summary of the investment tax credits to Small Business Development Centers by either supplying the Small Business Development Centers with a copy of these rules or delivering substantially similar information in any other format approved by the authority. The authority will make itself accessible to Small Business Development Centers for assistance with questions concerning completion of applications or any other questions pertaining to the investment tax credits available under this chapter.

115.4(3) Applications shall be date- and time-stamped by the authority in the order in which such applications are received. Applications for the investment tax credit shall be accepted by the authority until March 31 of the year following the calendar year in which the taxpayer's equity investment was made.

EXAMPLE 1: A taxpayer makes an equity investment in a qualifying business on December 31, 2011. The taxpayer has until March 31, 2012, to apply to the authority for an investment tax credit.

EXAMPLE 2: A taxpayer makes an equity investment in a qualifying business on July 1, 2012. The taxpayer has until March 31, 2013, to apply to the authority for an investment tax credit.

261—115.5(84GA,SF517) Verification of qualifying businesses and community-based seed capital funds.

115.5(1) *Qualifying businesses.*

a. Within 120 days from the first date on which the equity investments qualifying for investment tax credits have been made (or, for investments made during the 2011 calendar year, by the later of 120 days from the first date on which the investments were made or March 31, 2012), a qualifying business shall provide to the authority the following information as a prerequisite to the authority's issuance of any investment tax credits to investors in such qualifying business:

(1) A signed statement, from an officer, director, manager, member, or general partner of the qualifying business, that contains a description of the general nature of its business operations, the location of the principal business operations, the date on which the business was formed, and the date on which the business commenced operations;

(2) A balance sheet, certified by the chief executive officer and the chief financial officer of the qualifying business, that reflects the qualifying business's assets, liabilities and owners' equity as of the close of the most recent month or quarter;

(3) A signed statement, from an owner of the business, that describes the manner in which such owner satisfies one of the training requirements set forth in the definition of a qualifying business under rule 261—115.2(84GA,SF517);

(4) A signed statement from an officer, director, manager, member or general partner of the qualifying business that states the names, addresses, shares or equity interests issued, consideration paid for the shares or equity interests, and the amounts of any tax credits of all shareholders or equity holders who may initially qualify for the tax credits and the earliest year in which the tax credits may be redeemed. The statement shall contain a commitment by the qualifying business to amend its statement as may be necessary from time to time to reflect new equity interests or transfers in equity among current equity holders or as any other information on the list may change; and

(5) A certificate of existence of a business plan for the qualifying business which details the business's growth strategy, management team, production/management plan, marketing plan, financial plan and other standard elements of a business plan.

b. Upon the authority's receipt of the information and documentation necessary to demonstrate satisfaction of the criteria set forth herein, the authority shall, within a reasonable period of time, determine whether a business is a qualifying business. If the authority verifies that the business

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

is a qualifying business, the authority shall register the qualifying business on a registry of such qualifying businesses. The authority shall maintain the registry and use it to authorize the issuance of further investment tax credits to taxpayers who make equity investments in qualifying businesses registered with the authority. The authority shall issue written notification to the qualifying business and the applicant that such business has been registered as a qualifying business with the authority for the purpose of issuing investment tax credits but that such registration is subject to removal and rescission under rule 261—115.9(84GA,SF517) for any failure of the business to continuously satisfy the requirements necessary for verification and registration as a qualifying business.

115.5(2) Community-based seed capital funds.

a. Within 120 days from the first date on which the equity investments qualifying for investment tax credits have been made (or, for investments made during the 2011 calendar year, by the later of 120 days from the first date on which the investments were made or March 31, 2012), a community-based seed capital fund shall provide to the authority information as a prerequisite to the authority's issuance of investment tax credits to investors in such community-based seed capital fund. A community-based seed capital fund cannot invest in the Iowa fund of funds organized by the Iowa capital investment corporation under Iowa Code section 15E.65 but may invest up to 60 percent of its committed capital in an Iowa-based seed capital fund with at least 40 percent of its committed capital subscribed by community-based seed capital funds. The following information must be provided:

(1) A copy of the fund's certificate of limited partnership, limited partnership agreement, articles of organization or operating agreement, or any combination thereof, certified by the chief executive officer of the community-based seed capital fund.

(2) A signed statement, from an officer, director, manager, member or general partner of the fund, that states the total amount of capital contributions or capital commitments from investors, the total number of individual investors that are not affiliates, and the ownership interest of each individual investor in the fund.

(3) A signed statement, from an officer, director, manager, member or general partner of the fund, that states the names, addresses, equity interests issued, consideration paid for the interests and the amounts of any tax credits, of all limited partners or members who may initially qualify for the tax credits, and the earliest year in which the tax credits may be redeemed. The statement shall also contain a commitment by the fund to amend its statement as may be necessary from time to time to reflect new equity interests or transfers in equity among current equity holders or as any other information on the list may change.

b. Upon the authority's receipt of the information and documentation necessary to demonstrate a community-based seed capital fund's satisfaction of the criteria set forth herein, the board shall, within a reasonable period of time, determine whether a fund is a community-based seed capital fund. If the authority verifies that the fund is a community-based seed capital fund, the authority shall register the community-based seed capital fund on a registry of such community-based seed capital funds. The authority shall maintain the registry and use it to authorize the issuance of further investment tax credits to taxpayers that make equity investments in the community-based seed capital funds registered with the authority. The authority shall issue written notification to the community-based seed capital fund and the applicant that such fund has been registered as a community-based seed capital fund with the authority for the purpose of issuing investment tax credits but that such registration is subject to removal and rescission under rule 261—115.9(84GA,SF517) for any failure of the community-based seed capital fund to continuously satisfy the requirements necessary for verification and registration as a community-based seed capital fund.

261—115.6(84GA,SF517) Approval, issuance and distribution of investment tax credits.

115.6(1) Approval by the board. Upon verification and registration by the authority of a qualifying business or community-based seed capital fund and approval of the taxpayer's application, the board will approve the issuance of a tax credit certificate to the taxpayer applying for the tax credit.

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115.6(2) Issuance by the authority. Upon approval by the board, the authority shall issue a tax credit certificate to the applicant, provided, however, that such tax credit certificate shall be subject to rescission pursuant to rule 261—115.9(84GA,SF517).

115.6(3) Preparation of certificate. The tax credit certificate shall be prepared by the authority in a form approved by the board and shall contain the taxpayer's name, address, and tax identification number, the amount of credit, the name of the qualifying business or community-based seed capital fund, the year in which the credit may be redeemed and any other information that may be required by the department of revenue. In addition, the tax credit certificate shall contain the following statement:

Neither the authority nor the board has recommended or approved this investment or passed on the merits or risks of such investment. Investors should rely solely on their own investigation and analysis and seek investment, financial, legal and tax advice before making their own decision regarding investment in this enterprise.

115.6(4) Maximum aggregate limitation. The aggregate amount of tax credits issued pursuant to this chapter shall not exceed the amount allocated by the board pursuant to Iowa Code section 15.119, subsection 2. For fiscal year 2012 and all subsequent fiscal years, that amount is \$2 million.

If, during any fiscal year during which tax credits are to be issued under this chapter, applications totaling more than the maximum aggregate amount are received and approved, the applications may be carried forward and prioritized to receive tax credit certificates on a first-come, first-served basis in subsequent fiscal years.

When carrying forward and prioritizing such applications, the authority shall (1) issue tax credit certificates to the taxpayers for such carryover tax credits before issuing any new tax credits to later applicants, and (2) apply the aggregate amount of the credits carried over against the total amount of tax credits to be issued during the subsequent fiscal year before approving or issuing additional tax credits.

261—115.7(84GA,SF517) Claiming the tax credits. To claim a tax credit under this chapter, a taxpayer must attach to that taxpayer's tax return a certificate issued pursuant to this chapter when the return is filed with the department of revenue. For more information on claiming tax credits, see department of revenue rule 701—42.22(15E,422).

261—115.8(84GA,SF517) Notification to the department of revenue. Upon the issuance and distribution of investment tax credits for a tax year, the authority shall promptly notify the department of revenue by providing copies of the tax credit certificates issued for such tax year to the department of revenue. Such notification shall also include, but not be limited to, the aggregate number and amount of tax credits issued for the tax year.

261—115.9(84GA,SF517) Rescinding tax credits.

115.9(1) Rescission of credits for investments in qualifying businesses.

a. Within 24 months from the first date on which the equity investments qualifying for investment tax credits have been made, a qualifying business shall provide to the authority information and documentation sufficient to demonstrate that the business has secured total equity or near equity financing equal to at least \$250,000. Examples of sufficient information and documentation include, but are not limited to, the following:

(1) Corporate, partnership or limited liability company-certified resolutions setting forth the names of individuals or entities making capital contributions and the amounts of such capital contributions;

(2) Certified corporate, partnership, or limited liability company minutes reflecting the names of individuals or entities making capital contributions and the amounts of such capital contributions.

b. On or by the last day of the 24-month period described in paragraph 115.9(1) "a," a qualifying business shall certify to the authority, by a statement signed by an officer, director, member, manager, or general partner of the qualifying business, that it has secured the requisite amount of equity financing required by this rule within the time period prescribed in paragraph 115.9(1) "a" and shall recertify to the authority that the qualifying business continues to meet the requirements set forth in subrule 115.5(1).

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

c. In the event that a qualifying business fails to meet or maintain any requirement set forth in this rule, including, without limitation, timely filing of the certifications described in paragraph 115.9(1) “b,” the authority, upon action by the board, shall rescind any tax credit certificates issued to those taxpayers and shall notify the department of revenue that it has done so. A tax credit certificate that has been rescinded by the authority shall be null and void, and the department of revenue will not accept the tax credit certificate. In addition, the authority shall remove the qualifying business from the registry and shall issue written notification of such removal to the qualifying business and the applicants.

115.9(2) Rescission of credits for investments in community-based seed capital funds.

a. A community-based seed capital fund shall have invested at least 33 percent of its invested capital in one or more separate qualifying businesses on or by the last day of the 48-month period that commences with the fund’s investing activities.

b. On or by the last day of the 48-month period described in paragraph 115.9(2) “a,” a community-based seed capital fund shall certify to the board, by a statement signed by an officer, director, member, manager, or general partner of the community-based seed capital fund, that it has met the requirements of this rule within the time period prescribed by this subrule and shall recertify to the board that the community-based seed capital fund continues to meet the requirements set forth in subrule 115.5(2).

c. In the event that a community-based seed capital fund fails to meet or maintain any requirement set forth in this subrule, including, without limitation, timely filing of the certifications described in paragraph 115.9(2) “b,” the authority, upon action of the board, shall rescind any tax credit certificates issued to limited partners or members and shall notify the department of revenue that it has done so. A tax credit certificate that has been rescinded by the authority shall be null and void, and the department of revenue will not accept the tax credit certificate. In addition, the authority shall remove such community-based seed capital fund from the registry and shall issue written notification of such removal to the community-based seed capital fund and the applicants.

d. Notwithstanding paragraphs 115.9(2) “a” to “c,” a community-based seed capital fund may apply to the authority for a one-year waiver from the requirements of this rule. The authority shall, upon review of a community-based seed capital fund’s application for waiver, exercise reasonable discretion in granting or denying such waiver. In the event that the authority grants to a community-based seed capital fund a one-year waiver from the requirements of this rule, the authority shall defer any rescission of the tax credit certificates until the expiration of such one-year waiver period. If the community-based seed capital fund meets the requirements of this rule by the expiration of such one-year waiver period, the tax credit certificates shall not be rescinded. However, the tax credit certificates shall be rescinded at the end of such one-year waiver period if such requirements have not been met.

261—115.10(84GA,SF517) Additional information. The authority may at any time request additional information and documentation from a qualifying business or community-based seed capital fund regarding the operations, job creation and economic impact of such qualifying business or community-based seed capital fund, and the authority may use such information in preparing and publishing any reports to be provided to the governor and the general assembly.

These rules are intended to implement Iowa Code chapter 15E, division V, and 2011 Iowa Acts, Senate File 517.

ITEM 2. Adopt the following **new** 261—Chapter 116:

CHAPTER 116

TAX CREDITS FOR INVESTMENTS IN CERTIFIED INNOVATION FUNDS

261—116.1(84GA,SF517) Tax credit for investments in certified innovation funds.

116.1(1) Tax credit allowed. For tax years beginning on or after January 1, 2011, a taxpayer may claim a tax credit for a portion of the taxpayer’s equity investment in a certified innovation fund. The tax credit may be claimed against the taxpayer’s tax liability for any of the following taxes:

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

- a. The personal net income tax imposed under Iowa Code chapter 422, division II.
- b. The business tax on corporations imposed under Iowa Code chapter 422, division III.
- c. The franchise tax on financial institutions imposed under Iowa Code chapter 422, division V.
- d. The tax on the gross premiums of insurance companies imposed under Iowa Code chapter 432.
- e. The tax on moneys and credits imposed under Iowa Code section 533.329.

116.1(2) Treatment of pass-through entities. If the taxpayer that is entitled to an investment tax credit for an investment in an innovation fund is a pass-through entity electing to have its income taxed directly to its individual owners, such as a partnership, limited liability company, S corporation, estate or trust, the pass-through entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro-rata share of the earnings of the entity, and the individual owners may claim their respective credits on their individual income tax returns.

116.1(3) Credits for certain investments disallowed. A taxpayer shall not claim an investment tax credit for an investment in an innovation fund if the taxpayer is a venture capital investment fund allocation manager for the Iowa fund of funds described in Iowa Code section 15E.65, an investor that receives a tax credit for the same investment in a community-based seed capital fund as described in Iowa Code section 15E.45, or an investor that receives a tax credit for the same investment in a qualifying business as described in Iowa Code section 15E.44.

116.1(4) Cash investments required. The taxpayer's equity investment must be made in the form of cash to purchase equity in an innovation fund.

116.1(5) Amount of credit. The taxpayer may claim a tax credit in an amount equal to 20 percent of the taxpayer's equity investment in a certified innovation fund.

261—116.2(84GA,SF517) Definitions. For purposes of this chapter, unless the context otherwise requires:

"Authority" means the economic development authority created in 2011 Iowa Acts, House File 590.

"Board" means the same as defined in Iowa Code section 15.102 as amended by 2011 Iowa Acts, House File 590, section 3.

"Innovation fund" means a private, early-stage capital fund that has been certified by the board.

"Innovative business" means a business applying novel or original methods to the manufacture of a product or the delivery of a service. "Innovative business" includes but is not limited to a business engaged in advanced manufacturing, biosciences, or information technology.

261—116.3(84GA,SF517) Verification of innovation funds.

116.3(1) An innovation fund shall provide to the authority information as a prerequisite to the issuance of any investment tax credits to investors in such innovation funds. The innovation fund must provide this information within 120 days from the first date on which the equity investments qualifying for the investment tax credit have been made (or, for investments made during the 2011 calendar year, by the later of 120 days from the first date on which the investments have been made or March 31, 2012).

116.3(2) Application forms setting forth the information required to verify the eligibility of an innovation fund may be obtained by contacting the Economic Development Authority at 200 East Grand Avenue, Des Moines, Iowa 50309. The telephone number is (515)725-3000. Applications shall be submitted to the authority at the address identified above.

116.3(3) The following information must be submitted to the authority in order for an eligible innovation fund to be verified:

a. A copy of the fund's certificate of limited partnership, limited partnership agreement, articles of organization or operating agreement certified by the chief executive officer of the innovation fund.

b. A signed statement, from an officer, director, manager, member or general partner of the fund, stating the following:

(1) That the fund will make investments in promising early-stage companies which have a principal place of business in the state.

(2) That the fund proposes to make investments in innovative businesses which have a principal place of business in the state.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

- (3) That the fund seeks to secure private funding sources for investment in such businesses.
- (4) That the fund will use the profits from such investments to fund additional investments.

116.3(4) Upon the authority's receipt of the information and documentation necessary to demonstrate satisfaction of the criteria set forth herein, the authority shall, within a reasonable period of time, determine whether a certification will be issued for the innovation fund. If the authority certifies the innovation fund, the authority shall register the fund on a registry that shall be maintained by the authority. The authority shall use the registry to authorize the issuance of further investment tax credits to taxpayers who make equity investments in the innovation funds registered with the authority. The authority shall issue written notification to the innovation fund that the fund has been registered as an innovation fund with the authority for the purpose of issuing investment tax credits.

261—116.4(84GA,SF517) Application for the investment tax credit. Upon verification and registration by the authority of an innovation fund, a taxpayer who desires to receive an investment tax credit for an equity investment in an innovation fund must submit an application to the authority for approval by the board and provide such other information and documentation as may be requested by the authority. Application forms for the investment tax credit may be obtained by contacting the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309. Applications shall be submitted to the authority at the address identified above. Each application shall be date- and time-stamped by the authority in the order in which such applications are received. Applications for the investment tax credit shall be accepted by the authority until March 31 of the year following the calendar year in which the taxpayer's equity investment is made.

261—116.5(84GA,SF517) Approval, issuance and distribution of investment tax credits.

116.5(1) Approval and issuance. Upon verification and registration by the authority of an innovation fund, the authority, upon approval by the board, shall issue a tax credit certificate to the applicant. Applicants shall receive tax credit certificates on a first-come, first-served basis until the maximum aggregate amount of credits authorized for issuance has been reached for any fiscal year.

116.5(2) Carry forward. If, during any fiscal year during which tax credits are to be issued under this chapter, applications totaling more than the maximum aggregate amount are received and approved, the applications may be carried forward and prioritized to receive tax credit certificates on a first-come, first-served basis in subsequent fiscal years.

When carrying forward and prioritizing such applications, the authority shall (1) issue tax credit certificates to the taxpayers for such carryover tax credits before issuing any new tax credits to later applicants, and (2) apply the aggregate amount of the credits carried over against the total amount of tax credits to be issued during the subsequent fiscal year before approving or issuing additional tax credits.

116.5(3) Preparation of the certificate. The tax credit certificate shall be in a form approved by the authority and shall contain the taxpayer's name, address, and tax identification number, the amount of credit, the name of the innovation fund, the year in which the credit may be redeemed and any other information that may be required by the department of revenue. In addition, the tax credit certificate shall contain the following statement:

Neither the authority nor the board has recommended or approved this investment or passed on the merits or risks of such investment. Investors should rely solely on their own investigation and analysis and seek investment, financial, legal and tax advice before making their own decision regarding investment in this enterprise.

116.5(4) Credit amount. A tax credit for investment in an innovation fund is equal to 20 percent of the taxpayer's equity investment in the fund.

116.5(5) Maximum aggregate limitation. The maximum aggregate amount of tax credits issued pursuant to this chapter shall not exceed the amount allocated by the board pursuant to Iowa Code section 15.119, subsection 2. For fiscal year 2012 and all subsequent fiscal years, that amount is \$8 million.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

261—116.6(84GA,SF517) Claiming the tax credits. To claim a tax credit under this chapter, a taxpayer must attach to that taxpayer's tax return a certificate issued pursuant to this chapter when the return is filed with the department of revenue. For more information on claiming tax credits, see department of revenue rule 701—42.22(15E,422).

261—116.7(84GA,SF517) Notification to the department of revenue. Upon the issuance and distribution of investment tax credits for a tax year, the authority shall promptly notify the department of revenue by providing copies of the tax credit certificates issued for such tax year to the department of revenue. Such notification shall also include, but not be limited to, the aggregate number and amount of tax credits issued for the tax year.

261—116.8(84GA,SF517) Additional information. The authority may at any time request additional information and documentation from an innovation fund regarding the operations, job creation and economic impact of the fund, and the authority may use such information in preparing and publishing any reports to be provided to the governor and the general assembly.

These rules are intended to implement 2011 Iowa Acts, Senate File 517.

ARC 9848B**ECONOMIC DEVELOPMENT AUTHORITY[261]****Notice of Intended Action**

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

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

Pursuant to the authority of 2011 Iowa Acts, House File 590, section 7, the Economic Development Authority hereby proposes to adopt Chapter 117, “SSBCI Demonstration Fund,” Iowa Administrative Code.

The proposed rules create a program called the SSBCI Demonstration Fund. On August 30, 2011, the state of Iowa received an allocation of more than \$13 million from the United States Department of the Treasury for purposes of the State Small Business Credit Initiative (SSBCI). As part of that initiative, the Authority is obligated to spend \$5 million for purposes of an SSBCI Demonstration Fund. These rules implement the federal requirements of this program.

Public comments concerning the proposed rules will be accepted until 4:30 p.m. on December 6, 2011. Interested persons may submit written or oral comments by contacting Derek Lord, Iowa Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3081; or E-mail derek.lord@iowa.gov.

The Authority will hold a public hearing on Tuesday, December 6, 2011, from 11 a.m. to 12 noon to receive comments on these rules. The public hearing will be held in the Southeast Conference Room, First Floor, Iowa Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 9846B**. The content of that submission is incorporated by reference. The Adopted and Filed Emergency rules became effective on October 26, 2011; this Notice of Intended Action is published to allow for public comment.

After analysis and review of this rule making, no adverse impact on jobs has been found. These rules implement economic development policy in the state by means of a collaboration between government and the private sector. The collaboration allows the Economic Development Authority and the Iowa Innovation Corporation to further economic development policy. These rules allow Iowa to create a business environment which is competitive with other states in order to ensure job growth and retention.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

These rules are intended to implement 2011 Iowa Acts, House File 590, section 5, subsection, 1 and 2011 Iowa Acts, House File 590, section 7.

ARC 9852B**ECONOMIC DEVELOPMENT AUTHORITY[261]****Notice of Intended Action**

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

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

Pursuant to the authority of 2011 Iowa Acts, House File 590, section 52, the Economic Development Authority hereby proposes to rescind Chapter 400, “Generation Iowa Commission,” and adopt new Chapter 400, “Rules Applicable to Part XII,” and to adopt new Chapter 401, “Administration of Financial Assistance,” and Chapter 402, “Energy Efficiency Community Grant Program,” Iowa Administrative Code.

The amendments implement changes to the Iowa Code provisions that established the Office of Energy Independence (the office) and the Iowa Power Fund (the fund). The Legislature, in 2011 Iowa Acts, House File 590, repealed Iowa Code chapter 469, including the office and the fund, and transferred the administration of certain energy development programs in Iowa Code chapter 473 from the office to the Authority.

The amendments also implement 2011 Iowa Acts, House File 45, section 13, which repealed the Generation Iowa Commission.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on December 6, 2011. Interested persons may submit written or oral comments by contacting Kristin Hanks, Iowa Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3000; or E-mail kristin.hanks@iowa.gov.

The Authority will hold a public hearing on December 6, 2011, from 10 to 11 a.m. to receive comments on these amendments. The public hearing will be held in the Southeast Conference Room, First Floor, Iowa Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9851B**. The content of that submission is incorporated by reference. The Adopted and Filed Emergency amendments became effective on October 26, 2011; this Notice of Intended Action is published to allow for public comment.

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

These amendments are intended to implement Iowa Code chapter 473, 2011 Iowa Acts, House File 590, division III, and 2011 Iowa Acts, House File 45, section 13.

ARC 9842B**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 249J.24, the Department of Human Services proposes to amend Chapter 92, “IowaCare,” Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The proposed amendment streamlines procedural requirements for applying for the IowaCare program by requiring Form 470-4194, IowaCare Premium Agreement, only when the applicant:

- Used a Medicaid application other than the IowaCare application or renewal application, and
- Has sufficient income to be required to pay a premium (over 150 percent of the federal poverty guidelines).

Only 10 percent of IowaCare members have income high enough to pay premiums. The IowaCare application forms include the explanation of premiums and the agreement to pay premiums. Only a person who originally applied for Medicaid but was referred to IowaCare due to higher income or lack of categorical eligibility needs to acknowledge this requirement separately.

Any interested person may make written comments on the proposed amendment on or before December 6, 2011. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, 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.

This amendment does not provide for waivers in specified situations because it eliminates a requirement for the persons affected.

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

This amendment is intended to implement Iowa Code chapter 249J.

The following amendment is proposed.

Amend subrule 92.3(1) as follows:

92.3(1) An application for IowaCare may also be submitted on Comm. 239, IowaCare Application, or Form 470-4364, IowaCare Renewal Application. An applicant who submits an application on another form allowed under 441—76.1(249A) and has income over 150 percent of the federal poverty level shall also sign Form 470-4194, IowaCare Premium Agreement, and submit it within ten days of the department's request.

ARC 9853B

INSURANCE DIVISION[191]

Notice of Termination

Pursuant to the authority of 2011 Iowa Acts, House File 597, section 17, the Insurance Division hereby terminates the rule making initiated by its Notice of Intended Action to amend Chapter 76, "External Review," published in the Iowa Administrative Bulletin as **ARC 9639B** on July 27, 2011. The amendments were also Adopted and Filed Emergency and published as **ARC 9637B** on the same date. Because a number of substantive changes are being made to the amendments following comments received before and after the public hearing that was held August 23, 2011, at the office of the Insurance Division, the Notice of Intended Action (**ARC 9639B**) is being terminated. The Division has submitted a new Notice of Intended Action, published herein as **ARC 9854B**, to incorporate those changes.

ARC 9854B**INSURANCE DIVISION[191]****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 2011 Iowa Acts, House File 597, section 17, the Insurance Division hereby proposes to rescind Chapter 76, “External Review,” Iowa Administrative Code, and to adopt a new Chapter 76 with the same title.

The rules in Chapter 76 provide duties and procedures for external review of adverse determinations of certain health insurance claims. Amendments to Chapter 76 were Adopted and Filed Emergency and published in the July 27, 2011, Iowa Administrative Bulletin as **ARC 9637B**, effective July 8, 2011, to implement 2011 Iowa Acts, House File 597. Notice of Intended Action for the amendments was published as **ARC 9639B** on the same date to allow for public comment, and a public hearing was held August 23, 2011, at the office of the Insurance Division.

The Division has continued to work with interested and affected parties in determining what changes need to be made to the rules that went into effect July 8, 2011, and Division staff has monitored the practical administration of the rules.

Based on information provided by interested and affected parties, the Division has determined that extensive changes and additions to the rules and appendices are required. Therefore, the Division proposes to rescind Chapter 76 and to adopt a new Chapter 76 that incorporates these changes and permits additional public comment on the changes being made to the existing chapter. The proposed rules clarify the duties and procedures for external review pursuant to 2011 Iowa Acts, House File 597. In addition, the prior Notice of Intended Action (**ARC 9639B**) is being terminated (see **ARC 9853B** herein).

The Division intends that persons and entities shall comply with the rules beginning February 15, 2012. The rules that were Adopted and Filed Emergency, effective July 8, 2011, will remain in effect until the new rules go into effect. The Division anticipates that these rules will become effective on February 15, 2012.

Any interested person may make written suggestions or comments on these proposed rules on or before December 12, 2011. Such written materials should be directed to Ann Outka, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059; E-mail ann.outka@iid.iowa.gov.

Also, there will be a public hearing on December 12, 2011, at 10 a.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views about the rules either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record.

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

These rules are intended to implement 2011 Iowa Acts, House File 597.

The following amendment is proposed.

Rescind 191—Chapter 76 and adopt the following **new** chapter in lieu thereof:

CHAPTER 76
EXTERNAL REVIEW

191—76.1(84GA,HF597) Purpose. This chapter is intended to implement 2011 Iowa Acts, House File 597, and the federal Patient Protection and Affordable Care Act, Pub. L. No. 111-148 as amended by

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the federal Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, which amends the Public Health Service Act and adopts, in part, new 42 U.S.C. Section 300gg-19. These rules address issues which are unique to the external review process in this state and provide a uniform process for covered persons of health carriers providing health insurance coverage or the covered persons' authorized representatives to request and receive an external review of adverse determinations and final adverse determinations as defined in 2011 Iowa Acts, House File 597, sections 2(1) and 2(18), and as referenced in 2011 Iowa Acts, House File 597, section 9(1). Health carriers defined in 2011 Iowa Acts, House File 597, section 2(23), and included in paragraph 76.2(2) "c" are subject to these rules.

191—76.2(84GA, HF597) Applicable law and definitions.

76.2(1) The rules contained in this chapter shall apply to any health benefit plan as defined in 2011 Iowa Acts, House File 597, section 2(19), offered or issued by a health carrier as defined in 2011 Iowa Acts, House File 597, section 2(23), subject to the limitations set forth in 2011 Iowa Acts, House File 597, section 3(2), if the plan was issued in Iowa, and if the external review request is filed with the commissioner on or after July 1, 2011.

76.2(2) For purposes of this chapter, the definitions in 2011 Iowa Acts, House File 597, shall apply. In addition:

a. For purposes of applying the exemption in 2011 Iowa Acts, House File 597, section 3(2) "b," "Medicare supplement policy of insurance" shall mean the same as "Medicare supplement policy" as defined in rule 191—37.3(514D).

b. For purposes of this chapter, the definition of "adverse determination" in 2011 Iowa Acts, House File 597, section 2, shall include experimental or investigational treatment adverse determinations, as set forth in 2011 Iowa Acts, House File 597, section 9.

c. For purposes of this chapter, the definition of "health carrier" may include an employer self-funded plan if the employer chooses to opt in to comply with these rules.

191—76.3(84GA, HF597) Disclosure requirements. The description of external review procedures required by 2011 Iowa Acts, House File 597, section 16, shall be in the form of Appendix A or substantially similar language approved by the commissioner.

191—76.4(84GA, HF597) External review request.

76.4(1) Except for requests for expedited review, the covered person or the covered person's authorized representative shall submit a written request for external review (completed Appendix B) to the commissioner by personal delivery, by mail, by fax or by electronic transmission, including a copy of the health carrier's written notice containing the final adverse determination, within the time periods specified in 2011 Iowa Acts, House File 597, section 7(1) or 9(1), as applicable. The request form and notice shall be submitted to the commissioner at Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059; or e-mail iid.marketregulation@iid.iowa.gov.

76.4(2) Requests for expedited review may be made orally, and the commissioner may require submission of additional documentation such as physician certifications or medical information releases as is deemed practicable under the time constraints.

76.4(3) There is no charge or fee for submitting a request for external review.

191—76.5(84GA, HF597) Communication between covered person, health carrier, independent review organization and the commissioner.

76.5(1) Notices or other communications required by 2011 Iowa Acts, House File 597, between the commissioner, the health carrier and the independent review organization shall be by e-mail or facsimile, unless otherwise specified, and shall be documented to prove transmission and receipt of the communication.

76.5(2) Notices or other communications required by 2011 Iowa Acts, House File 597, from the commissioner, the health carrier or the independent review organization to the covered person shall be

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by e-mail, facsimile or overnight mail, and shall be documented to prove transmission and receipt of the communication.

76.5(3) The covered person or covered person's representative may provide notifications and communications to the health carrier, independent review organization and the commissioner as required by 2011 Iowa Acts, House File 597, by e-mail, facsimile or overnight mail, but also may do so by first-class mail or personal delivery.

76.5(4) Any time periods or deadlines specified in 2011 Iowa Acts, House File 597, shall commence upon receipt of the notice or communication and cease upon the transmission of the subsequent notice or communication.

191—76.6(84GA, HF597) Assignment of independent review organization by the commissioner.

76.6(1) The assignment by the commissioner of an independent review organization pursuant to 2011 Iowa Acts, House File 597, shall be by rotation among approved independent review organizations.

76.6(2) Upon assignment by the commissioner of an independent review organization, in addition to providing notice to the health carrier and the covered person or covered person's representative as required by 2011 Iowa Acts, House File 597, the commissioner shall provide notice of the assignment to the independent review organization.

76.6(3) Within two business days of receipt by the independent review organization of notice from the commissioner pursuant to subrule 76.6(2), the independent review organization shall make a determination of its ability to perform the external review and advise the commissioner if the independent review organization is unable to perform the review due to conflict of interest or due to lack of expertise or qualification for the particular subject matter of the review.

191—76.7(84GA, HF597) Decision notification. The independent review organization shall immediately provide a copy of a draft of the decision to the commissioner for review. The commissioner shall review the draft of the decision to verify that the independent review organization has included in its draft of the decision the requirements set forth in 2011 Iowa Acts, House File 597, section 7, 8 or 9. The commissioner shall make any suggestions for changes to make the draft of the decision comply with the requirements. The independent review organization shall make such required changes within two business days. Once the commissioner determines that the decision meets the requirements of 2011 Iowa Acts, House File 597, section 7, 8, or 9, as applicable, the independent review organization shall immediately send the decision to the commissioner, the health carrier, and the covered person or covered person's authorized representative. The decision approved by the commissioner shall be delivered by telephone, fax or electronic transmission to the health carrier, the commissioner and the covered person or covered person's authorized representative, and a hard copy of the decision also shall be delivered by mail to the covered person or covered person's authorized representative.

191—76.8(84GA, HF597) Health carrier information.

76.8(1) Each health carrier shall provide to the commissioner the name, title, telephone number, fax number and e-mail address of the individual who shall be the health carrier's contact person for external review procedures. The carrier's contact person or an appointed alternate shall be available to the commissioner during the Iowa insurance division's normal business hours, 8 a.m. to 4:30 p.m., Monday through Friday, central time, excluding state holidays. Any change in personnel or contact information shall be immediately sent to the commissioner.

76.8(2) Each health carrier shall make available to the commissioner upon request within five business days a detailed description of the process the health carrier has in place to ensure compliance with the requirements found in this chapter and in 2011 Iowa Acts, House File 597. The description shall include:

- a.* An explanation of how the carrier determines when a person has qualified for external review and should receive a notice from the carrier, and
- b.* A copy of the notice sent to persons who fall within the scope of the law.

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76.8(3) Each health carrier shall provide to the commissioner, upon request, information set forth in 2011 Iowa Acts, House File 597, section 14(2) “b,” in a format substantially similar to Appendix D, or as approved by the commissioner.

191—76.9(84GA, HF597) Certification of independent review organization.

76.9(1) In addition to the minimum qualifications set forth in 2011 Iowa Acts, House File 597, section 12, the following minimum standards are required for certification as an independent review organization:

a. The applicant shall provide a description of the procedures employed to comply with 2011 Iowa Acts, House File 597, section 12(1) “a.”

b. The applicant shall provide the number of reviewers retained by the independent review organization and a description of the areas of expertise available from such reviewers and the types of cases such reviewers are qualified to review.

c. The applicant shall provide the names and résumés of all directors, officers, and executives of the independent review organization.

d. The applicant shall provide a description of the fees to be charged to the carrier by the independent review organization for external reviews.

e. The applicant shall provide the name of the medical director or health professional director responsible for the supervision and oversight of the independent review procedure.

76.9(2) The independent review organization shall develop written policies and procedures to ensure adherence to the requirements of this chapter and 2011 Iowa Acts, House File 597, by any contractor, subcontractor, subvendor, agent or employee affiliated with the certified independent review organization.

76.9(3) In addition to the toll-free telephone service required by 2011 Iowa Acts, House File 597, section 12(1) “b,” the independent review organization shall establish a facsimile and electronic mail service to receive information relating to external reviews pursuant to this chapter and 2011 Iowa Acts, House File 597.

76.9(4) The independent review organization shall provide the commissioner within ten business days of request such data, information, and reports as the commissioner determines necessary to evaluate the external review process established under 2011 Iowa Acts, House File 597, or a report in the format of Appendix C to comply with 2011 Iowa Acts, House File 597, section 14(1).

76.9(5) Applications shall be submitted to the Commissioner of Insurance, 330 Maple Street, Des Moines, Iowa 50319; or as designated by the commissioner. Applications must be submitted in full to be considered. The form for initially approving and for reapproving independent review organizations required by 2011 Iowa Acts, House File 597, section 11(4), shall be in the form of Appendix E. If the commissioner designates an entity to review applications, the designee may charge a fee, as permitted by 2011 Iowa Acts, House File 597, section 11(5), as approved by the commissioner. All applicants will be notified of the certification decision.

76.9(6) A list of certified independent review organizations shall be maintained by the commissioner and shall be available through the Web site of the Iowa insurance division: www.iid.state.ia.us.

191—76.10(84GA, HF597) Fees charged by independent review organizations.

76.10(1) Fees charged by independent review organizations shall be reasonable.

76.10(2) A health carrier objecting to the fee charged by an independent review organization shall file a written notice with the commissioner and the independent review organization indicating the health carrier’s objections to the fee and the reasons and any documentation for the objections.

76.10(3) Five days after receipt of the notice, the independent review organization may submit to the commissioner written documentation supporting the fee.

76.10(4) If the parties do not come to an agreement within 30 days of the initial notice, the commissioner or the commissioner’s designee shall conduct a review of the fee and submissions and issue a written decision within 60 days. Factors to consider in determining whether a fee is unreasonable may include the following:

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- a. The time and labor required to perform the independent review;
- b. The novelty and difficulty of the issues;
- c. The skill requisite to perform the independent review properly;
- d. The customary fee;
- e. The experience, reputation and ability of the independent review organization and those performing the independent review.

76.10(5) A party may appeal the commissioner's decision pursuant to 191—Chapter 3.

191—76.11(84GA, HF597) Penalties.

76.11(1) *Independent review organizations.* The commissioner may withdraw the approval of an independent review organization for any of the following reasons:

- a. Failure to maintain the minimum standards set forth in 2011 Iowa Acts, House File 597, sections 11 and 12, or in subrule 76.9(1).
- b. Failure to comply with any of the requirements in subrules 76.9(2) through 76.9(5) or rule 191—76.10(84GA, HF597).
- c. Failure to meet any time requirements for conducting a standard, experimental or investigational, or expedited external review.
- d. Failure to comply with any other requirements set forth in this chapter or in 2011 Iowa Acts, House File 597.

76.11(2) *Health carriers.*

- a. Failure to comply with any of the provisions of this chapter is a violation of Iowa Code chapter 507B.
- b. The commissioner may require a health carrier to provide additional time for a covered person to request an external review or submit documentation if the health carrier failed to comply with any part of 2011 Iowa Acts, House File 597, or of this chapter.
- c. The commissioner may order restitution or take other corrective action pursuant to Iowa Code section 505.8(10).

These rules are intended to implement 2011 Iowa Acts, House File 597.

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Appendix A

NOTICE OF APPEAL RIGHTS

You have a right to appeal any decision we make that denies payment on your claim or your request for coverage of a health care service or treatment.

You may request additional explanation when your claim or request for coverage of a health care service or treatment is denied or the health care service or treatment you received was not fully covered. Contact us when you:

- Do not understand the reason for denial;
- Do not understand why the health care service or treatment was not fully covered;
- Do not understand why a request for coverage of a health care service or treatment was denied;
- Cannot find the applicable provision in your Benefit Plan Document;
- Want a copy (free of charge) of the guideline, criteria or clinical rationale that we used to make our decision; or
- Disagree with the denial or the amount not covered and you want to appeal.

If your claim was denied due to missing or incomplete information, you or your health care provider may resubmit the claim to us with the necessary information to complete the claim.

Internal Appeal: All appeals to us for claim denials (or any decision that does not cover expenses you believe should have been covered) must be sent to [insert address of the health carrier contact person where appeals should be sent] within **180 days** of the date you receive our denial. We will provide a full and fair review of your claim by individuals associated with us, but who were not involved in making the initial denial of your claim. You may provide us with additional information that relates to your claim, and you may request copies of information that we have that pertains to your claim. We will notify you of our decision in writing within **30 days** of receiving your appeal. If you do not receive our decision within **30 days** of receiving your appeal, you may be entitled to file a request for external review.

External Review: We have denied your request for the provision of or payment for a health care service or course of treatment. If our decision involved making a judgment as to the medical necessity, appropriateness, health care setting, level of care or effectiveness of the health care service or treatment you requested, **you may have a right to have our decision reviewed** by health care professionals who have no association with us. Requests for external review may be submitted to the Commissioner of Insurance.

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You may obtain an external review if:

- Our decision involved the admission, availability of care, continued stay, or other health care service that is a covered benefit; and
- We denied, reduced or terminated the payment for the service because we determined it did not meet our requirements for medical necessity, health care setting, level of care or effectiveness of the health care service or treatment you requested.
- You have a medical condition that would seriously jeopardize your life or health or would jeopardize your ability to regain maximum function. In this situation, you may file a request for an **expedited external review** of our denial.
- The final adverse determination concerns an admission, availability of care, continued stay, or a health care service for which you received emergency services, but you have not been discharged from a facility. In this situation, you or your authorized representative may request an **expedited external review**.
- Our denial to provide or pay for health care service or course of treatment is based on a determination that the service or treatment is experimental or investigational. In addition, if your treating health care professional certifies in writing that the recommended or requested health care service or treatment that is the subject of the recommendation or request would be significantly less effective if not promptly initiated, then you or your authorized representative may request an **expedited external review**.

You can obtain a copy of the External Review Request Form from: the Iowa Insurance Division, 330 Maple, Des Moines, Iowa 50319; telephone 877-955-1212 or 515-281-6348; facsimile 515-281-3059; Web site www.iid.state.ia.us.

Within **four months** after receipt of our notice containing the final adverse determination and this Notice of Appeal Rights, you should submit a request for external review to the Iowa Insurance Division, 330 Maple, Des Moines, Iowa 50319; telephone 877-955-1212 or 515-281-6348; facsimile 515-281-3059; e-mail iid.marketregulation@iid.iowa.gov.

For standard external review, a decision will be made within **45 days** after the independent review organization receives your request.

For details, please review your Benefit Plan Document, contact us, or contact the Iowa Insurance Division.

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Appendix B

EXTERNAL REVIEW REQUEST FORM**SECTION 1. ELIGIBILITY FOR EXTERNAL REVIEW**

This External Review Request Form must be filed with the Iowa Insurance Division within **four months** after your health carrier denied, reduced or terminated the requested health care service or treatment or payment for the service or treatment. You or your authorized representative may request an external review under any of the following circumstances:

1. Your health carrier has made a determination that an admission, availability of care, continued stay, or other health care service that is a covered benefit does not meet the health carrier's requirements for medical necessity, appropriateness, health care setting, level of care or effectiveness, and the requested service or payment for the service is therefore denied, reduced, or terminated. **Please follow the directions in Sections 1 and 2, then submit completed Sections 3 and 4, Section 5 if applicable, and Section 7 if you are requesting an expedited review.**
2. Your health carrier has made a denial of coverage based on a determination that the health care service or treatment recommended or requested is experimental or investigational. **Please follow the directions in Sections 1 and 2, then submit completed Sections 3 and 4, Section 5 if applicable, Section 6, and Section 7 if you are requesting an expedited review.**
3. The final adverse determination concerns an admission, availability of care, continued stay, or a health care service for which you received emergency services, but you have not been discharged from a facility. **Please follow the directions in Sections 1 and 2, then submit completed Sections 3 and 4, Section 5 if applicable, and Section 7.**

If coverage was denied for a service or treatment specifically listed in your health insurance policy as excluded from coverage (other than what is listed in paragraphs 1 and 2 above), you will not be eligible for external review.

You also will need to have completed any internal appeals with your health carrier before you can request an external review, unless:

1. You already did request an internal appeal with your health carrier and have not received a decision and it has been 30 days since you requested the appeal; or
2. Your health carrier has waived the requirement that you complete an internal appeal before requesting an external review; or
3. You need an expedited review because time is a factor in your treatment.

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SECTION 2. WHAT TO SEND AND WHERE TO SEND IT

YOU MUST SUBMIT ITEMS 1 AND 2 BELOW:

1. This External Review Request Form, signed and dated, with the sections completed for your particular situation as described in Section 1. If you would like help completing your external review request for submission, contact the Consumer Assistance Program of the Iowa Insurance Division by calling 877-955-1212, or by e-mail at <http://insuranceca.iowa.gov>.
2. One of the following:
 - a. The letter from the covered person's health carrier or utilization review company that states that the decision is final and that the covered person or the covered person's authorized representative has exhausted all internal appeal procedures;
 - b. The letter from the covered person's health carrier or utilization review company that states it has waived the requirement to exhaust all of the health carrier's internal appeal procedures;
 - c. A copy of the covered person's or the covered person's authorized representative's request for internal appeal and a statement that no decision from the health carrier has been received for 30 days; or
 - d. A completed request for expedited review, Section 7 of this form.

WHERE TO SEND IT:

If you are requesting a standard external review, send all paperwork to the Iowa Insurance Division, 330 Maple, Des Moines, Iowa 50319; facsimile 515-281-3059; e-mail iid.marketregulation@iid.iowa.gov. If you have questions, telephone 877-955-1212 or 515-281-6348.

If you are requesting an expedited external review, call the Iowa Insurance Division (telephone 877-955-1212 or 515-281-6348) before sending your paperwork, and you will receive instructions on the quickest way to submit the application and supporting information.

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SECTION 3. INFORMATION REQUIRED FOR ALL EXTERNAL REVIEW REQUESTS**APPLICANT NAME:**

The applicant is a:

- Covered Person/Patient
- Provider (the covered person/patient must complete Section 4)
- Authorized Representative (submit completed Sections 4 and 5)

COVERED PERSON/PATIENT INFORMATION

Covered Person's/Patient's Name:

Address:

Telephone Number:

Daytime:

Evening:

E-mail Address:

Fax Number:

INSURANCE INFORMATION

Name of Insurer or HMO:

Covered Person's Insurance ID Number and/or Policy Number:

Insurance Claim/Reference Number:

Insurer/HMO Mailing Address:

Insurer/HMO Telephone Number:

Insurer/HMO E-mail Address:

Insurer/HMO Fax Number:

EMPLOYER INFORMATION

Employer's Name:

Is the health coverage that you have through your employer a self-funded plan? (Y/N)_____.

Some self-funded plans may voluntarily provide external review, but may have different procedures.
You should check with your employer.

HEALTH CARE PROVIDER INFORMATION

Treating Physician/Health Care Provider:

Address:

Contact Person:

Telephone Number:

E-mail Address:

Fax Number:

Patient Medical Record Number:

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REASON FOR HEALTH CARRIER DENIAL

(Please check one.)

- The health care service or treatment was denied due to medical necessity, appropriateness, health care setting, level of care or effectiveness.
- The health care service or treatment is experimental or investigational (submit completed Section 6).
- Other: _____.

SUMMARY OF EXTERNAL REVIEW REQUEST

Enter a brief description of the claim and the request for health care service or treatment that was denied and attach a copy of the denial from your health carrier.

HEALTH CARE SERVICE OR TREATMENT DECISION IN DISPUTE

Describe in your own words the health care service or treatment in dispute and why you are appealing this denial. Indicate clearly the services being denied and the specific dates being denied. Explain why you disagree. Attach additional pages if necessary and include available pertinent medical records, any information you received from your health carrier concerning the denial, any pertinent peer literature or clinical studies, and any additional information from your physician or health care provider that you want the independent review organization to consider.

SECTION 4. SIGNATURE AND RELEASE OF MEDICAL RECORDS

To appeal your health carrier's denial, you must sign and date this external review request form and consent to the release of medical records.

I, _____, hereby request an external review. I attest that the information provided in this application is true and accurate to the best of my knowledge. I authorize my insurance company and my health care providers to release all relevant medical or treatment records to the independent review organization and the Iowa Insurance Division. I understand that the independent review organization and the Iowa Insurance Division will use this information to make a determination on my external review and that the information will be kept confidential and will not be released to anyone else. This release is valid for one year.

Signature of covered person/patient or legal representative (parent, guardian, conservator or other – please specify)

Date:

SECTION 5. APPOINTMENT OF AUTHORIZED REPRESENTATIVE

(Fill out this section only if someone else will be representing you in this request for external review.)

You can represent yourself, or you may ask another person, including your treating health care provider, to act as your authorized representative. You may revoke this authorization at any time.

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I hereby authorize _____ to pursue my external review request on my behalf.

Signature of covered person/patient or legal representative (parent, guardian, conservator or other – please specify)

Date:

Address of Authorized Representative:

Authorized Representative's Telephone Number:

Daytime:

Evening:

Fax Number:

E-mail Address:

SECTION 6. REQUEST FOR EXTERNAL REVIEW OF DENIALS BASED ON THE REASON THAT THE TREATMENT WAS EXPERIMENTAL OR INVESTIGATIONAL

PHYSICIAN CERTIFICATION: EXPERIMENTAL OR INVESTIGATIONAL DENIALS

(To Be Completed by Treating Physician)

I hereby certify that I am the treating physician for _____ (covered person's/patient's name) and that I have requested the authorization for a drug, device, procedure or therapy denied for coverage due to the insurance carrier's determination that the proposed therapy is experimental and/or investigational. I understand that in order for the covered person/patient to obtain the right to an external review of this denial, as treating physician I must certify that the covered person's/patient's medical condition meets certain requirements:

In my medical opinion as the insured's treating physician, I hereby certify to the following:

(NOTE: Requirements 1 through 3 below must all apply for the covered person/patient to qualify for an external review.)

1. The covered person/patient has a condition that qualifies under one or more of the following descriptions.

(Please check all descriptions that apply.)

Standard health care services or treatments have not been effective in improving the covered person's/patient's condition.

Standard health care services or treatments are not medically appropriate for the covered person/patient.

There is no available standard health care service or treatment covered by the health carrier that is more beneficial than the requested or recommended health care service or treatment.

2. The physician is a licensed, board-certified, or board-eligible physician qualified to practice in the area of medicine appropriate to treat the covered person's condition.

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3. Scientifically valid studies using accepted protocols demonstrate that the health care service or treatment recommended or that is the subject of the adverse determination or final adverse determination is likely to be more beneficial to the covered person/patient than any available standard health care services or treatments.

Explain:

Please provide a description of the recommended or requested health care service or treatment that is the subject of the denial. (Attach additional information as necessary.)

Physician's Signature _____ Date: _____

Physician's Name (Please print.) _____

SECTION 7. REQUEST FOR EXPEDITED EXTERNAL REVIEW**CERTIFICATION OF TREATING HEALTH CARE PROVIDER
FOR EXPEDITED EXTERNAL REVIEW REQUEST****(To Be Completed by Treating Health Care Provider)****NOTE TO THE TREATING HEALTH CARE PROVIDER:**

The standard external review process can take up to 60 days from the date the patient's request for external review is received by the Iowa Insurance Division.

The independent review organization should complete an expedited external review within 72 hours.

This form is for the purpose of providing the certification necessary to trigger expedited review.

CERTIFICATION

I hereby certify that: I am a treating health care provider for the patient, _____; and that one of the following is true: (Please check all that apply.)

That adherence to the time frame for conducting a standard external review of the patient's appeal would, in my professional judgment, seriously jeopardize the life or health of the patient or would jeopardize the patient's ability to regain maximum function.

The recommended or requested health care service or treatment that is the subject of the external review request would be significantly less effective if not promptly initiated.

The final adverse determination concerns an admission, availability of care, continued stay, or a health care service for which the patient received emergency services, but has not been discharged from a facility.

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For this reason, the patient's appeal of the denial by the patient's health carrier of the requested health care service or course of treatment should be processed on an expedited basis.

Treating Health Care Provider's Signature _____ Date _____

Treating Health Care Provider's Name (Please print.) _____

Provider's Mailing Address:

Telephone Number:

E-mail Address:

Fax Number:

Licensure and Area of Clinical Specialty:

INSURANCE DIVISION[191](cont'd)

Appendix C

IOWA INSURANCE DIVISION

**INDEPENDENT REVIEW ORGANIZATION EXTERNAL REVIEW
ANNUAL REPORT FORM**

(Attach information to this form if necessary.)

External Review Annual Summary for 20__

Each independent review organization (IRO) shall submit upon request of the Commissioner an annual report with information for each health carrier in the aggregate for Iowa on external reviews performed and by type of health benefit plan.

1. IRO name:
Filing date:
2. IRO address:
3. IRO Web site:
4. Name, e-mail address, telephone number and fax number of the person completing this form:
5. Name, title, e-mail address, telephone number and fax number of the person responsible for regulatory compliance and quality of external reviews:
6. Total number of requests for external review received from the Iowa Insurance Division during the reporting period:
7. Number of standard external reviews:
8. Average number of days the IRO required to reach a final decision in standard reviews:
9. Number of expedited reviews completed to a final decision:
10. Average number of days the IRO required to reach a final decision in expedited reviews:
11. Number of medical necessity reviews decided in favor of the health carrier:
Briefly list procedures denied:
12. Number of medical necessity reviews decided in favor of the covered person/patient:
Briefly list procedures approved:

INSURANCE DIVISION[191](cont'd)

13. Number of experimental/investigational reviews decided in favor of the health carrier:
Briefly list procedures denied:
14. Number of experimental/investigational reviews decided in favor of the covered person/patient:
Briefly list procedures approved:
15. Number of reviews terminated as the result of a reconsideration by the health carrier:
16. Number of reviews terminated by the covered person/patient prior to issuance by the IRO of external review decision:
17. Number of reviews declined due to possible conflict with:
Health carrier:
Covered person/patient:
Health care provider:
Describe possible conflicts of interest:
18. Number of reviews declined due to other reasons not reflected in #17 above:

INSURANCE DIVISION[191](cont'd)

Appendix D

IOWA INSURANCE DIVISION

HEALTH CARRIER EXTERNAL REVIEW ANNUAL REPORT FORM

(Attach information to this form if necessary.)

External Review Annual Summary for 20__

Each health carrier shall submit upon request of the Commissioner an annual report with information in the aggregate for Iowa and by type of health benefit plan.

1. Health carrier name:
2. Health carrier address:
3. Health carrier Web site:
4. Name, e-mail address, telephone number and fax number of the person completing this form:
5. Name, title, e-mail address, telephone number and fax number of the person responsible for regulatory compliance:
6. Total number of external review requests of the health carrier's adverse determinations and final adverse determinations received from the Iowa Insurance Division during the reporting period:
7. From the total number of external review requests provided in Question 6, the number of requests determined eligible for an external review:
8. Total number of external review requests resolved and, of those resolved, the number resolved upholding the adverse determination or final adverse determination of the health carrier and the number resolved reversing the adverse determination or final adverse determination of the health carrier:
9. Total number of external review requests that were terminated as the result of a reconsideration by the health carrier of its adverse determination or final adverse determination after the receipt of additional information from the covered person or the covered person's authorized representative:

INSURANCE DIVISION[191](cont'd)

Appendix E

INDEPENDENT REVIEW ORGANIZATION APPLICATION

1. BASIC INFORMATION:

Name:

Street Address:

City, State, ZIP:

Telephone (a toll-free telephone service to receive information related to external reviews 24 hours a day, 7 days a week, that is capable of accepting, recording, or providing appropriate instruction to incoming telephone callers outside normal business hours):

Fax Number:

E-mail Address:

Director, Officer, or Executive Officer responsible for supervision and oversight of review procedures:

Telephone:

Fax Number:

E-mail Address:

Contact person to receive contacts, notices, and information from the Division:

Telephone:

Fax Number:

E-mail Address:

2. Names and titles of all directors, officers, and executives:

3. Identify independent review accreditation by nationally recognized private accrediting entity:

4. Identify all clinical reviewers to be assigned by your IRO by name, general certification, and specialty or subspecialty certification:

A clinical reviewer shall be a physician or other appropriate health care professional who is an expert in the treatment of the covered person's medical condition, is knowledgeable about the recommended or requested health care service or treatment through actual clinical experience treating patients with the same or similar medical condition, holds a nonrestricted license in a state of the United States and, for physicians, a current certification by a recognized American medical specialty board in the area or areas appropriate to the subject of the external review, and has no history of disciplinary actions or sanctions.

5. I, _____ (authorized signatory), agree to the following undertakings and have provided attachments as required:

a. To provide notices and conduct reviews within the specified time frames.

b. To ensure the selection of qualified and impartial clinical reviewers and suitable matching of reviewers to specific cases.

INSURANCE DIVISION[191](cont'd)

- c. To ensure the confidentiality of medical and treatment records and clinical review criteria.
- d. To establish and maintain written procedures to ensure the IRO is unbiased.

Specifically, the IRO shall not own or control, be a subsidiary of, or in any way be owned or controlled by, or exercise control with, a health benefit plan, a national, state, or local trade association of health benefit plans, or a national, state, or local trade association of health care providers. Further, neither the independent review organization nor any clinical reviewer assigned by the independent organization to conduct an external review shall have a material professional, familial, or financial conflict of interest with the health carrier, the covered person or covered person's representative, any officer, director, or management employee of the health carrier, the health care professional, the health care professional's medical group or independent practice association recommending the health care service or treatment that is the subject of the external review, the facility at which the recommended health care service or treatment would be provided, the developer or manufacturer of the principal drug, device, procedure, or other therapy being recommended for the covered person whose health care service or treatment is the subject of the external review.

- e. To maintain required records and provide access to those records by the commissioner upon request.
6. Set forth a description of fees to be charged by the independent review organization for external reviews:

ARC 9856B**REVENUE DEPARTMENT[701]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 10, “Interest, Penalty, Exceptions to Penalty and Jeopardy Assessments,” Chapter 42, “Adjustments to Computed Tax and Tax Credits,” Chapter 52, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” and Chapter 58, “Filing Returns, Payment of Tax, Penalty and Interest, and Tax Credits,” Iowa Administrative Code.

These amendments are proposed as a result of 2011 Iowa Acts, Senate File 517.

Item 1 adds new subrule 10.2(31) to provide the rate of interest on interest-bearing taxes for the calendar year 2012.

Item 2 amends subrule 42.22(1) to provide for changes to the investment tax credit for equity investments in a qualifying business or community-based seed capital funds for investments made on or after January 1, 2011, for Iowa individual income tax.

Item 3 adds new subrule 42.22(4) to provide for the tax credit for investments in an innovation fund for investments made on or after January 1, 2011, for Iowa individual income tax.

Item 4 amends the implementation sentence for rule 701—42.22(15E,422).

Item 5 amends subrule 52.21(1) to provide for changes to the investment tax credit for equity investments in a qualifying business or community-based seed capital funds for investments made on or after January 1, 2011, for Iowa corporation income tax. This change is similar to the change in Item 2.

REVENUE DEPARTMENT[701](cont'd)

Item 6 adds new subrule 52.21(4) to provide for the tax credit for investments in an innovation fund for investments made on or after January 1, 2011, for Iowa corporation income tax. This change is similar to the change in Item 3.

Item 7 amends the implementation sentence for rule 701—52.21(15E,422).

Item 8 amends subrule 58.11(1) to provide for changes to the investment tax credit for equity investments in a qualifying business or community-based seed capital funds for investments made on or after January 1, 2011, for Iowa franchise tax. This change is similar to the changes in Items 2 and 5.

Item 9 adds new subrule 58.11(4) to provide for the tax credit for investments in an innovation fund for investments made on or after January 1, 2011, for Iowa franchise tax. This change is similar to the changes in Items 3 and 6.

Item 10 amends the implementation sentence for rule 701—58.11(15E,422).

The amendments are intended to work in conjunction with Economic Development Authority 261—Chapters 115 and 116 published under Notice of Intended Action herein as **ARC 9845B**.

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

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

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than December 19, 2011, to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 6, 2011. Such written comments should be directed to the Policy Section, Policy and Communications Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. Persons who want to convey their views orally should contact the Policy Section, Policy and Communications Division, Department of Revenue, at (515)281-8450 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 6, 2011.

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

These amendments are intended to implement Iowa Code sections 15E.42, 15E.43, 422.23 and 422.60 as amended by 2011 Iowa Acts, Senate File 517; 2011 Iowa Acts, Senate File 517, section 40; and Iowa Code section 421.7.

The following amendments are proposed.

ITEM 1. Adopt the following **new** subrule 10.2(31):

10.2(31) *Calendar year 2012.* The interest rate upon all unpaid taxes which are due as of January 1, 2012, will be 5 percent per annum (0.4% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2012. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2012. This interest rate of 5 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2012.

ITEM 2. Amend subrule 42.22(1) as follows:

42.22(1) *Investment tax credit for an equity investment in a qualifying business or community-based seed capital fund.* See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a qualifying business or community-based seed capital fund, along with the issuance of tax credit certificates by the Iowa capital investment board, for equity investments made before January

REVENUE DEPARTMENT[701](cont'd)

1, 2011. For equity investments made on or after January 1, 2011, see 261—Chapter 115 for information regarding eligibility for qualifying businesses and community-based seed capital funds, applications for the investment tax credit for equity investments in a qualifying business or community-based seed capital fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the Iowa capital investment board or the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in a qualifying business or community-based seed capital fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For example, if an individual taxpayer makes an equity investment during the 2012 calendar year, the individual taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. However, if the taxpayer dies prior to redeeming the tax credit, the remaining tax credit may be redeemed on the decedent's final income tax return. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$2 million. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$2 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if an individual taxpayer makes an equity investment in December 2012 and the \$2 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

For equity investments made in a community-based seed capital fund or equity investments made in a qualifying business on or after January 1, 2004, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

For equity investments made in a qualifying business prior to January 1, 2004, only direct investments made by an individual are eligible for the investment tax credit. Individuals receiving income from a revocable trust's investment in a qualifying business are eligible for the investment tax credit for the portion of the revocable trust's equity investment in a qualifying business.

ITEM 3. Adopt the following **new** subrule 42.22(4):

42.22(4) Innovation fund investment tax credit. See 261—Chapter 116 for information regarding eligibility for an innovation fund, applications for the investment tax credit for investments in an innovation fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in the form of cash in an innovation fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For example, if an individual taxpayer makes an equity investment during the 2012 calendar year, the individual taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$8 million. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

REVENUE DEPARTMENT[701](cont'd)

If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$8 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if an individual taxpayer makes an equity investment in December 2012 and the \$8 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

For equity investments made in an innovation fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

ITEM 4. Amend rule **701—42.22(15E,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~sections~~ section 15E.43, as amended by 2011 Iowa Acts, Senate File 517; sections 15E.51, 15E.66, and 422.11F, and 422.11G; and 2011 Iowa Acts, Senate File 517, section 40 ~~sections 15E.51 and 422.11G as amended by 2010 Iowa Acts, Senate File 2380.~~

ITEM 5. Amend subrule 52.21(1) as follows:

52.21(1) *Investment tax credit for an equity investment in a community-based seed capital fund or qualifying business.* See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a community-based seed capital fund or an equity investment made on or after January 1, 2004, in a qualifying business, along with the issuance of tax credit certificates by the Iowa capital investment board, for equity investments made before January 1, 2011. For equity investments made on or after January 1, 2011, see 261—Chapter 115 for information regarding eligibility for qualifying businesses and community-based seed capital funds, applications for the investment tax credit for equity investments in a qualifying business or community-based seed capital fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the Iowa capital investment board or the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in a qualifying business or community-based seed capital fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For example, if a corporation taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the corporation taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$2 million. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$2 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if a corporation taxpayer whose tax year ends on December 31, 2012, makes an equity investment in December 2012 and the \$2 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

REVENUE DEPARTMENT[701](cont'd)

For equity investments made in a community-based seed capital fund and equity investments made on or after January 1, 2004, in a qualifying business, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

ITEM 6. Adopt the following **new** subrule 52.21(4):

52.21(4) Innovation fund investment tax credit. See 261—Chapter 116 for information regarding eligibility for an innovation fund, applications for the investment tax credit for investments in an innovation fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in an innovation fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For example, if a corporation taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the corporation taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$8 million. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$8 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if a corporation taxpayer whose tax year ending on December 31, 2012, makes an equity investment in December 2012 and the \$8 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

For equity investments made in an innovation fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

ITEM 7. Amend rule **701—52.21(15E,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~15E.43 and 15E.66~~; sections ~~15E.51, 15E.66, and 422.33(13)~~ 15E.42, 15E.43 and 422.33 as amended by ~~2010~~ 2011 Iowa Acts, Senate File ~~2380~~ 517; and 2011 Iowa Acts, Senate File 517, section 40.

ITEM 8. Amend subrule 58.11(1) as follows:

58.11(1) Investment tax credit for an equity investment in a community-based seed capital fund or qualifying business. See rule 123—2.1(15E) for the discussion of the investment tax credit for an equity investment in a community-based seed capital fund or an equity investment made on or after January 1, 2004, in a qualifying business, along with the issuance of tax credit certificates by the Iowa capital investment board, for equity investments made before January 1, 2011. For equity investments made on or after January 1, 2011, see 261—Chapter 115 for information regarding eligibility for qualifying businesses and community-based seed capital funds, applications for the investment tax credit for equity investments in a qualifying business or community-based seed capital fund, and the issuance of tax credit certificates by the economic development authority.

REVENUE DEPARTMENT[701](cont'd)

The department of revenue will be notified by the Iowa capital investment board or the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in a qualifying business or community-based seed capital fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For example, if a franchise taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the franchise taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$2 million. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$2 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if a franchise taxpayer whose tax year ends on December 31, 2012, makes an equity investment in December 2012 and the \$2 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until used, whichever is the earlier. The tax credit cannot be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

For equity investments made in a community-based seed capital fund and equity investments made on or after January 1, 2004, in a qualifying business, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

ITEM 9. Adopt the following **new** subrule 58.11(4):

58.11(4) Innovation fund investment tax credit. See 261—Chapter 116 for information regarding eligibility for an innovation fund, applications for the investment tax credit for investments in an innovation fund, and the issuance of tax credit certificates by the economic development authority.

The department of revenue will be notified by the economic development authority when the tax credit certificates are issued. The credit is equal to 20 percent of the taxpayer's equity investment in an innovation fund. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. For example, if a franchise taxpayer whose tax year ends on December 31, 2012, makes an equity investment during the 2012 calendar year, the franchise taxpayer cannot claim the tax credit until the tax year ending December 31, 2015. For fiscal years beginning July 1, 2011, the amount of tax credits authorized cannot exceed \$8 million. The tax credit certificate must be attached to the taxpayer's return for the tax year in which the credit may be redeemed as stated on the tax credit certificate.

If a tax credit is carried over and issued for the tax year immediately following the year in which the investment was made because the \$8 million cap has been reached, the tax credit may be claimed by the taxpayer for the third tax year following the tax year for which the credit is issued. For example, if a franchise taxpayer whose tax year ends on December 31, 2012, makes an equity investment in December 2012 and the \$8 million cap for the fiscal year ending June 30, 2013, had already been reached, the tax credit will be issued for the tax year ending December 31, 2013, and cannot be redeemed until the tax year ending December 31, 2016.

Any credit in excess of the tax liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is the earlier. The tax credit cannot be carried back to a

REVENUE DEPARTMENT[701](cont'd)

tax year prior to the tax year in which the taxpayer claims the tax credit. The tax credit is not transferable to any other taxpayer.

For equity investments made in an innovation fund, an individual may claim the credit if the investment was made by a partnership, S corporation, limited liability company, or an estate or trust electing to have the income directly taxed to the individual. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

ITEM 10. Amend rule **701—58.11(15E,422)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code section ~~15E.43 and 15E.66~~; sections ~~15E.51, 15E.66, and 422.60(5)~~ 15E.42, 15E.43 and 422.60 as amended by ~~2010~~ 2011 Iowa Acts, Senate File ~~2380~~ 517; and 2011 Iowa Acts, Senate File 517, section 40.

ARC 9860B

SECRETARY OF STATE[721]

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 490.135 and chapter 489, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 40, “Corporations,” Iowa Administrative Code.

The rules in Chapter 40 specify actions related to applications and filing requirements for corporations, including the payment and refund of fees. This amendment to Chapter 40 proposes to adopt new rule 721—40.8(489,490), which codifies the existing fees and procedures for filing biennial reports pursuant to Iowa Code sections 489.209 and 490.1622. In collecting the fees associated with Iowa Code sections 489.209 and 490.1622, the Secretary of State has followed the established procedures of previous Secretaries of State for collecting the fees. These procedures were not codified by previous Secretaries, and the current Secretary of State wishes to clarify compliance with Iowa Code chapter 17A. No new fees or increases to current fees will be added by the adoption of rule 721—40.8(489,490).

Any interested person may make written suggestions or comments on this proposed amendment on or before December 6, 2011. Written suggestions or comments should be directed to Doug Struyk, Legal Counsel, Office of the Secretary of State, Capitol Building, Des Moines, Iowa 50319; fax (515)242-5952. Persons who wish to convey their views orally should contact the Secretary of State's office by telephone at (515)281-7041 or in person at the Secretary of State's office on the first floor of the Lucas State Office Building.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 9861B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated herein by reference.

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

This amendment is intended to implement Iowa Code sections 489.209 and 490.1622.

ARC 9859B**SECRETARY OF STATE[721]****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 490.135, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 40, “Corporations,” Iowa Administrative Code.

The rules in Chapter 40 specify actions related to applications and filing requirements for corporations. This proposed amendment adds new rule 721—40.9(490), which requires that a registered agent if filing online provide an e-mail address through which to receive notices and other communication pursuant to Iowa Code sections 490.120 and 490.135.

Any interested person may make written suggestions or comments on this proposed amendment on or before December 6, 2011. Such written materials should be directed to the Office of the Secretary of State, Attn: Doug Struyk, Capitol Building, Des Moines, Iowa 50319; fax (515)242-5952. Persons who wish to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-7041 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building.

Also, there will be a public hearing on December 6, 2011, at 9 a.m., on the first floor of the Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Secretary of State’s office and advise of specific needs.

After analysis and review of this rule making, no adverse impact on jobs has been found. Requiring e-mail addresses should increase efficiency for corporations conducting business in Iowa.

This amendment is intended to implement Iowa Code chapter 490.

The following amendment is proposed.

Adopt the following **new** rule 721—40.9(490):

721—40.9(490) Online filing requirements. The following requirements apply to the electronic filing of documents and the certification of electronic documents.

40.9(1) Registered agents who file documents electronically must provide an e-mail address to the secretary of state.

40.9(2) For filings requiring an online account, an applicant must follow the terms and conditions on the secretary of state’s Internet Web site for each electronic filing.

40.9(3) All correspondence related to an electronic filing shall be handled electronically in accordance with the requirements set forth in the uniform electronic transactions Act, Iowa Code chapter 554D.

40.9(4) Documents filed electronically shall be accompanied by the appropriate fee. This fee must be paid by check, credit card, or secretary of state charge account.

ARC 9857B**SECRETARY OF STATE[721]****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 9E.3 and 9E.7, the Secretary of State hereby gives Notice of Intended Action to amend Chapter 43, “Notarial Acts,” Iowa Administrative Code.

The rules in Chapter 43 describe the requirements of a notarial act, including the effects of notarial acts under law. This amendment adds new rule 721—43.6(9E) pertaining to the revocation of a notary license pursuant to the requirements of the Iowa Administrative Procedure Act set forth in Iowa Code sections 17A.12 and 17A.18.

Any interested person may make written suggestions or comments on this proposed amendment on or before December 6, 2011. Such written materials should be directed to the Office of the Secretary of State, Attn: Doug Struyk, Capitol Building, Des Moines, Iowa 50319; fax (515)242-5952. Persons who wish to convey their views orally should contact the Secretary of State’s office by telephone at (515)281-7041 or in person at the Secretary of State’s office on the first floor of the Lucas State Office Building.

Also, there will be a public hearing on December 6, 2011, at 9 a.m., on the first floor of the Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Secretary of State’s office and advise of specific needs.

After analysis and review of this rule making, no substantial impact on jobs has been found. Although the rule addresses revocation of notaries’ licenses, notarizing is typically only one aspect of the job and little to no impact on jobs would exist.

This amendment is intended to implement Iowa Code sections 9E.3 and 9E.7.

The following amendment is proposed.

Adopt the following **new** rule 721—43.6(9E):

721—43.6(9E) Revocation of notary license. The secretary of state may revoke a notary license for cause. In the event that a formal complaint is received by the secretary of state, an investigation shall be conducted to determine if there is sufficient cause for revocation. The secretary of state’s office shall provide forms to complainants and notaries as required under this rule. Every direction of every instruction shall be complied with and each question or portion of every form answered in the same manner as if the forms and instruction were embodied in this rule.

43.6(1) The notary complaint and the notary’s response to the complaint are subject to the following procedures:

a. A formal complaint must be submitted to the secretary of state on a complaint form supplied by the secretary of state’s business services office. Each submitted complaint form must comply with the form instructions and include the basis for the complaint. The complainant shall provide copies of any written documentation supporting the allegations set forth in the complaint as attachments to the complaint. Incomplete complaint forms shall be returned to the complainant with a brief explanation stating the basis for rejection.

SECRETARY OF STATE[721](cont'd)

b. The notary who is the subject of the complaint shall be notified by the secretary of state within 15 days from the receipt of the complaint. The secretary of state shall provide a copy of the complaint and a notary response form.

c. The notary may submit a completed response form for the purposes of the complaint investigation within 15 days of receipt of the copy of the complaint and response form. A completed notary response form must be submitted by personal service or by certified mail, return receipt requested, to the Assistant Director of Business Services, Secretary of State, Business Services Division, Lucas State Office Building, Des Moines, Iowa 50319. The notary response form shall be considered filed on the date of personal service or on the date of the United States Postal Service postmark. If the notary does not respond within 15 days, the assistant director of business services may still conduct the investigation and reach a decision based on the information available.

d. The complainant and notary shall be duly notified of the decision and the assistant director's basis for the decision.

43.6(2) If the investigation reveals sufficient cause for revocation, the secretary of state shall send a notice of revocation to the notary by certified mail, return receipt requested. The notice shall state the cause of the revocation and shall inform the person of the right to a hearing on the revocation in accordance with the requirements set forth in Iowa Code section 17A.12(2).

43.6(3) Delivery of the notice of revocation as referred to in subrule 43.6(2) shall constitute commencement of the contested case proceeding. Contested case hearings shall be afforded to all parties to respond and present evidence and argument on all issues involved and to be represented by counsel at their own expense. Every contested case shall comply with the requirements for informal and formal disposition outlined in Iowa Code section 17A.12 and shall follow the contested case hearing procedures set forth in Iowa Code section 17A.12 and in rule 721—3.6(17A).

43.6(4) A written appeal form requesting a contested case hearing shall be obtained from the office of the secretary of state and submitted within 15 days from the date of receipt by the notary who is the subject of the complaint of the decision of the assistant director of business services. A written appeal form must be submitted in writing by personal service or by certified mail, return receipt requested, to the Assistant Director of Business Services, Secretary of State, Business Services Division, Lucas State Office Building, Des Moines, Iowa 50319. A request for hearing shall be considered filed on the date of personal service or on the date of the United States Postal Service postmark.

a. If no appeal form is submitted to the secretary of state's office, the notary license is effectively revoked in accordance with Iowa Code sections 9E.3 and 9E.7. The assistant director of business services may proceed in the manner outlined in paragraph 43.6(4) "c."

b. If an appeal form is received, notice of the contested case hearing shall be prepared by the assistant director of business services and mailed by certified mail, return receipt requested, to the notary who is the subject of the complaint. The notice shall be sent at least 30 days before the date of the hearing unless an earlier date is agreed to by the parties and shall follow the notice requirements set forth in rule 721—3.5(17A). If the notary fails to appear or participate in a contested case proceeding after proper service of notice, the assistant director of business services shall proceed in the manner outlined in paragraph 43.6(4) "c."

c. A default decision may be granted or the assistant director of business services may proceed with the hearing and make a decision in the absence of the notary who is the subject of the complaint. The notary shall be duly notified of the decision and of the assistant director's basis for the decision. A decision by the assistant director may be vacated in accordance with Iowa Code section 17A.12(3). The decision is considered final unless a further appeal is initiated by the notary within 20 days of the date of notification or mailing of the decision.

43.6(5) Any notary who is the subject of the complaint may file an application for rehearing, stating the specific grounds and the relief sought within 20 days after the issuance of any final decision by the assistant director of business services in a contested case. A copy of such application shall be timely mailed by the applicant to all parties of record not joining in the application.

SECRETARY OF STATE[721](cont'd)

a. The director of business services shall review the application for rehearing and notify all the parties of record if a rehearing has been granted. If a rehearing has been granted, the director of business services shall conduct the rehearing.

b. An application for rehearing shall be deemed to have been denied unless the secretary of state grants the application within 20 days after its filing. A request for a rehearing need not be made as a prerequisite for seeking judicial review of a final decision.

43.6(6) A notary who is the subject of the complaint and who is aggrieved or adversely affected by a final decision of the secretary of state may seek judicial review of that decision by filing a petition either in Polk County district court or in the district court for the county in which the petitioner resides or has its principal place of business. Proceedings for judicial review shall be followed as provided in Iowa Code section 17A.19(2).

ARC 9843B

UTILITIES DIVISION[199]

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 Iowa Code sections 17A.4 and 476.2, the Utilities Board (Board) gives notice that on October 19, 2011, the Board issued an order in Docket No. RMU-2011-0006, In re: Rescission of 199 IAC Chapter 43, Iowa Broadband Initiative, “Order Commencing Rule Making.” The Board is proposing to rescind 199 IAC 43 because the statutory provisions creating the Iowa Broadband Initiative and authorizing the Board to adopt rules implementing those provisions were eliminated by subsequent legislative action.

The order commencing rule making contains a more thorough discussion of the proposed rule making. The order is available on the Board’s Web site at www.state.ia.us/iub.

Pursuant to Iowa Code sections 17A.4(1)“a” and “b,” any interested person may file a written statement of position pertaining to the proposed rescission. The statement must be filed on or before December 6, 2011. The statement should be filed electronically through the Board’s Electronic Filing System (EFS). Instructions for making an electronic filing can be found on the EFS Web site at <http://efs.iowa.gov>. Any person who does not have access to the Internet may file comments on paper pursuant to 199 IAC 14.4(5). An original and ten copies of paper comments shall be filed. Both electronic and written filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author’s name and address and make specific reference to this docket. All communications should be directed to the Executive Secretary, Iowa Utilities Board, 1375 E. Court Avenue, Room 69, Des Moines, Iowa 50319-0069.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)“b,” an oral presentation may be requested or the Board on its own motion may determine that an oral presentation should be scheduled.

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

This amendment is intended to implement Iowa Code sections 17A.4 and 476.2 and 2005 Iowa Acts, chapter 9, section 3.

The following amendment is proposed.

Rescind and reserve **199—Chapter 43.**

ARC 9846B

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed Emergency

Pursuant to the authority of 2011 Iowa Acts, House File 590, section 7, the Economic Development Authority hereby adopts Chapter 117, “SSBCI Demonstration Fund,” Iowa Administrative Code.

The rules create a program called the SSBCI Demonstration Fund. On August 30, 2011, the state of Iowa received an allocation of more than \$13 million from the United States Department of the Treasury for purposes of the State Small Business Credit Initiative (SSBCI). As part of that initiative, the Authority is obligated to spend \$5 million for purposes of an SSBCI Demonstration Fund. These rules implement the federal requirements of this program.

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to public interest because of the need to have application procedures in effect immediately in order to make certain federal funds available to Iowa businesses by the end of November 2011.

The Authority further finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of these rules should be waived and these rules should be made effective upon filing. The Authority’s finding is based upon the fact that the rules will confer a benefit upon the public by providing opportunities for additional discussion before these rules are amended further.

These rules are published herein under Notice of Intended Action as **ARC 9848B** to allow for public comment.

The Economic Development Authority adopted these rules on October 20, 2011.

The Governor’s Office pre-cleared the rules on October 18, 2011.

After analysis and review of this rule making, no adverse impact on jobs has been found. These rules implement economic development policy in the state by means of a collaboration between government and the private sector. The collaboration allows the Economic Development Authority and the Iowa Innovation Corporation to further economic development policy. These rules allow Iowa to create a business environment which is competitive with other states in order to ensure job growth and retention.

These rules are intended to implement 2011 Iowa Acts, House File 590, section 5, subsection 1, and 2011 Iowa Acts, House File 590, section 7.

These rules became effective October 26, 2011.

The following amendment is adopted.

Adopt the following new 261—Chapter 117:

CHAPTER 117
SSBCI DEMONSTRATION FUND

261—117.1(84GA,HF590) Authority. The authority for establishing rules governing the SSBCI demonstration fund under this chapter is provided in 2011 Iowa Acts, House File 590.

261—117.2(84GA,HF590) Purposes, goals, and promotion.

117.2(1) Purposes. The SSBCI demonstration fund is established to provide financial and technical assistance to innovative entrepreneurs and businesses. The purposes of providing such assistance are to help innovative entrepreneurs overcome the challenges associated with launching new ventures, attract private capital investment, and expand the volume of high-technology prototype and concept development activities which have a clear potential to lead to commercially viable products or services within a reasonable period of time.

117.2(2) Goals. The fund will be used to help businesses with a high growth potential to reach a position from which they will be able to attract later-stage private sector funding and to leverage as much private investment as possible in accordance with the goals and requirements of the federal SSBCI program.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

117.2(3) Promotion. The authority will market and promote the fund in a way that reflects the purposes of subrule 117.2(1).

261—117.3(84GA,HF590) Definitions. For purposes of this chapter, unless the context otherwise requires:

“*Authority*” means the economic development authority.

“*Award*” means the provision of financial or technical assistance to a project.

“*Board*” means the members of the board in whom the powers of the authority are vested pursuant to Iowa Code chapter 15.

“*Committee*” means the technology commercialization committee created by the board.

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

“*Fund*” means the SSBCI demonstration fund established in this chapter.

“*Innovative business*” means a business applying novel or original methods to the manufacture of a product or the delivery of a service. “Innovative business” includes a business engaged in one of the following industries classified by the NAICS:

1. Biosciences.
2. Information technologies.
3. Advanced manufacturing.

“*IP*” means intellectual property.

“*NAICS*” means the North American Industry Classification System.

“*SSBCI*” means the State Small Business Credit Initiative established by the United States Department of the Treasury.

261—117.4(84GA,HF590) Project funding.

117.4(1) Awards shall be made on a per-project basis upon board approval. Each award shall be designed in such a way as to most effectively implement the purposes and goals of the fund as described in rule 261—117.2(84GA,HF590).

117.4(2) The board may determine the appropriate amount of financial assistance for a single project based on the merits of the project, the amount of private investment to be leveraged by the project, the amount of moneys available for purposes of the fund, and the requirements of the SSBCI program.

117.4(3) Funds awarded by the board may be used for intellectual property development and evaluation, in-depth analysis of market potential, analysis of competitive landscape, advancing proof of concept work for a scientific discovery, designing and developing prototypes, conducting research and development to attract venture capital and other financing, marketing and product promotion, hiring of key personnel, purchasing equipment, and paying construction costs.

117.4(4) Funds may not be used for university overhead expenses or for any work that was conducted prior to the term of the contract by the applicant or by any third-party consultant.

117.4(5) The forms of financial assistance may consist of, but are not limited to, loans, forgivable loans, grants and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

261—117.5(84GA,HF590) Leverage of financial assistance required. In order to be eligible for financial assistance, an applicant must demonstrate the ability to secure one dollar of private moneys for every one dollar of financial assistance received from the authority. The board shall consider the amount of private moneys leveraged that is in excess of the minimum matching amount required by this rule and shall make awards of financial assistance to those projects that most efficiently leverage the amount of moneys available in the fund.

261—117.6(84GA,HF590) Eligible applicants. An eligible applicant must be located in Iowa, demonstrate the potential for high growth, and be an innovative business.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

261—117.7(84GA, HF590) Ineligible applicants. The following businesses are not eligible for financial assistance from the fund:

117.7(1) A business which is engaged in retail sales or provides health services.

117.7(2) A business which closes or substantially reduces its workforce by more than 20 percent at an existing operation in order to relocate substantially the same operation to another area of the state. Such a business is ineligible for financial assistance for 36 consecutive months at any of its Iowa sites from the date the new establishment opens.

117.7(3) A business that does not meet the requirements of the federal SSBCI program.

261—117.8(84GA, HF590) Application and review process.

117.8(1) An eligible business must submit an application for financial and technical assistance from the fund to the Iowa Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309, on a form provided by the authority. Required forms and instructions are available at this address or in electronic form on the authority's Web site.

117.8(2) To apply for financial assistance from the fund, a business shall submit an application to the authority on a form provided by the authority. The application will be reviewed by authority staff, the committee and the board. The committee will make a recommendation to the board about an application. The board has final decision-making authority on requests for financial assistance from the fund. The board may approve, defer or deny an application.

117.8(3) The authority may contract with third-party service providers for assistance with the evaluation and review of applications.

117.8(4) An application for assistance shall include all information required by the authority including, but not limited to, the following:

a. Proposed product or service. A description of the proposed product or service, the experience of those involved in the proposed project, and the company resources.

b. Market research. A market research analysis that addresses questions such as:

(1) What are the competing or alternative technologies?

(2) What is the advantage of this new approach?

(3) What are the distribution plans?

(4) What is the estimated return on investment?

c. Commercialization. A description of the key next steps to making an impact with the innovation and a description of funding requirements necessary to overcome obstacles to success.

d. Work plan. A description of the strategy and key elements to be funded to address goals of the work plan, including project milestones.

e. Resources and budget. A budget that includes a detailed description of the sources, including the required match, and uses of the funds.

261—117.9(84GA, HF590) Application selection criteria. In reviewing applications for financial assistance, the committee and the board shall consider the following criteria:

117.9(1) Intellectual property, and how the ownership of the IP is structured. More points will be awarded for greater IP control by the business, with the greatest number of points being awarded for exclusive IP ownership by the business.

117.9(2) Experience. The business's experience in productization and commercialization, and ongoing product maintenance.

117.9(3) Estimate to completion.

a. What are the work requirements; how quickly will the work be completed?

b. How credible is this estimate relative to the business's experience?

c. Does the business have the resources to fulfill these requirements?

117.9(4) Market research.

a. Is there a competitor?

b. How large is the market outside Iowa?

c. How credible is the marketing plan?

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

- d. Does the business have experience in this industry?
- e. Is there an industry in Iowa that would be a natural client/market?

117.9(5) Financial requirement.

- a. Have the matching and necessary funds been secured?
- b. Is the amount of funds available sufficient to take the product to market?

117.9(6) Distribution. Do the channels already exist to take the product to market?

117.9(7) Expected return. Is the expected return quantified based on time to break even and long-term economic impact?

261—117.10(84GA, HF590) Contract and reporting.

117.10(1) Notice of award. Successful applicants will be notified in writing of an award of assistance, including any conditions and terms of the approval.

117.10(2) Contract required. The authority shall prepare a contract, which includes, but is not limited to, a description of the project to be completed by the business, conditions to disbursement, required reports, the repayment requirements imposed on the business, the procedures and remedies available if there is an event of default under the contract, and any other specific repayment provisions (“clawback” provisions) to be established on a project-by-project basis.

117.10(3) SSBCI requirements. The contract required pursuant to subrule 117.10(2) shall include any and all provisions necessary for compliance with federal SSBCI program requirements. An applicant shall submit any and all information required by the authority in sufficient detail to permit the authority to prepare the reports required under the federal SSBCI program.

These rules are intended to implement 2011 Iowa Acts, House File 590, section 5, subsection 1, and 2011 Iowa Acts, House File 590, section 7.

[Filed Emergency 10/26/11, effective 10/26/11]

[Published 11/16/11]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 11/16/11.

ARC 9851B

ECONOMIC DEVELOPMENT AUTHORITY[261]

Adopted and Filed Emergency

Pursuant to the authority of 2011 Iowa Acts, House File 590, section 52, the Economic Development Authority hereby rescinds Chapter 400, “Generation Iowa Commission,” and adopts new Chapter 400, “Rules Applicable to Part XII,” and adopts new Chapter 401, “Administration of Financial Assistance,” and Chapter 402, “Energy Efficiency Community Grant Program,” Iowa Administrative Code.

The amendments implement changes to the Iowa Code provisions that established the Office of Energy Independence (the “office”) and the Iowa Power Fund (the “fund”). The Legislature, in 2011 Iowa Acts, House File 590, repealed Iowa Code chapter 469, including the office and the fund, and transferred the administration of certain energy development programs in Iowa Code chapter 473 from the office to the Authority.

The amendments also implement 2011 Iowa Acts, House File 45, section 13, which repealed the Generation Iowa Commission.

The Authority finds, pursuant to Iowa Code section 17A.4(3), that notice and public participation are unnecessary because 2011 Iowa Acts, House File 590, section 52, requires that these rules be adopted and implemented on an “emergency” basis.

The Authority further finds, pursuant to Iowa Code section 17A.5(2)“b”(1), that the normal effective date of these amendments should be waived and these amendments should be made effective upon filing because 2011 Iowa Acts, House File 590, section 52, directs the Authority to adopt rules relative to 2011 Iowa Acts, House File 590, by emergency rule making and directs that the rules should be made effective upon filing.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

These amendments are published herein under Notice of Intended Action as **ARC 9852B** to allow for public comment.

The Economic Development Authority adopted these amendments on October 20, 2011.

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

These amendments are intended to implement Iowa Code chapter 473, 2011 Iowa Acts, House File 590, division III, and 2011 Iowa Acts, House File 45, section 13.

These amendments became effective October 26, 2011.

The following amendments are adopted.

ITEM 1. Rescind 261—Chapter 400 and adopt the following new chapter in lieu thereof:

CHAPTER 400
RULES APPLICABLE TO PART XII

261—400.1(84GA, HF590) Definitions. For purposes of this part, unless the context otherwise requires:

“*Authority*” means the economic development authority created in Iowa Code chapter 15.

“*Board*” means the economic development authority board.

“*Director*” means the director of the economic development authority.

“*Entity*” or “*entities*” includes but is not limited to businesses, nonprofit organizations, educational institutions, units of state and local government, and individuals conducting business, research, or programs in Iowa.

“*Foreign*” means a locality outside of, or nation other than, the United States, Canada, or Mexico.

“*Fund*” means the moneys appropriated in prior fiscal years for purposes of the Iowa power fund created in 2011 Iowa Code section 469.9 and any repayments, recaptures, royalties, or other moneys accruing to the authority as a result of such appropriations.

261—400.2(84GA, HF590) Purpose, administrative information, and implementation.

400.2(1) Purpose. In 2011 Iowa Acts, House File 590, the general assembly repealed Iowa Code chapter 469 which established the Iowa power fund, allowed for the provision of financial assistance from the fund to certain energy projects, and provided for the fund’s administration by the office of energy independence. With the repeal of Iowa Code chapter 469, the general assembly transferred to the authority the administration of all outstanding projects funded under the Iowa power fund and the contracts entered into thereunder. The purpose of this part is to allow the authority to administer and wind down the contracts entered into under the power fund legislation before its repeal.

400.2(2) Administrative information. The projects and contracts formerly administered by the office of energy independence are now administered by the authority. The public may obtain information about the Iowa power fund, the office of energy independence, or the office’s projects by contacting the Economic Development Authority, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3000.

400.2(3) Implementation. This part is intended to implement 2011 Iowa Code chapter 469 and 2011 Iowa Acts, House File 590, division III.

These rules are intended to implement 2011 Iowa Acts, House File 590, division III.

ITEM 2. Adopt the following new 261—Chapter 401:

CHAPTER 401
ADMINISTRATION OF FINANCIAL ASSISTANCE

261—401.1(84GA, HF590) Purpose.

401.1(1) Assistance was awarded under the Iowa power fund for purposes of the following:

a. Increasing the research, development, production, and use of biofuels and other sources of renewable energy;

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

- b. Improving energy efficiency;
- c. Reducing greenhouse gas emissions; and
- d. Furthering the research, development, commercialization and distribution of technologies and practices to sustain the environment and develop business in this state.

401.1(2) Each individual project receiving a grant or loan need not meet all of these purposes, but the financial assistance provided, when considered on the whole, shall be consistent with these purposes.

261—401.2(84GA, HF590) Appropriations. The fund includes appropriations made to the fund by the general assembly, other moneys available to or obtained or accepted from federal or private sources, interest earned, and repayments and recaptures of loans and grants.

261—401.3(84GA, HF590) Control of fund assets. The fund is under the control of the authority. The director shall coordinate the administration of the fund. The board shall approve, defer, or deny applications for financial assistance from moneys appropriated to the fund. The board may amend or wind down contracts entered into for the provision of financial assistance under the fund.

261—401.4(84GA, HF590) Allocation of fund moneys.

401.4(1) Moneys available in the fund may be used to provide financial assistance to entities conducting business, research, or programs in Iowa:

a. To accelerate research and development, knowledge transfer, and technology innovation and improve the economic competitiveness of efforts furthering the goals of the fund stated in rule 261—401.1(84GA, HF590).

b. To increase the demand for and educate the public about technologies and approaches furthering the goals of the fund stated in rule 261—401.1(84GA, HF590).

401.4(2) Appropriations are subject to actual receipt of moneys by the fund.

401.4(3) Repayments and recaptures of fund moneys may be allocated by the board for purposes of financial assistance under this part or for the administrative costs of the authority.

261—401.5(84GA, HF590) Eligible applicants. Entities conducting or proposing or partnering to conduct business, research, or programs in Iowa are eligible to apply to the authority for financial assistance from the fund. Proposals must demonstrate potential for significant impact in Iowa. A single entity or group of entities may submit an application for assistance from the fund.

261—401.6(84GA, HF590) Eligibility criteria for financial assistance.

401.6(1) General criteria. Applicants must include documentation relating to the actual or potential development of the following:

a. Utilization of crops and products grown or produced in this state that maximize the value of crops used as feedstock in biomanufacturing products and as coproducts.

b. Reduction of greenhouse gas emissions and carbon sequestration.

c. Commercialization of technology and product development for sale in the national and international market.

d. Alternative and renewable energy and increased energy efficiency.

e. Private or federal matching funds.

401.6(2) Research criteria. In addition to including documentation related to the general criteria in subrule 401.6(1), applicants seeking funding for research must include information related to the following:

a. The technical feasibility of the proposal.

b. The extent to which the proposed research builds on already-existing research.

c. The extent to which the proposed research meets a market need and demonstrates viability for commercialization.

401.6(3) Commercialization criteria. In addition to including documentation related to the general criteria in subrule 401.6(1), applicants seeking funding for commercialization projects must include information related to the following:

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

- a. The extent to which the technology has been proven.
- b. The technology sought to be commercialized.
- c. The current scale-up status of the project.

401.6(4) Education criteria. In addition to including documentation related to the general criteria in subrule 401.6(1), applicants seeking funding for educational projects must include information related to the following:

- a. The target audience, including the estimated number of people targeted.
- b. An estimate of the energy savings possible or fossil fuel reductions achievable if the target audience implements the methods presented.

401.6(5) Undesignated projects criteria. In addition to including documentation related to the general criteria in subrule 401.6(1), applicants seeking funding for undesignated projects must include information that explains how the project meets the statutory goals of the fund.

261—401.7(84GA, HF590) Forms of assistance.

401.7(1) Types of assistance. Financial assistance from the fund may consist of, but is not limited to, loans, forgivable loans, grants, investments, loan guarantees, and such other forms of assistance the board deems appropriate and consistent with the needs of a given project.

401.7(2) Eligible uses of funds. The eligible uses of the funds awarded by the board may be limited at the board's discretion. Generally, funds awarded by the board may not be used to fund the purchase of land or buildings, and no more than 10 percent of the funds awarded per application may be used for indirect costs.

261—401.8(84GA, HF590) Application process.

401.8(1) Preapplication. To apply for moneys from the fund, an applicant shall submit a preapplication to the authority in a form provided by the authority on behalf of the board. The preapplication serves as an executive summary of the applicant's proposal. The authority shall review preapplications and request full applications for those projects that appear to meet the eligibility criteria and statutory goals of the fund.

401.8(2) Full application. An applicant requested to submit a full application shall submit such application to the authority in a form provided by the authority on behalf of the board. The authority shall review the full applications and any technical, scientific or financial review completed and make recommendations to the board. The board shall review the applications and make the final decision. The board shall have final authority to approve, defer, or deny such applications. The board or the authority may request additional information at any time and proceed with consideration of the application when that information is received.

401.8(3) Technical, scientific or financial review. The board or the authority may request an applicant to obtain a technical, scientific or financial review of a proposal which may wholly or partially be funded at the applicant's expense. The review may be obtained from a reviewer recommended by the board or the authority or may be obtained from a reviewer selected by the applicant and approved in advance by the board or the authority. Only reviews from reviewers recommended by or approved by the board or the authority will be accepted.

401.8(4) Agency review. The authority may refer proposals to other state agencies for review as appropriate.

401.8(5) Ongoing acceptance of applications. Applications shall be accepted by the authority on behalf of the board on an ongoing basis. Review times will vary due to the complexity and diversity of applications.

401.8(6) Forms and directions. Application forms and directions for completing the forms are available from the authority.

261—401.9(84GA, HF590) Confidentiality.

401.9(1) Period of confidentiality. All information contained in an application for financial assistance submitted to the board shall remain confidential while the board is reviewing the application,

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

processing requests for confidentiality, negotiating with the applicant, and preparing the application for consideration by the board.

401.9(2) *Release of information for technical review.* The board may release certain information in an application for financial assistance to a third party for technical review. If the board releases such information, the board shall ensure that the third party protects such information from public disclosure.

401.9(3) *Applicant request for confidentiality.* An applicant may make a written request to the board to keep confidential certain details of an application, contract, or the material submitted in support of an application or a contract. If the request includes a sufficient explanation as to why the public disclosure of such details would give an unfair advantage to competitors, the board shall keep such details confidential.

401.9(4) *Criteria for determining confidential treatment.* In determining whether to grant a request for confidential treatment of applicant information, the board must appropriately balance an applicant's need for confidentiality against the public's right to information about the board's activities. The board may consider the following:

- a. The nature and extent of competition in the applicant's industry sector.
- b. The likelihood of adverse financial impact to the applicant if the information were to be released.
- c. The risk that the applicant would locate in another state if the request is denied.
- d. Any other factors the board may reasonably consider relevant.

401.9(5) *Confidentiality decision.* The board shall notify an applicant in writing of its decision regarding the confidentiality of an application, contract, or supporting materials. Once the board has notified the applicant of its decision, any information not deemed confidential by the board shall be made publicly available. Any information deemed confidential by the board shall be kept confidential by the authority and the board during and following the administration of a contract executed pursuant to a successful application.

401.9(6) *Withdrawal of application.* If the board denies an applicant's request for confidentiality, the applicant may withdraw an application and any supporting materials. The board shall not retain any copies of the application and supporting materials. Upon notice that an application has been withdrawn, the board shall not release a copy in response to a request for records pursuant to Iowa Code chapter 22.

261—401.10(84GA, HF590) Contents of full application. A full application to request assistance from the fund shall include, but not be limited to, the following:

401.10(1) Documentation that the applicant meets the eligibility criteria stated in rules 261—401.5(84GA, HF590) and 261—401.6(84GA, HF590).

401.10(2) A description that explains how the applicant's project will promote one or more of the goals of the fund as set forth in rule 261—401.1(84GA, HF590).

401.10(3) A description of the proposed project, including all sources and uses of funding, the amount and type of funding requested, and an identification of the community or location for the project.

401.10(4) Information regarding benefits to the state of Iowa from the proposed project in terms of the state's return on investment in the project. A recipient of power fund moneys shall provide to the board on a periodic basis as determined by the board a report on the use and effectiveness of the moneys granted or loaned.

401.10(5) A business plan, schedule of work, or equivalent that describes the applicant's current operations and future plans.

401.10(6) If applicable, a description of the applicant's violations of law in the preceding five years including, but not limited to, worker safety statutes, rules, and regulations. The description must include violations of any federal or state environmental protection statute, regulation, or rule within the previous five years. If the violations seriously affected the public health or safety, or the environment, the applicant shall provide an explanation of any mitigating circumstances and corrective action taken to achieve compliance. If requested by the authority, the applicant shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings, and other information that would assist the authority or the board in understanding the nature of the violation.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

401.10(7) A certification by the applicant that the information provided in the application is true and accurate to the best of the applicant's knowledge.

401.10(8) A release of information to permit the authority and the board, and their respective attorneys and agents, to reasonably evaluate the application.

401.10(9) Financial information to the extent requested by the board, including, if applicable, information about the applicant's owners, investors, and business structure.

261—401.11(84GA, HF590) Selection criteria. The board shall seek to maintain flexibility when making decisions to allocate moneys from the fund to specific proposals. In reviewing applications for financial assistance, the board shall consider the extent to which the proposal is consistent with the energy independence plan as developed in accordance with 2011 Iowa Code section 469.4 and consistent with the statutory purposes of the fund as described in subrule 401.1(1). In addition, the board shall consider the following:

401.11(1) Proposal categories.

a. The board may allocate moneys from the fund annually to projects in any or all of the following categories:

- (1) Commercialization.
- (2) Research.
- (3) Education.
- (4) Undesignated.

b. The allocation of moneys by the board to proposals in these categories is discretionary and depends on factors including, but not limited to, the quality and quantity of the applications submitted.

401.11(2) Financial assistance.

a. The board will consider whether the applicant has available financial resources in addition to the fund to support the proposal financially. In assessing available financial resources, the board may:

- (1) Consider both private and public funds as available financial resources.
- (2) Recognize the contribution of in-kind resources.
- (3) Require a match of available financial resources for commercialization proposals.
- (4) Give weight to available financial resources for research, education, or other undesignated proposals.

b. The significance of the availability of financial resources may be weighed by the board in its discretion when allocating moneys from the fund for specific proposals.

261—401.12(84GA, HF590) Contract administration.

401.12(1) Notice of award. Applicants will be notified in writing of the board's decision, including any conditions and terms of approval.

401.12(2) Contract required. The board shall direct the authority to prepare an agreement which includes, but is not limited to, a description of the project to be completed by the recipient; length of the project period; conditions to disbursement as approved by the board; a requirement for a report, to be made to the board on a periodic basis determined by the board, on the use and effectiveness of financial assistance from the fund; and the reimbursement requirements of the recipient or other penalties imposed on the recipient in the event the recipient does not meet the commitments set forth in the contract, in the documentation provided to establish eligibility, or in other specific repayment provisions ("clawback" provisions) to be established on a project-by-project basis. Successful applicants shall execute an agreement within 120 days of the approval. Failure to do so may result in action by the board to revoke the award. The 120-day time limit may be extended by the board for good cause shown. No award is final until an agreement is signed by all parties.

401.12(3) Contract amendments. Any substantive change to a funded project will require a contract amendment. Such an amendment may be approved by the board or, if allowed by subrule 401.12(4), the amendment may be approved by the authority. Substantive changes include, but are not limited to, contract time extensions, budget revisions, and significant alterations of existing activities or beneficiaries.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

401.12(4) Situations not requiring board approval. The authority may take final action on budget revision amendments that would not substantially change the terms or conditions of the award or contract, on the discontinuance or suspension of collection efforts, and on negotiated settlements for projects that do not meet contract requirements. The authority may decide to take final action or to refer the matter to the full board for action.

401.12(5) Intellectual property. The director shall promote statewide utilization of the results of research, development, and commercialization activities funded in whole or in part by the fund. The director is authorized to negotiate provisions with applicants that address issues relating to income generated from patents, trademarks, licenses, or royalties expected to be produced as a result of moneys proposed to be expended from the fund. The director may seek assistance from appropriate state agencies and may seek outside expertise. An applicant shall not be prevented from protecting any previously developed intellectual property.

These rules are intended to implement 2011 Iowa Acts, House File 590, division III.

ITEM 3. Adopt the following **new** 261—Chapter 402:

CHAPTER 402
ENERGY EFFICIENCY COMMUNITY GRANT PROGRAM

261—402.1(84GA, HF590) Purpose. The purpose of the energy efficiency community grant program is to make funding available to local communities for energy efficiency projects or programs. The program is established with moneys from the fund, which is under the administration of the authority.

261—402.2(84GA, HF590) Definitions. For purposes of this chapter, unless the context otherwise requires:

“*Eligible applicant*” means a city, county, nonprofit organization, organization involved with energy efficiency or conservation efforts, environmental organization, or group that has a tax identification number.

“*Eligible project*” means any project or program that would save energy dollars or energy units.

“*In kind*” means any matching funds in the form of salaries and materials. Equipment and indirect costs will not be counted as in-kind matching funds. Volunteer hours that are submitted for salary match must use an hourly rate equivalent to the average national hourly earnings of all production and nonsupervisory workers on private, nonfarm payrolls as determined by the U.S. Bureau of Labor Statistics.

261—402.3(84GA, HF590) Requests for applications. The authority shall determine the form of the application and manage requests for applications as necessary.

261—402.4(84GA, HF590) Geographic distribution. Consideration will be given to applications based on distribution throughout Iowa’s congressional districts. The authority may consider multiple applications from the same community. The authority may take into account geographic distribution in determining awards.

261—402.5(84GA, HF590) Criteria for review. In reviewing applications, the authority shall consider the following.

402.5(1) Promotion of energy efficiency or renewable generation. The authority shall consider the project’s potential promotion of residential or small-scale renewable energy systems and the project’s ability to reduce energy consumption, energy units, or dollars spent on energy.

402.5(2) Collaboration. The authority shall consider the following:

a. Whether the project establishes or supports a community-based, county-based or regional energy efficiency project or program.

ECONOMIC DEVELOPMENT AUTHORITY[261](cont'd)

- b. The breadth and depth of community, county or regional involvement in the energy efficiency project or program.
- c. The involvement of local schools, civic organizations, chambers of commerce, and private groups.
- d. The project's support of any existing or proposed ordinances encouraging energy efficiency and conservation or energy efficient building code provisions and enforcement.
- e. The project's efforts to secure local funding for the community-based, county-based or regional energy efficiency project or program or for a funding sustainability plan.

261—402.6(84GA,HF590) Project approval and award of funds. Projects shall be approved by the director after review and recommendation by authority personnel. All funding decisions shall be reported monthly to the board. Funds will be distributed to approved projects based on mutually agreed-upon contract terms.

These rules are intended to implement 2011 Iowa Acts, House File 590, division III.

[Filed Emergency 10/26/11, effective 10/26/11]

[Published 11/16/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/16/11.

ARC 9861B

SECRETARY OF STATE[721]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 17A.3 and 490.135 and chapter 489, the Secretary of State hereby amends Chapter 40, "Corporations," Iowa Administrative Code.

The rules in Chapter 40 specify actions related to applications and filing requirements for corporations, including the payment and refund of fees. This amendment to Chapter 40 adopts new rule 721—40.8(489,490), which codifies the existing fees and procedures for filing biennial reports pursuant to Iowa Code sections 489.209 and 490.1622. In collecting the fees associated with Iowa Code sections 489.209 and 490.1622, the Secretary of State has followed the established procedures of previous Secretaries of State for collecting the fees. These procedures were not codified by previous Secretaries, and the current Secretary of State wishes to clarify compliance with Iowa Code chapter 17A. No new fees or increases to current fees have been added by the adoption of rule 721—40.8(489,490).

In compliance with Iowa Code section 17A.4(3), the Secretary of State finds that notice and public participation are impracticable because of the immediate need for rule making to implement the provisions of this law.

The Secretary 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 October 26, 2011, because the amendment confers a benefit by codifying an existing practice.

This amendment is also published herein under Notice of Intended Action as **ARC 9860B** to allow public comment.

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

This amendment is intended to implement Iowa Code sections 489.209 and 490.1622.

This amendment became effective October 26, 2011.

The following amendment is adopted.

Adopt the following **new** rule 721—40.8(489,490):

721—40.8(489,490) Biennial reports. The secretary of state shall collect the following fees at the time the documents described in this rule are delivered to the secretary for filing.

SECRETARY OF STATE[721](cont'd)

40.8(1) A limited liability company or a foreign limited liability company authorized to transact business in this state shall deliver to the secretary of state for filing a biennial report that meets the requirements of Iowa Code section 489.209.

a. The fee for filing and indexing a biennial report filed on paper or in a paper-based format is \$45. This fee may be provided in the form of cash, personal check, cashier's check, or money order or by secretary of state charge account.

b. The fee for an electronic filing through the secretary of state Internet Web site is \$30. This fee must be paid by check, credit card, or secretary of state charge account.

40.8(2) Each domestic corporation, and each foreign corporation authorized to transact business in this state, shall deliver to the secretary of state for filing a biennial report that meets the requirements of Iowa Code section 490.1622.

a. The fee for filing and indexing a biennial report filed on paper or in a paper-based format is \$45. This fee may be provided in the form of cash, personal check, cashier's check, or money order or by a secretary of state charge account.

b. The fee for an electronic filing through the secretary of state Internet Web site is \$30. This fee must be paid by check, credit card, or secretary of state charge account.

[Filed Emergency 10/26/11, effective 10/26/11]

[Published 11/16/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/16/11.

ARC 9862B**PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Chiropractic hereby amends Chapter 45, "Discipline for Chiropractic Physicians," Iowa Administrative Code.

The adopted amendment clarifies that conviction of a crime includes when the judgment of conviction or sentence was deferred.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 1, 2011, as **ARC 9551B**. A public hearing was held on June 23, 2011, from 8 to 8:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment was adopted by the Board of Chiropractic on October 12, 2011.

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

This amendment will become effective December 21, 2011.

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

The following amendment is adopted.

Amend subrule 45.2(11) as follows:

45.2(11) Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within the profession, regardless of whether the judgment of conviction or sentence was deferred. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

[Filed 10/28/11, effective 12/21/11]

[Published 11/16/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/16/11.

ARC 9844B**PROFESSIONAL LICENSURE DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physician Assistants amends Chapter 327, "Practice of Physician Assistants," Iowa Administrative Code.

The amendment defines ways to allow an electronic health records system to meet the requirement that the name of the supervising physician associated with the prescribing physician assistant be provided on each prescription. Currently, many systems do not have fields to allow multiple names to be submitted, and the law allows for other options to be utilized.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 29, 2011, as **ARC 9580B**. A public hearing was held on July 19, 2011, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Public comments received disagreed that the proposed list met federal standards or was feasible given the fact that people could take a prescription anywhere to get it filled and that the list did not seem to meet the standard of being a part of each prescription. At its October 19, 2011, meeting, the Board discussed public comments and modified the noticed amendment to remove the language of a list from the second sentence in paragraph 327.6(1)"d" and to add a third sentence to provide directions for adding a code and supervising physician's name to a memo or comment field in an electronic record if there is no dedicated field for that information. These changes incorporate stakeholder suggestions. Stakeholders at the meeting agreed with the Board-approved modifications.

The amendment was adopted by the Board of Physician Assistants on October 19, 2011.

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

This amendment will become effective December 21, 2011.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

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

Amend paragraph **327.6(1)“d”** as follows:

d. ~~A~~ When delegated prescribing occurs, the supervising physician's name, ~~which~~ shall be used, recorded, or otherwise indicated in connection with each individual prescription so that the individual who dispenses or administers the prescription knows under whose delegated authority the physician assistant is prescribing. Notification may include, but is not limited to, including the physician's name on the prescription, including the physician's name in the memo section of an electronic prescription, or providing the physician's name by telephone or other electronic means. If, in an electronic prescription record, the record does not include a dedicated field for the name of the supervising physician, a memo or comment field may be used to record the supervising physician's name by entering the code "SP01" and then the supervising physician's name prior to any other comment in the memo or comment field.

[Filed 10/21/11, effective 12/21/11]

[Published 11/16/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/16/11.

ARC 9847B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 105.4, the Plumbing and Mechanical Systems Board hereby amends Chapter 28, "Plumbing and Mechanical Systems Board—Licensure Fees," Iowa Administrative Code.

The purpose of these amendments is to align the rules in Chapter 28 with the definitions and requirements contained in 2011 Iowa Acts, House File 392. These amendments describe the fees for new licenses, reciprocal licenses, and renewal licenses for those persons working in the plumbing, HVAC, refrigeration, and hydronics trades. In addition, late renewal fees are addressed. An annual review of the fee schedule is also included.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 13, 2011, as **ARC 9610B**. In addition, these amendments were simultaneously Adopted and Filed Emergency as **ARC 9603B**. One public comment was received in support of the amendments. These amendments are identical to the amendments published under Notice of Intended Action and Adopted and Filed Emergency.

The Plumbing and Mechanical Systems Board adopted these amendments on September 20, 2011.

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

These amendments are intended to implement Iowa Code chapter 105 as amended by 2011 Iowa Acts, House File 392.

These amendments shall become effective on December 21, 2011, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

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 [28.1, 28.2] is being omitted. These amendments are identical to those published under Notice as **ARC 9610B** and Adopted and Filed Emergency as **ARC 9603B**, IAB 7/13/11.

[Filed 10/26/11, effective 12/21/11]

[Published 11/16/11]

[For replacement pages for IAC, see IAC Supplement 11/16/11.]

ARC 9849B**PUBLIC HEALTH DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 105.4, the Plumbing and Mechanical Systems Board hereby amends Chapter 29, “Plumbing and Mechanical Systems Board—Application, Licensure, and Examination,” Iowa Administrative Code.

The purpose of these amendments is to align the rules in Chapter 29 with the definitions and requirements contained in 2011 Iowa Acts, House File 392, as well as to make clarifications needed for certain parts of the rules. These amendments redefine “refrigeration,” “HVAC,” and “hydronic,” which affect the types of applicable licenses for which individuals will need to apply; extend the licensing period to three years for all licenses; allow a candidate two years to apply for the applicable license after passing an examination; update guidelines for lapsed licenses; and include a 30-day grace period before penalties are imposed. In addition, a waiver from examination has been provided for individuals who were in military service during the original waiver period.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 13, 2011, as **ARC 9612B**. In addition, these amendments were simultaneously Adopted and Filed Emergency as **ARC 9604B**. One public comment was received in support of the amendments. Two comments were received that objected to the definition of “hydronic” and to the overregulation of industry utilizing process piping. These amendments are identical to the amendments published under Notice of Intended Action and Adopted and Filed Emergency.

The Plumbing and Mechanical Systems Board adopted these amendments on September 20, 2011.

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

These amendments are intended to implement Iowa Code chapter 105 as amended by 2011 Iowa Acts, House File 392.

These amendments shall become effective on December 21, 2011, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend rule **641—29.1(105)**, definitions of “HVAC,” “Hydronic” and “Refrigeration,” as follows:

“*HVAC*” means heating, ventilation, air conditioning, ~~and~~ ducted systems, or any type of refrigeration used for food processing or preservation. “HVAC” includes all natural, propane, liquid propane, or other gas lines associated with any component of an HVAC system.

“*Hydronic*” means a heating or cooling system that transfers heating or cooling by circulating fluid through a closed system, including boilers, pressure vessels, refrigerated equipment in connection with chilled water systems, all steam piping, hot or chilled water piping together with all control devices and accessories, installed as part of, or in connection with, any ~~comfort~~ heating or ~~comfort~~ cooling system or appliance using a liquid, water, or steam as the heating or cooling media. “Hydronic” includes all low-pressure and high-pressure systems and all natural, propane, liquid propane, or other gas lines associated with any component of a hydronic system.

“*Refrigeration*” means any system of refrigeration regardless of the level of power, if such refrigeration is intended to be used for the purpose of food processing and product preservation and is not also intended to be used for comfort systems. “Refrigeration” includes all natural, propane, liquid propane, or other gas lines associated with any component of refrigeration.

ITEM 2. Amend rule 641—29.2(105), introductory paragraph, as follows:

641—29.2(105) Available licenses and general requirements. Effective January 1, 2011, all licenses issued by the board will be for a three-year period. All licenses issued prior to January 1, 2011, will be for a two-year period. Subject to the general requirements set forth herein and the minimum qualifications for licensure set forth in rule 641—29.4(105), the following licenses are available:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 3. Amend paragraph **29.2(4)“g”** as follows:

g. Provide the board with evidence that the applicant holds an active master license or employs at least one person who holds an active master license issued under Iowa Code chapter 105 for each discipline in which the applicant performs chapter 105-covered work.

ITEM 4. Amend paragraph **29.6(3)“I”** as follows:

I. A journeyperson examination applicant may apply to sit for the examination up to ~~60 days~~ 6 months prior to completion of the 48 months of required apprentice credit, which shall include the granting of advanced standing or credit for previously acquired experience, training, or skills.

ITEM 5. Adopt the following new subrule 29.6(4):

29.6(4) Expiration of passing examination score. An applicant who successfully passes an examination must apply for licensure in the applicable discipline at the applicable discipline level within two years of notification that the applicant successfully passed the examination. A passing examination score shall expire if the applicant fails to apply for licensure within the two-year period as set forth herein, and the applicant shall be required to successfully retake said examination to become licensed in the applicable discipline at the applicable discipline level.

ITEM 6. Amend subrule 29.7(1), introductory paragraph, as follows:

29.7(1) The period of licensure to operate as a contractor or work as a master, journeyperson or apprentice in the plumbing, HVAC, refrigeration, or hydronic disciplines or work as a certified medical gas system installer or work in the specialty license disciplines developed by the board shall be ~~biennial (every two years)~~ for a period of three years.

ITEM 7. Amend subparagraphs **29.7(2)“b”(1)** and **(2)** as follows:

(1) A licensee who allows a license to lapse for ~~one month~~ 30 days or less may reinstate and renew the license without examination upon payment of ~~a late fee and~~ the appropriate renewal of license fee as defined in 641—subrule 28.1(5).

(2) A licensee who allows a license to lapse for more than ~~one month~~ 30 days but less than ~~two months~~ 60 days may reinstate and renew the license without examination upon payment of ~~a late fee equivalent to the appropriate license fee~~ a \$60 late fee and the appropriate renewal of license fee as defined in 641—subrule 28.1(5).

ITEM 8. Amend paragraph **29.7(2)“c,”** introductory paragraph, as follows:

c. A licensee who allows a license to lapse for more than ~~two months~~ 60 days is required to retake and pass the applicable licensing examination and pay the appropriate renewal of license fee as defined in 641—subrule 28.1(5) in order to obtain reinstatement and renewal of that person’s license.

ITEM 9. Adopt the following new rule 641—29.9(105):

641—29.9(105) Waiver from examination for military service. The written examination requirements and prior experience requirements set forth in Iowa Code sections 105.18(2)“b”(1) and 105.18(2)“c” shall be waived for a journeyperson license or master license if the applicant meets all of the following requirements:

29.9(1) Is an active or retired member of the United States military.

29.9(2) Provides documentation that the applicant was deployed on active duty during any portion of the time period of July 1, 2008, through December 31, 2009.

29.9(3) Provides documentation that shows the applicant has previously passed an examination which the board deems substantially similar to the examination for a journeyperson license or a master license, as applicable, issued by the board, or provides documentation that shows the applicant has previously been licensed by a state or local government jurisdiction in the same trade and trade level.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 10. Amend **641—Chapter 29**, implementation sentence, as follows:
 These rules are intended to implement Iowa Code chapter 105 as amended by 2011 Iowa Acts, House File 392.

[Filed 10/26/11, effective 12/21/11]

[Published 11/16/11]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 11/16/11.

ARC 9850B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 105.4, the Plumbing and Mechanical Systems Board hereby amends Chapter 30, "Continuing Education for Plumbing and Mechanical Systems Professionals," Iowa Administrative Code.

The purpose of these amendments is to align the rules in Chapter 30 with the definitions and requirements contained in 2011 Iowa Acts, House File 392. These amendments describe the standards governing the criteria for continuing education activities; the standards governing approval for instructors; the requirements for specialty licenses; and the grounds for exempting continuing education requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 13, 2011, as **ARC 9613B**. In addition, these amendments were simultaneously Adopted and Filed Emergency as **ARC 9605B**. One public comment was received in support of the amendments. A second comment was received that identified a wording error in subrule 30.6(1); the Board supported changing "license biennium" to "continuing education compliance period" in the introductory paragraph of the subrule. As a consequence, proposed Item 10 has been modified to include the amendment to the introductory paragraph of subrule 30.6(1). The introductory paragraph now reads as follows:

"30.6(1) Automatic exemptions. A licensee shall be exempt from the continuing education requirement during the continuing education compliance period when that person:"

In addition, proposed Item 11 adopting new paragraph 30.6(1)"e" has been incorporated into Item 10.

The Plumbing and Mechanical Systems Board adopted these amendments on September 20, 2011.

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

These amendments are intended to implement Iowa Code chapter 105 as amended by 2011 Iowa Acts, House File 392.

These amendments shall become effective on December 21, 2011, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

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 [30.2 to 30.4, 30.6(1)] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 9613B** and Adopted and Filed Emergency as **ARC 9605B**, IAB 7/13/11.

[Filed 10/26/11, effective 12/21/11]

[Published 11/16/11]

[For replacement pages for IAC, see IAC Supplement 11/16/11.]



EXECUTIVE ORDER NUMBER SEVENTY-FIVE

WHEREAS, A competitive and dynamic environment for job creators is needed to achieve our goal of 200,000 new jobs for Iowans and a 25% increase in family incomes over the next five years; and

WHEREAS, a vibrant and dynamic economy is of vital importance to the people of Iowa and fosters an essential environment for the creation of jobs to benefit Iowans; and

WHEREAS, economic development is an important public purpose in which both the public and private sectors have important roles to play; and

WHEREAS, according to Iowa Code section 15.101, "economic development is an important public purpose and that both the public and private sectors have a shared interest in fostering the economic vitality of the state;" and

WHEREAS, collaboration between government and private sector job creators, in the form of a public-private partnership was furthered by the laws of the first session of the Eighty-Fourth General Assembly which created a public-private partnership for economic development in Iowa; and

WHEREAS, the public-private collaboration encouraged by House File 590 (2011) will require the guidance, vision, and planning abilities that only a council of successful private sector business people can provide.

NOW, THEREFORE, I, Terry E. Branstad, Governor of the State of Iowa, declare that job creation, economic development and economic growth should be encouraged in the State of Iowa. I hereby order the creation of the Governor's Iowa Partnership for Economic Progress ("IPEP").

1. **Purpose:** IPEP shall serve as an advisory body within state government and function on a continuing basis for the study and recommendation of solutions and policy alternatives for issues arising in the area of economic development. The partnership shall focus on job creation, identifying emerging global markets, harnessing competitive economic forces, increasing the income of Iowa families and growing the Iowa economy.
2. **Organization:** IPEP shall be composed of no more than 15 members appointed by the Governor. Each member will serve at the pleasure of the Governor without compensation and in an advisory capacity.
 - a. The IPEP board shall include the following ex-officio, non-voting members: the chair of the economic authority board, the head of the non-profit organization known as the Iowa Innovation Corporation, the director of the economic development authority and the Governor, or the Governor's designee.
 - b. The IPEP board shall include the following members: eleven additional IPEP board members who are actively engaged in the private, for-profit sector of the economy or have experience in private sector job creation, economic development or other related fields. These board members for the partnership shall be appointed by the

Governor for staggered terms of two years to begin at 12:01a.m. on November 1 in the year of appointment and expire at midnight on October 31 in the year of expiration. Initially, terms of members will be staggered with five members appointed to an initial one year term and six members appointed to an initial two year term.

Six members of the IPEP board constitute a quorum and the affirmative vote of a majority of the appointed members is necessary for any action taken by the board. The majority shall not include any member who has a conflict of interest and a statement by a member of a conflict of interest shall be conclusive for this purpose. A vacancy in the membership does not impair the ability of a quorum to exercise all rights and perform all duties of the partnership.

The economic development authority shall provide staff support to IPEP, as needed, to enable IPEP to fulfill its responsibilities.

- 3. **Goals:** The IPEP board shall have the following duties:
 - a. hold meetings for the purposes of carrying out its advisory functions; and
 - b. develop a strategic vision for economic development and private-sector job creation in Iowa; and
 - c. reach other goals and objectives as requested by the office of the Governor.

All agencies, departments and boards of the State of Iowa shall cooperate fully with IPEP. IPEP may seek the expertise and services of individuals and entities outside its membership for research, advice and other needs, as required to accomplish its mission.



IN TESTIMONY WHEREOF, I HAVE
HEREUNTO SUBSCRIBED MY NAME
AND CAUSED THE GREAT SEAL OF
THE STATE OF IOWA TO BE AFFIXED.
DONE AT DES MOINES THIS 24th DAY
OF OCTOBER IN THE YEAR OF OUR
LORD TWO THOUSAND ELEVEN.


TERRY E. BRANSTAD
GOVERNOR OF IOWA

ATTEST: 
MATT SCHULTZ
SECRETARY OF STATE